

LEGISLATURE OF NEBRASKA
ONE HUNDRED FOURTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 375

Introduced by Craighead, 6.

Read first time January 15, 2015

Committee: Banking, Commerce and Insurance

- 1 A BILL FOR AN ACT relating to the Nebraska Real Estate License Act; to
- 2 amend sections 81-885.01 and 81-885.16, Reissue Revised Statutes of
- 3 Nebraska; to change provisions relating to broker's price opinions
- 4 and comparative market analyses; and to repeal the original
- 5 sections.
- 6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 81-885.01, Reissue Revised Statutes of Nebraska,
2 is amended to read:

3 81-885.01 For purposes of the Nebraska Real Estate License Act,
4 unless the context otherwise requires:

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

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

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

28 (4) Designated broker means an individual holding a broker's license
29 who has full authority to conduct the real estate activities of a real
30 estate business. In a sole proprietorship, the owner, or broker
31 identified by the owner, shall be the designated broker. In the event the

1 owner identifies the designated broker, the owner shall file a statement
2 with the commission subordinating to the designated broker full authority
3 to conduct the real estate activities of the sole proprietorship. In a
4 partnership, limited liability company, or corporation, the partners,
5 limited liability company members, or board of directors shall identify
6 the designated broker for its real estate business by filing a statement
7 with the commission subordinating to the designated broker full authority
8 to conduct the real estate activities of the partnership, limited
9 liability company, or corporation. The designated broker shall also be
10 responsible for supervising the real estate activities of any associate
11 brokers or salespersons;

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

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

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

27 (8) Person means and includes individuals, corporations,
28 partnerships, and limited liability companies, except that when referring
29 to a person licensed under the act, it means an individual;

30 (9) Subdivision or subdivided land means any real estate offered for
31 sale and which has been registered under the Interstate Land Sales Full

1 Disclosure Act, 82 Stat. 590 and following, 15 U.S.C. 1701 and following,
2 as such act existed on January 1, 1973, or real estate located out of
3 this state which is divided or proposed to be divided into twenty-five or
4 more lots, parcels, or units;

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

9 (11) Purchaser means a person who acquires or attempts to acquire or
10 succeeds to an interest in land;

11 (12) Commission means the State Real Estate Commission;

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

20 (14) Comparative market analysis means an analysis, opinion, or
21 conclusion prepared by a person licensed under the act in the ordinary
22 course of his or her business relating to the price of specified
23 interests in or aspects of identified real estate or identified real
24 property by comparison to other real property currently or recently in
25 the marketplace for the purpose of (a) listing, purchase, or sale, ~~or~~ (b)
26 originating, extending, renewing, or modifying a loan in a transaction
27 other than a federally related transaction, or (c) real property tax
28 appeals;

29 (15) Distance education means courses in which instruction does not
30 take place in a traditional classroom setting, but rather through other
31 media by which instructor and student are separated by distance and

1 sometimes by time;

2 (16) Regulatory jurisdiction means a state, district, or territory
3 of the United States, a province of Canada or a foreign country, or a
4 political subdivision of a foreign country, which has implemented and
5 administers laws regulating the activities of a broker;

6 (17) Federal financial institution regulatory agency means (a) the
7 Board of Governors of the Federal Reserve System, (b) the Federal Deposit
8 Insurance Corporation, (c) the Office of the Comptroller of the Currency,
9 (d) the Office of Thrift Supervision, (e) the National Credit Union
10 Administration, or (f) the successors of any of those agencies; and

11 (18) Federally related transaction means a real-estate-related
12 transaction that (a) requires the services of an appraiser and (b) is
13 engaged in, contracted for, or regulated by a federal financial
14 institution regulatory agency.

15 Sec. 2. Section 81-885.16, Reissue Revised Statutes of Nebraska, is
16 amended to read:

17 81-885.16 (1) The Real Property Appraiser Act shall not apply to a
18 person licensed under the Nebraska Real Estate License Act who, in the
19 ordinary course of his or her business, gives a broker's price opinion or
20 comparative market analysis, except that such opinion or analysis shall
21 not be referred to as an appraisal.

22 (2) No compensation, fee, or other consideration shall be charged
23 for a broker's price opinion or comparative market analysis other than a
24 real estate commission or brokerage fee charged or paid for brokerage
25 services rendered in connection with the sale of the real estate involved
26 unless the opinion or analysis is in writing, is signed by the preparer,
27 includes the date on which it was prepared, and contains or has attached
28 thereto the following disclosure in bold fourteen-point type: This
29 opinion or analysis is not an appraisal. It is intended only for the
30 benefit of the addressee for the purpose of assisting buyers or sellers
31 or prospective buyers or sellers in deciding the listing, offering, or

1 sale price of the real property, ~~or~~ for lending purposes in a transaction
2 other than a federally related transaction, or for real property tax
3 appeal purposes. This opinion or analysis is not governed by the Real
4 Property Appraiser Act.

5 (3) A broker's price opinion or comparative market analysis prepared
6 for an existing or potential lienholder originating, extending, renewing,
7 or modifying a loan in a transaction other than a federally related
8 transaction may not be used as the sole basis to determine the value of
9 the real estate for the purpose of originating a loan secured by such
10 real estate, and the person giving the opinion or analysis must be
11 engaged directly by the lienholder or its agent. Such person shall have
12 no duty to inquire as to any other basis used to determine such value.

13 Sec. 3. Original sections 81-885.01 and 81-885.16, Reissue Revised
14 Statutes of Nebraska, are repealed.