

AMENDMENTS TO LB929

Introduced by Lindstrom, 18.

1           1. Strike the original sections and insert the following new  
2 sections:

3           Section 1. Section 81-885.04, Reissue Revised Statutes of Nebraska,  
4 is amended to read:

5           81-885.04 Except as to the requirements with respect to the  
6 subdivision of land, the Nebraska Real Estate License Act shall not apply  
7 to:

8           (1) Any person, partnership, limited liability company, or  
9 corporation who as owner or lessor shall perform any of the acts  
10 described in subdivision (2) of section 81-885.01 with reference to  
11 property owned or leased by him, her, or it or to the regular employees  
12 thereof, with respect to the property so owned or leased, when such acts  
13 are performed in the regular course of or as an incident to the  
14 management, sale, or other disposition of such property and the  
15 investment therein, except that such regular employees shall not perform  
16 any of the acts described in such subdivision in connection with a  
17 vocation of selling or leasing any real estate or the improvements  
18 thereon;

19           (2) An attorney in fact under a duly executed power of attorney to  
20 convey real estate from the owner or lessor or the services rendered by  
21 any attorney at law in the performance of his or her duty as such  
22 attorney at law;

23           (3) Any person acting as receiver, trustee in bankruptcy, personal  
24 representative, conservator, or guardian or while acting under a court  
25 order or under the authority of a will or of a trust instrument or as a  
26 witness in any judicial proceeding or other proceeding conducted by the  
27 state or any governmental subdivision or agency;

1 (4) Any person acting as the resident manager of an apartment  
2 building, duplex, apartment complex, or court, when such resident manager  
3 resides on the premises and is engaged in the leasing of property in  
4 connection with his or her employment, or any employee, parent, child,  
5 brother, or sister of the owner or any employee of a licensed broker who  
6 manages rental property for the owner of such property;

7 (5) Any officer or employee of a federal agency in the conduct of  
8 his or her official duties;

9 (6) Any officer or employee of the state government or any political  
10 subdivision thereof performing his or her official duties for real estate  
11 tax purposes or performing his or her official duties related to the  
12 acquisition of any interest in real property when the interest is being  
13 acquired for a public purpose;

14 (7) Any person or any employee thereof who renders an estimate or  
15 opinion of value of real estate or any interest therein when such  
16 estimate or opinion of value is for the purpose of real estate taxation;  
17 or

18 (8) Any person who, for himself or herself or for others, purchases  
19 or sells oil, gas, or mineral leases or performs any activities related  
20 to the purchase or sale of such leases; or -

21 (9) Any person not required to be licensed under the act who  
22 provides a list or lists of potential purchasers to a broker or  
23 salesperson or who makes calls or facilitates the initial contact between  
24 a potential client or customer as defined in sections 76-2407 and  
25 76-2409, respectively, and a broker or salesperson. The unlicensed person  
26 may only provide information regarding the broker or salesperson and the  
27 broker's or salesperson's services in written information created by the  
28 broker or salesperson that identifies the broker or salesperson and the  
29 broker's or salesperson's place of business and which is sent by email,  
30 United States mail, or by link to a web site created by the broker or  
31 salesperson. The unlicensed person is not permitted to discuss with such

1 potential client or customer the services offered or to be offered by the  
2 broker or salesperson. The unlicensed person acting under this exemption  
3 may not discuss with such potential client or customer the client's or  
4 customer's motivation, motivating factors, or price such potential client  
5 or customer is willing to offer or accept. The unlicensed person does not  
6 have the authority and shall not purport to have the authority to  
7 obligate any such potential client or customer to work with a particular  
8 broker or salesperson or particular broker's or salesperson's place of  
9 business. The unlicensed person shall, at the beginning of any contact  
10 with such potential client or customer, identify who the unlicensed  
11 person is, the name of the entity that employs the unlicensed person, the  
12 name of the broker or salesperson, and the name of the broker's or  
13 salesperson's real estate business on whose behalf the contact is being  
14 made. The unlicensed person shall not perform any other activity of a  
15 broker or salesperson described in section 81-885.01, except those acts  
16 specifically provided for in this subdivision.

17       Sec. 2. Section 81-885.24, Revised Statutes Cumulative Supplement,  
18 2018, is amended to read:

19       81-885.24 The commission may, upon its own motion, and shall, upon  
20 the sworn complaint in writing of any person, investigate the actions of  
21 any broker, associate broker, salesperson, or subdivider, may censure the  
22 licensee or certificate holder, revoke or suspend any license or  
23 certificate issued under the Nebraska Real Estate License Act, or enter  
24 into consent orders, and, alone or in combination with such disciplinary  
25 actions, may impose a civil fine on a licensee pursuant to section  
26 81-885.10, whenever the license or certificate has been obtained by false  
27 or fraudulent representation or the licensee or certificate holder has  
28 been found guilty of any of the following unfair trade practices:

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

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

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

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

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

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

16 (7) Representing or attempting to represent a real estate broker,  
17 other than the employer, without the express knowledge and consent of the  
18 employer;

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

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

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

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

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

31 (13) Inducing any party to a contract of sale or lease to break such

1 contract for the purpose of substituting, in lieu thereof, a new contract  
2 with another principal;

3 (14) Negotiating a sale, exchange, listing, or lease of real estate  
4 directly with an owner or lessor if he or she knows that such owner has a  
5 written outstanding listing contract in connection with such property  
6 granting an exclusive agency or an exclusive right to sell to another  
7 broker or negotiating directly with an owner to withdraw from or break  
8 such a listing contract for the purpose of substituting, in lieu thereof,  
9 a new listing contract;

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

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

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

18 (18) Providing any form of compensation or consideration to any  
19 person for performing the services of a broker, associate broker, or  
20 salesperson who has not first secured his or her license under the  
21 Nebraska Real Estate License Act unless such person is (a) a nonresident  
22 who is licensed in his or her resident regulatory jurisdiction or (b) a  
23 citizen and resident of a foreign country which does not license persons  
24 conducting the activities of a broker and such person provides reasonable  
25 written evidence to the Nebraska broker that he or she is a resident  
26 citizen of that foreign country, is not a resident of this country, and  
27 conducts the activities of a broker in that foreign country;

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

31 (20) Failing to deliver within a reasonable time a completed and

1 dated copy of any purchase agreement or offer to buy or sell real estate  
2 to the purchaser and to the seller;

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

10 (22) Making any substantial misrepresentations;

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

13 (24) Failing by an associate broker or salesperson to place, as soon  
14 after receipt as practicable, in the custody of his or her employing  
15 broker any deposit money or other money or funds entrusted to him or her  
16 by any person dealing with him or her as the representative of his or her  
17 licensed broker;

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

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

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

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

30 (29) Demonstrating negligence, incompetency, or unworthiness to act  
31 as a broker, associate broker, or salesperson, whether of the same or of

1 a different character as otherwise specified in this section;

2 (30) Inducing or attempting to induce a person to transfer an  
3 interest in real property, whether or not for monetary gain, or  
4 discouraging another person from purchasing real property, by  
5 representing that (a) a change has occurred or will or may occur in the  
6 composition with respect to religion, race, color, national origin,  
7 ethnic group, sex, familial status, or disability of the owners or  
8 occupants in the block, neighborhood, or area or (b) such change will or  
9 may result in the lowering of property values, an increase in criminal or  
10 antisocial behavior, or a decline in the quality of schools in the block,  
11 neighborhood, or area;

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

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

16 (33) Utilizing advertising which does not prominently display the  
17 name under which the designated broker does business as filed with the  
18 commission;

19 (34) Utilizing team advertising or a team name suggesting the team  
20 is an independent real estate brokerage; ~~or~~

21 (35) Charging or collecting, as part or all of his or her  
22 compensation or consideration, any part of the earnest money or other  
23 money paid to him or her or the entity under which he or she does  
24 business in connection with any real estate transaction until the  
25 transaction has been consummated or terminated. However, a payment for  
26 goods or services rendered by a third party on behalf of the client shall  
27 not be considered compensation or consideration if such payment does not  
28 include any profit, compensation, or payment for services rendered by the  
29 broker and the broker retains a record of the payment to the third party  
30 for such goods or services; or -

31 (36) Failing to provide a copy of section 81-885.04 or written

1 instructions explaining the provisions of the exemption from licensure as  
2 set forth in subdivision (9) of section 81-885.04 to any unlicensed  
3 person who assists in procuring a potential client or customer as defined  
4 in sections 76-2407 and 76-2409, respectively, for the purpose of the  
5 listing, sale, purchase, exchange, renting, leasing, or optioning of any  
6 real estate.

7       Sec. 3.   Original section 81-885.04, Reissue Revised Statutes of  
8 Nebraska, and section 81-885.24, Revised Statutes Cumulative Supplement,  
9 2018, are repealed.