

Banking, Commerce, and Insurance Committee

Nebraska Legislature

Occupational Regulation Review

of the

Nebraska Real Estate License Act (NRELA)

Pursuant to the

Occupational Board Reform Act,

Neb. Rev. Stat. §§ 84-933 to 84-948

And Interim Study Resolution LR 118 (Slama)

December 2023

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The Occupational Board Reform Act (OBRA), *Neb. Rev. Stat.* §§ 84-933 to 84-948, was enacted in 2018 to provide for legislative review of occupational regulations.

Neb. Rev. Stat. § 84-948 (1) provides as follows:

1. Beginning in 2019, each standing committee of the Legislature shall annually review and analyze approximately twenty percent of the occupational regulations within the jurisdiction of the committee and prepare and submit an annual report electronically to the Clerk of the Legislature by December 15 of each year as provided in this section. Each committee shall complete this process for all occupational regulations within its jurisdiction within five years and every five years thereafter. Each report shall include the committee's recommendations regarding whether the occupational regulations should be terminated, continued, or modified.

The Banking, Commerce and Insurance Committee's recommendation is that the occupational regulations related to the Nebraska Real Estate License Act should be:

- Terminated*
- Continued*
- Modified*

Neb. Rev. Stat. § 84-948(2) provides as follows:

2. Each committee may require the submission of information by the affected occupational board and other affected or interested parties.

Banking, Commerce and Insurance Committee staff sent out a request for the submission of information by the Nebraska Real Estate Commission on July 12, 2023. The Commission submitted the requested information on September 27, 2023. The information found in this report is directly related to answers provided in that submission. A link to the submitted information can be found below:

https://nebraskalegislature.gov/reports/committeesurvey_view.php

Neb. Rev. Stat. § 84-948(3) provides as follows:

3. A committee's report shall include, but not be limited to, the following:
 - a. **The title of the regulated occupation and the name of the occupational board responsible for enforcement of the occupational regulations;**
Title of Regulated Occupation: Real Estate Broker; Real Estate Salesperson
Name of Occupational Board: Nebraska Real Estate Commission
 - b. **The statutory citation or other authorization for the creation of the occupational regulations and occupation board;**

*The Nebraska Real Estate License Act (NRELA). *Neb. Rev. Stat* §§ 81-885 to 81-885.56*

c. The number of members of the occupational board and how the members are appointed;

Consists of the Secretary of State, who shall be chairperson of the commission, and six members appointed by the Governor

d. The qualifications for membership on the occupational board;

Three of the members of the commission appointed by the Governor shall be active and licensed real estate brokers who have engaged in the real estate business as brokers or associate brokers for not less than five years, which members shall be appointed by the Governor, one from each of the three congressional districts as the districts were constituted on January 1, 2006. The remaining members shall be appointed at large, one of whom shall be representative of the public, one of whom shall be a licensed real estate salesperson who has engaged in the real estate business as a salesperson for not less than three years, and one of whom shall be an active and licensed real estate broker who has engaged in the real estate business as a broker or associate broker for not less than five years. The member representing the former congressional district 1 on July 14, 2006, shall represent congressional district 1 for the balance of his or her term. The member representing the former congressional district 2 on July 14, 2006, shall represent congressional district 2 for the balance of his or her term. The member representing the former congressional district 3 on July 14, 2006, shall become an at-large member for the balance of his or her term. The member representing the former congressional district 4 on July 14, 2006, shall represent congressional district 3 for the balance of his or her term.

e. The number of times the occupational board is required to meet during the year and the number of times it actually met.

Required FY22-23 0 Held 10

Required FY21-22 0 Held 10

Required FY20-21 0 Held 10

Required FY19-20 0 Held 10

Required FY18-19 0 Held 11

f. Annual budget information for the occupational board for the five most recently completed fiscal years

Separate. Other funding sources include all cash funds from license fees. Spending authority granted by 81-885.07(4).

FY22-23 \$1,254,860

FY21-22 \$1,127,309

FY20-21 \$1,639,895

FY19-20 \$1,233,286

FY18-19 \$1,207,344

- g. For the immediately preceding five calendar years, or for the period of time less than five years for which the information is practically available, the number of government certificates, occupational licenses, and registrations the occupational board has issued, revoked, denied, or assessed penalties against, listed anonymously and separately per type of credential, and the reasons for such revocations, denials, and other penalties;**

Real Estate Broker and Real Estate Salesperson

<i>Period</i>	<i>Certs Issued</i>	<i>Individual Licenses</i>	<i>Firm Licenses</i>	<i>Revocation</i>
2018 to 2023	3679			2

Total number of sales and broker licenses issued in the last five fiscal years, Broker and Sales Breakdown , Broker 529, Salesperson 3,150.

The 2 revocations of licenses were permanent revocations resulting from violations of the License Act.

The number of government certificates denied is only for years 2021 and 2022, and these were manually counted. Applicants who have a criminal history which may disqualify them under the License Act appear before the Commission for an informal special appearance for review. In the two years we had approximately 300 (estimated) applications with some kind of criminal history, and of the 300 only 35 rose to the level of possible disqualification for license under the statute and came in for a special appearance. All of those 35 individuals were denied for recent felonies and or a persistent pattern of violations that showed no signs of abating.

There were 76 disciplinary actions resulting in a finding of violation during the last five years. Disciplinary action can result from an order pursuant to hearing in front of the Commission or a consent decree approved by the Commission. Disciplinary orders include suspension, probation, fines, censures, ordered education or some combination thereof.

- h. A review of the basic assumptions underlying the creation of the occupational regulations;**

The Nebraska Real Estate License Act was first passed in 1935, and became effective January 1, 1936. The Act was initially administered and enforced by the Nebraska Secretary of State. In 1943 the Nebraska Real Estate Commission was created by an act of the Legislature (Laws 1943, c. 171 §§1-26), the Commission then consisted of four appointed members, one from each Congressional District, and the Secretary of State, who then, as now, served as Chair of the Commission. Each of the appointed members was required to be an active and licensed real estate broker. In 1973 the Act was

amended significantly and membership was expanded to the current seven Commissioners. (<https://nrec.nebraska.gov/commission-info/index.html>).

There is not a stated legislative purpose found in the Act, but the basic assumption behind its purpose can be identified from certain statutes within the Act:

81-885.02. Broker, associate broker, real estate salesperson; license required; exemption; activities included. After September 2, 1973, it shall be unlawful for any person, directly or indirectly, to engage in or conduct, or to advertise or hold himself or herself out as engaging in or conducting the business, or acting in the capacity, of a real estate broker, associate broker, or real estate salesperson within this state without first obtaining a license as such broker, associate broker, or salesperson, as provided in the Nebraska Real Estate License Act, unless he or she is exempted from obtaining a license under section 81-885.04.

Source: Laws 1973, LB 68, § 2; Laws 1983, LB 182, § 2; Laws 2009, LB30, § 2; Laws 2022, LB892, § 1.

The Commission was given rule-making authority in NRELA Section 81-885.07(5):

81-885.10. (5) The commission may adopt and promulgate rules and regulations relating to the administration of but not inconsistent with the act.

*The Board was assigned Title 299 to Title 302 in the Nebraska Administrative Code (NAC) as the location for its properly promulgated rules. **As indicated in 81-885.02 and 81-885.10 the basic assumption underlying the creation of regulations includes the establishment of regulations to maintain a high standard of integrity and dignity in the profession of real estate sales transactions.***

i. A statement from the occupational license board on the effectiveness of the occupational regulations, and

Following Statement from NREC Director Greg Lemon:

This is a very simple but broad question. Rather than starting by offering an opinion, I will relay a story from last year regarding a licensee.

The Commission routinely conducts trust account examinations on all licensed brokers through the use of our compliance audit staff, who visit the independent brokers throughout the state approximately once every year. Trust accounts are used to handle client funds, sometimes the relatively simple task of handling the earnest deposit for a real estate purchase, sometimes the more complex task of handling client's funds when engaged in ongoing activities like farm or property management.

Last year, in the course of one of our audits, it was discovered that an older broker's property management records and documentation were in extreme disarray, with balances not matching and required documents missing.

A report was submitted to the Commission and a complaint was filed. In the process of investigating the complaint the licensee said they were winding up their business, and knew that they were not handling funds and records properly. They said that they were

not going to renew their license for the next year. Rather than pursue disciplinary action further, the Commission, with a guarantee that the licensee was retiring, was given access through the licensee's attorney to the bank account records of the property management business. Commission staff reviewed the records, identified approximately \$40,000 dollars in funds that had not been properly accounted for or dispersed, oversaw the dispersal of the funds to renters (security deposits) and former clients (rent and maintenance monies) so that all parties were made whole to the best of our ability. The licensee ceased activity and did not renew her license, and the complaint was dismissed without prejudice. I would also note that this number would not be included in the disciplinary action summary request above, because no formal finding of violation or disciplinary action was taken.

The above is only one instance of the Commission's work in protecting the public through proactive efforts. Our unofficial motto is that we would rather educate than regulate. We educate through our compliance audit program, the review, approval and development of real estate pre-license and continuing education classes, license law minute videos, outreach meetings with the Realtor's Association and individual real estate agencies, updating laws and regulations to adopt to new industry practices, and updates to our website on not only regulatory matters but consumer scams and industry best practices.

The Commission, as noted in some of the earlier information provided, oversees about 7,700 active licensees, each of whom on average is responsible for a large number of transactions each year. We process somewhere around 40 formal complaints a year. I feel that the complaint number is low, and the number is low because of the education efforts as outlined above. We also answer countless phone calls and emails from licensees and the public on the conduct of licensees and the basics of real estate transactions, giving advice which in many cases stops trouble before it starts.

So, in short, I feel the regulations and program administered by the Nebraska Real Estate Commission has been effective in fulfilling our role and mission, which is "To protect the public interest of Nebraska citizens through the efficient and effective administration of the Nebraska Real Estate License Act."

j. A comparison of whether and how other states regulate the occupation.

All 50 states have regulations that govern the occupations of real estate brokers or real estate salespersons. Said regulations vary in severity, but all such regulations appear to be intended to maintain a high standard of integrity and dignity in the profession of real estate sales transactions.

Neb. Rev. Stat. § 84-948(4) provides as follows:

4. Subject to subsection (5) of this section, each committee shall also analyze, and include in its report, whether the occupational regulations meet the policies stated in section 84-946 considering the following recommended courses of action for the meeting such policies:

a. **If the need is to protect consumers against fraud, the likely recommendation will be to strengthen powers under the Uniform Deceptive Trade Practices Act or require disclosures that will reduce misleading attributes of the specific good or service;**

Not necessary. Nebraska currently has regulatory processes to monitor the occupations appropriately.

b. **If the need is to protect consumers against unclean facilities or to promote general health and safety, the likely recommendations will be to require periodic inspections of such facilities;**

N/A

c. **If the need is to protect consumers against potential damages and failure by providers to complete a contract fully or up to standards, the likely recommendations will to require that be bonded;**

N/A

d. **If the need is to protect a person who is not party to contract between the provider and consumer, the likely recommendation will be to require that he provider have insurance;**

In 1991 errors and omissions insurance was made mandatory for all licensees. No recommendations for the need of more insurance protection at this time. See 299 Neb. Admin. Code § 8-001.

e. **If the need is to protect consumers against a potential damages by transient providers, the likely recommendation will be to require that providers register their businesses with the Secretary of State;**

All salespersons and brokers are required to be licensed in the state. Therefore, no risk of potential damage by transient providers.

f. **If the need is to protect consumers against a shortfall or imbalance of knowledge about the goods and services relative to the providers' knowledge, the likely recommendation will be to enact government certifications, and;**

In 1985 continuing education was made mandatory for all licensees. No recommendation for the need for more continuing education at this time. See 299 Neb. Admin. Code § 7-001.

g. **If the need is to address a systematic information shortfall such that a reasonable consumer is unable to distinguish between the quality of providers, there is an**

absence of institutions that provide adequate guidance to the consumer, and the consumer's ability to distinguish between providers and the lack of adequate guidance allows for undue risk of present, significant, and substantiated harms, the likely recommendation will be to enact an occupational license.

All salespersons and brokers are required to be licensed in the state.

Neb. Rev. Stat. § 84-948(5) provides as follows:

5. If a lawful occupation is subject to the Nebraska Regulation of Health Professions Act, the analysis under section (4) of this section shall be made using the least restrictive method of regulation as set out in section 71-6222.

N/A

Neb. Rev. Stat. § 84-948(6) provides as follows:

6. In developing recommendations under this section, the committee shall review any report issued to the Legislature pursuant to the Nebraska Regulation of Health Professions Act, if applicable, and consider any findings or recommendations of such report related to the occupational regulations under review.

N/A

Neb. Rev. Stat. § 84-948(7) provides as follows:

7. If the committee finds that it is necessary to change professional regulations, the committee shall recommend the least restrictive regulation consistent with the public interest and the policies in this section and section 84-946.

The regulatory framework for issuance of certificates and permits is established by the Legislature and administered by the Nebraska Real Estate Commission. It is serving the expectations of Nebraskans when seeking professional real estate transaction services from certified brokers and salespersons. As a whole, this regulatory framework is appropriate and balanced and does not need modification at this time.