

LEGISLATURE OF NEBRASKA
ONE HUNDRED FOURTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 678

FINAL READING

Introduced by Craighead, 6.

Read first time January 06, 2016

Committee: Banking, Commerce and Insurance

- 1 A BILL FOR AN ACT relating to the Nebraska Real Estate License Act; to
- 2 amend sections 81-885 and 81-885.24, Reissue Revised Statutes of
- 3 Nebraska, and section 81-885.01, Revised Statutes Supplement, 2015;
- 4 to define and redefine terms; to provide duties for a team leader as
- 5 prescribed; to provide unfair trade practices; to harmonize
- 6 provisions; to provide an operative date; and to repeal the original
- 7 sections.
- 8 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 81-885, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 81-885 Sections 81-885 to 81-885.55 and section 3 of this act shall
4 be known and may be cited as the Nebraska Real Estate License Act.

5 Sec. 2. Section 81-885.01, Revised Statutes Supplement, 2015, is
6 amended to read:

7 81-885.01 For purposes of the Nebraska Real Estate License Act,
8 unless the context otherwise requires:

9 (1) Real estate means and includes condominiums and leaseholds, as
10 well as any other interest or estate in land, whether corporeal,
11 incorporeal, freehold, or nonfreehold, and whether the real estate is
12 situated in this state or elsewhere;

13 (2) Broker means any person who, for any form of compensation or
14 consideration or with the intent or expectation of receiving the same
15 from another, negotiates or attempts to negotiate the listing, sale,
16 purchase, exchange, rent, lease, or option for any real estate or
17 improvements thereon, or assists in procuring prospects or holds himself
18 or herself out as a referral agent for the purpose of securing prospects
19 for the listing, sale, purchase, exchange, renting, leasing, or optioning
20 of any real estate or collects rents or attempts to collect rents, gives
21 a broker's price opinion or comparative market analysis, or holds himself
22 or herself out as engaged in any of the foregoing. Broker also includes
23 any person: (a) Employed, by or on behalf of the owner or owners of lots
24 or other parcels of real estate, for any form of compensation or
25 consideration to sell such real estate or any part thereof in lots or
26 parcels or make other disposition thereof; (b) who auctions, offers,
27 attempts, or agrees to auction real estate; or (c) who buys or offers to
28 buy or sell or otherwise deals in options to buy real estate;

29 (3) Associate broker means a person who has a broker's license and
30 who is employed by another broker to participate in any activity
31 described in subdivision (2) of this section;

1 (4) Designated broker means an individual holding a broker's license
2 who has full authority to conduct the real estate activities of a real
3 estate business. In a sole proprietorship, the owner, or broker
4 identified by the owner, shall be the designated broker. In the event the
5 owner identifies the designated broker, the owner shall file a statement
6 with the commission subordinating to the designated broker full authority
7 to conduct the real estate activities of the sole proprietorship. In a
8 partnership, limited liability company, or corporation, the partners,
9 limited liability company members, or board of directors shall identify
10 the designated broker for its real estate business by filing a statement
11 with the commission subordinating to the designated broker full authority
12 to conduct the real estate activities of the partnership, limited
13 liability company, or corporation. The designated broker shall also be
14 responsible for supervising the real estate activities of any associate
15 brokers or salespersons;

16 (5) Inactive broker means an associate broker whose license has been
17 returned to the commission by the licensee's broker, a broker who has
18 requested the commission to place the license on inactive status, a new
19 licensee who has failed to designate an employing broker or have the
20 license issued as an individual broker, or a broker whose license has
21 been placed on inactive status under statute, rule, or regulation;

22 (6) Salesperson means any person, other than an associate broker,
23 who is employed by a broker to participate in any activity described in
24 subdivision (2) of this section;

25 (7) Inactive salesperson means a salesperson whose license has been
26 returned to the commission by the licensee's broker, a salesperson who
27 has requested the commission to place the license on inactive status, a
28 new licensee who has failed to designate an employing broker, or a
29 salesperson whose license has been placed on inactive status under
30 statute, rule, or regulation;

31 (8) Person means and includes individuals, corporations,

1 partnerships, and limited liability companies, except that when referring
2 to a person licensed under the act, it means an individual;

3 (9) Team means two or more persons licensed by the commission who
4 (a) work under the supervision of the same broker, (b) work together on
5 real estate transactions to provide real estate brokerage services, (c)
6 represent themselves to the public as being part of a team, and (d) are
7 designated by a team name;

8 (10) Team leader means any person licensed by the commission and
9 appointed or recognized by his or her broker as the leader for his or her
10 team;

11 (11 9) Subdivision or subdivided land means any real estate offered
12 for sale and which has been registered under the Interstate Land Sales
13 Full Disclosure Act, ~~82 Stat. 590 and following,~~ 15 U.S.C. 1701 et seq.
14 and following, as such act existed on January 1, 1973, or real estate
15 located out of this state which is divided or proposed to be divided into
16 twenty-five or more lots, parcels, or units;

17 (12 10) Subdivider means any person who causes land to be subdivided
18 into a subdivision for himself, herself, or others or who undertakes to
19 develop a subdivision but does not include a public agency or officer
20 authorized by law to create subdivisions;

21 (13 11) Purchaser means a person who acquires or attempts to acquire
22 or succeeds to an interest in land;

23 (14 12) Commission means the State Real Estate Commission;

24 (15 13) Broker's price opinion means an analysis, opinion, or
25 conclusion prepared by a person licensed under the Nebraska Real Estate
26 License Act in the ordinary course of his or her business relating to the
27 price of specified interests in or aspects of identified real estate or
28 identified real property for the purpose of (a) listing, purchase, or
29 sale, (b) originating, extending, renewing, or modifying a loan in a
30 transaction other than a federally related transaction, or (c) real
31 property tax appeals;

1 (~~16~~ 14) Comparative market analysis means an analysis, opinion, or
2 conclusion prepared by a person licensed under the act in the ordinary
3 course of his or her business relating to the price of specified
4 interests in or aspects of identified real estate or identified real
5 property by comparison to other real property currently or recently in
6 the marketplace for the purpose of (a) listing, purchase, or sale, (b)
7 originating, extending, renewing, or modifying a loan in a transaction
8 other than a federally related transaction, or (c) real property tax
9 appeals;

10 (~~17~~ 15) Distance education means courses in which instruction does
11 not take place in a traditional classroom setting, but rather through
12 other media by which instructor and student are separated by distance and
13 sometimes by time;

14 (~~18~~ 16) Regulatory jurisdiction means a state, district, or
15 territory of the United States, a province of Canada or a foreign
16 country, or a political subdivision of a foreign country, which has
17 implemented and administers laws regulating the activities of a broker;

18 (~~19~~ 17) Federal financial institution regulatory agency means (a)
19 the Board of Governors of the Federal Reserve System, (b) the Federal
20 Deposit Insurance Corporation, (c) the Office of the Comptroller of the
21 Currency, (d) the Office of Thrift Supervision, (e) the National Credit
22 Union Administration, or (f) the successors of any of those agencies; and

23 (~~20~~ 18) Federally related transaction means a real-estate-related
24 transaction that (a) requires the services of an appraiser and (b) is
25 engaged in, contracted for, or regulated by a federal financial
26 institution regulatory agency.

27 Sec. 3. A team leader shall be responsible for supervising the real
28 estate activities of his or her team performed under the Nebraska Real
29 Estate License Act subject to the overall supervision by the designated
30 broker of the team leader and team members.

31 Sec. 4. Section 81-885.24, Reissue Revised Statutes of Nebraska, is

1 amended to read:

2 81-885.24 The commission may, upon its own motion, and shall, upon
3 the sworn complaint in writing of any person, investigate the actions of
4 any broker, associate broker, salesperson, or subdivider, may censure the
5 licensee or certificate holder, revoke or suspend any license or
6 certificate issued under the Nebraska Real Estate License Act, or enter
7 into consent orders, and, alone or in combination with such disciplinary
8 actions, may impose a civil fine on a licensee pursuant to section
9 81-885.10, whenever the license or certificate has been obtained by false
10 or fraudulent representation or the licensee or certificate holder has
11 been found guilty of any of the following unfair trade practices:

12 (1) Refusing because of religion, race, color, national origin,
13 ethnic group, sex, familial status, or disability to show, sell, or rent
14 any real estate for sale or rent to prospective purchasers or renters;

15 (2) Intentionally using advertising which is misleading or
16 inaccurate in any material particular or in any way misrepresents any
17 property, terms, values, policies, or services of the business conducted;

18 (3) Failing to account for and remit any money coming into his or
19 her possession belonging to others;

20 (4) Commingling the money or other property of his or her principals
21 with his or her own;

22 (5) Failing to maintain and deposit in a separate trust account all
23 money received by a broker acting in such capacity, or as escrow agent or
24 the temporary custodian of the funds of others, in a real estate
25 transaction unless all parties having an interest in the funds have
26 agreed otherwise in writing;

27 (6) Accepting, giving, or charging any form of undisclosed
28 compensation, consideration, rebate, or direct profit on expenditures
29 made for a principal;

30 (7) Representing or attempting to represent a real estate broker,
31 other than the employer, without the express knowledge and consent of the

1 employer;

2 (8) Accepting any form of compensation or consideration by an
3 associate broker or salesperson from anyone other than his or her
4 employing broker without the consent of his or her employing broker;

5 (9) Acting in the dual capacity of agent and undisclosed principal
6 in any transaction;

7 (10) Guaranteeing or authorizing any person to guarantee future
8 profits which may result from the resale of real property;

9 (11) Placing a sign on any property offering it for sale or rent
10 without the written consent of the owner or his or her authorized agent;

11 (12) Offering real estate for sale or lease without the knowledge
12 and consent of the owner or his or her authorized agent or on terms other
13 than those authorized by the owner or his or her authorized agent;

14 (13) Inducing any party to a contract of sale or lease to break such
15 contract for the purpose of substituting, in lieu thereof, a new contract
16 with another principal;

17 (14) Negotiating a sale, exchange, listing, or lease of real estate
18 directly with an owner or lessor if he or she knows that such owner has a
19 written outstanding listing contract in connection with such property
20 granting an exclusive agency or an exclusive right to sell to another
21 broker or negotiating directly with an owner to withdraw from or break
22 such a listing contract for the purpose of substituting, in lieu thereof,
23 a new listing contract;

24 (15) Discussing or soliciting a discussion of, with an owner of a
25 property which is exclusively listed with another broker, the terms upon
26 which the broker would accept a future listing upon the expiration of the
27 present listing unless the owner initiates the discussion;

28 (16) Violating any provision of sections 76-2401 to 76-2430;

29 (17) Soliciting, selling, or offering for sale real estate by
30 offering free lots or conducting lotteries for the purpose of influencing
31 a purchaser or prospective purchaser of real estate;

1 (18) Providing any form of compensation or consideration to any
2 person for performing the services of a broker, associate broker, or
3 salesperson who has not first secured his or her license under the
4 Nebraska Real Estate License Act unless such person is (a) a nonresident
5 who is licensed in his or her resident regulatory jurisdiction or (b) a
6 citizen and resident of a foreign country which does not license persons
7 conducting the activities of a broker and such person provides reasonable
8 written evidence to the Nebraska broker that he or she is a resident
9 citizen of that foreign country, is not a resident of this country, and
10 conducts the activities of a broker in that foreign country;

11 (19) Failing to include a fixed date of expiration in any written
12 listing agreement and failing to leave a copy of the agreement with the
13 principal;

14 (20) Failing to deliver within a reasonable time a completed and
15 dated copy of any purchase agreement or offer to buy or sell real estate
16 to the purchaser and to the seller;

17 (21) Failing by a broker to deliver to the seller in every real
18 estate transaction, at the time the transaction is consummated, a
19 complete, detailed closing statement showing all of the receipts and
20 disbursements handled by such broker for the seller, failing to deliver
21 to the buyer a complete statement showing all money received in the
22 transaction from such buyer and how and for what the same was disbursed,
23 and failing to retain true copies of such statements in his or her files;

24 (22) Making any substantial misrepresentations;

25 (23) Acting for more than one party in a transaction without the
26 knowledge of all parties for whom he or she acts;

27 (24) Failing by an associate broker or salesperson to place, as soon
28 after receipt as practicable, in the custody of his or her employing
29 broker any deposit money or other money or funds entrusted to him or her
30 by any person dealing with him or her as the representative of his or her
31 licensed broker;

1 (25) Filing a listing contract or any document or instrument
2 purporting to create a lien based on a listing contract for the purpose
3 of casting a cloud upon the title to real estate when no valid claim
4 under the listing contract exists;

5 (26) Violating any rule or regulation adopted and promulgated by the
6 commission in the interest of the public and consistent with the Nebraska
7 Real Estate License Act;

8 (27) Failing by a subdivider, after the original certificate has
9 been issued, to comply with all of the requirements of the Nebraska Real
10 Estate License Act;

11 (28) Conviction of a felony or entering a plea of guilty or nolo
12 contendere to a felony charge by a broker or salesperson;

13 (29) Demonstrating negligence, incompetency, or unworthiness to act
14 as a broker, associate broker, or salesperson, whether of the same or of
15 a different character as otherwise specified in this section;~~or~~

16 (30) Inducing or attempting to induce a person to transfer an
17 interest in real property, whether or not for monetary gain, or
18 discouraging another person from purchasing real property, by
19 representing that (a) a change has occurred or will or may occur in the
20 composition with respect to religion, race, color, national origin,
21 ethnic group, sex, familial status, or disability of the owners or
22 occupants in the block, neighborhood, or area or (b) such change will or
23 may result in the lowering of property values, an increase in criminal or
24 antisocial behavior, or a decline in the quality of schools in the block,
25 neighborhood, or area; ~~or~~

26 (31) Failing by a team leader to provide a current list of all team
27 members to his or her designated broker;

28 (32) Failing by a designated broker to maintain a record of all team
29 leaders and team members working under him or her;

30 (33) Utilizing advertising which does not prominently display the
31 name under which the designated broker does business as filed with the

1 commission; or

2 (34) Utilizing team advertising or a team name suggesting the team
3 is an independent real estate brokerage.

4 Sec. 5. This act becomes operative on October 1, 2016.

5 Sec. 6. Original sections 81-885 and 81-885.24, Reissue Revised
6 Statutes of Nebraska, and section 81-885.01, Revised Statutes Supplement,
7 2015, are repealed.