

LEGISLATIVE BILL 808

Approved by the Governor August 15, 2020

Introduced by La Grone, 49; Kolterman, 24.

A BILL FOR AN ACT relating to commerce; to amend sections 25-223, 76-842, 76-844, 76-854, 76-857, 76-859, 76-860, 76-867, 76-869, 76-870, 76-884, 76-890, 76-2202, 76-2204, 76-2205.02, 76-2207.01, 76-2207.17, 76-2207.22, 76-2207.26, 76-2212.03, 76-2215, 76-2216, 76-2216.02, 76-2218.02, 76-2219.01, 76-2219.02, 76-2220, 76-2221, 76-2223, 76-2227, 76-2233, 76-2233.01, 76-2233.02, 76-2233.03, 76-2239, 76-2243, 76-2245, 76-2246, 76-2247.01, 76-3207, 76-3210, and 81-885.04, Reissue Revised Statutes of Nebraska, sections 1-116, 21-201, and 81-885.24, Revised Statutes Cumulative Supplement, 2018, and sections 76-861, 76-2207.27, 76-2207.30, 76-2228.01, 76-2228.02, 76-2230, 76-2231.01, 76-2232, 76-2236, 76-2238, 76-3202, 76-3203.01, and 77-2387, Revised Statutes Supplement, 2019; to eliminate obsolete provisions relating to accountants; to change provisions relating to the certified public accountant examination; to define terms and provide for the ratification of defective corporate actions under the Nebraska Model Business Corporation Act; to adopt the Uniform Trust Decanting Act; to change provisions relating to actions on breach of warranty on improvements to real property; to change provisions under the Nebraska Condominium Act; to change provisions relating to the Real Property Appraiser Act; to define and eliminate certain terms under the Nebraska Appraisal Management Company Registration Act; to redefine the term security to include certain student loans under the Public Funds Deposit Security Act; to change provisions under the Nebraska Real Estate License Act; to harmonize provisions; to provide operative dates; to provide severability; to repeal the original sections; to outright repeal sections 76-2205.01 and 76-2216.03, Reissue Revised Statutes of Nebraska; and to declare an emergency.

Be it enacted by the people of the State of Nebraska,

Section 1. Section 1-116, Revised Statutes Cumulative Supplement, 2018, is amended to read:

~~1-116 Prior to January 1, 1998, a person shall be eligible to take the examination described in section 1-114 if he or she meets the requirements of subdivision (1)(a) of section 1-114.~~

Any person making initial application ~~on or after January 1, 1998,~~ to take the examination described in section 1-114 shall be eligible to take the examination if he or she has completed at least one hundred fifty semester hours or two hundred twenty-five quarter hours of postsecondary academic credit and has earned a baccalaureate or higher degree from a college or university accredited by a regional accrediting agency recognized by the United States Department of Education or a similar agency as determined to be acceptable by the board. The person shall demonstrate that accounting, auditing, business, and other subjects at the appropriate academic level as required by the board are included within the required hours of postsecondary academic credit. A person who expects to complete the postsecondary academic credit and earn the degree as required by this section may take test sections of the examination within one hundred twenty days prior to completing the postsecondary academic credit and earning the degree within sixty days following when the examination is held shall be eligible to take such examination, but such person shall not receive any credit for such test sections examination unless evidence satisfactory to the board showing that such person has completed the postsecondary academic credit and earned the degree as required by this section is received by the board within one hundred fifty ninety days following when the first test section of the examination is taken held. The board shall not prescribe the specific curricula of colleges or universities. If the applicant is an individual, the application shall include the applicant's social security number.

Sec. 2. Section 21-201, Revised Statutes Cumulative Supplement, 2018, is amended to read:

21-201 (MBCA 1.01) Sections 21-201 to 21-2,232 and sections 3 to 10 of this act shall be known and may be cited as the Nebraska Model Business Corporation Act.

Sec. 3. (MBCA 1.45) In sections 3 to 10 of this act:

(1) Corporate action means any action taken by or on behalf of the corporation, including any action taken by the incorporator, the board of directors, a committee of the board of directors, an officer or agent of the corporation, or the shareholders.

(2) Date of the defective corporate action means the date, or the approximate date, if the exact date is unknown, the defective corporate action was purported to have been taken.

(3) Defective corporate action means (i) any corporate action purportedly taken that is, and at the time such corporate action was purportedly taken would have been, within the power of the corporation, but is void or voidable due to a failure of authorization, and (ii) an overissue.

(4) Failure of authorization means the failure to authorize, approve, or otherwise effect a corporate action in compliance with the provisions of the Nebraska Model Business Corporation Act, the articles of incorporation or bylaws, a corporate resolution or any plan or agreement to which the corporation is a party, if and to the extent such failure would render such corporate action void or voidable.

(5) Overissue means the purported issuance of:

(i) Shares of a class or series in excess of the number of shares of a class or series the corporation has the power to issue under section 21-237 at the time of such issuance; or

(ii) Shares of any class or series that is not then authorized for issuance by the articles of incorporation.

(6) Putative shares means the shares of any class or series, including shares issued upon exercise of rights, options, warrants, or other securities convertible into shares of the corporation, or interests with respect to such shares, that were created or issued as a result of a defective corporate action, that (i) but for any failure of authorization would constitute valid shares, or (ii) cannot be determined by the board of directors to be valid shares.

(7) Valid shares means the shares of any class or series that have been duly authorized and validly issued in accordance with the act, including as a result of ratification or validation under sections 3 to 10 of this act.

(8) Validation effective time with respect to any defective corporate action ratified under sections 3 to 10 of this act means the later of:

(i) The time at which the ratification of the defective corporate action is approved by the shareholders, or if approval of shareholders is not required, the time at which the notice required by section 7 of this act becomes effective in accordance with section 21-215; and

(ii) The time at which any articles of validation filed in accordance with section 9 of this act become effective.

The validation effective time shall not be affected by the filing or pendency of a judicial proceeding under section 10 of this act or otherwise, unless otherwise ordered by the court.

Sec. 4. (MBCA 1.46) (a) A defective corporate action shall not be void or voidable if ratified in accordance with section 5 of this act or validated in accordance with section 10 of this act.

(b) Ratification under section 5 of this act or validation under section 10 of this act shall not be deemed to be the exclusive means of ratifying or validating any defective corporate action, and the absence or failure of ratification in accordance with sections 3 to 10 of this act shall not, of itself, affect the validity or effectiveness of any corporate action properly ratified under common law or otherwise, nor shall it create a presumption that any such corporate action is or was a defective corporate action or void or voidable.

(c) In the case of an overissue, putative shares shall be valid shares effective as of the date originally issued or purportedly issued upon:

(1) The effectiveness under sections 3 to 10 of this act and under sections 21-2,150 to 21-2,160 of an amendment to the articles of incorporation authorizing, designating, or creating such shares; or

(2) The effectiveness of any other corporate action under sections 3 to 10 of this act ratifying the authorization, designation, or creation of such shares.

Sec. 5. (MBCA 1.47) (a) To ratify a defective corporate action under this section, other than the ratification of an election of the initial board of directors under subsection (b) of this section, the board of directors shall take action ratifying the action in accordance with section 6 of this act, stating:

(1) The defective corporate action to be ratified and, if the defective corporate action involved the issuance of putative shares, the number and type of putative shares purportedly issued;

(2) The date of the defective corporate action;

(3) The nature of the failure of authorization with respect to the defective corporate action to be ratified; and

(4) That the board of directors approves the ratification of the defective corporate action.

(b) In the event that a defective corporate action to be ratified relates to the election of the initial board of directors of the corporation under subdivision (a)(2) of section 21-223, a majority of the persons who, at the time of the ratification, are exercising the powers of directors may take an action stating:

(1) The name of the person or persons who first took action in the name of the corporation as the initial board of directors of the corporation;

(2) The earlier of the date on which such persons first took such action or were purported to have been elected as the initial board of directors; and

(3) That the ratification of the election of such person or persons as the initial board of directors is approved.

(c) If any provision of the Nebraska Model Business Corporation Act, the articles of incorporation or bylaws, any corporate resolution, or any plan or agreement to which the corporation is a party in effect at the time action under subsection (a) of this section is taken requires shareholder approval or would have required shareholder approval at the date of the occurrence of the defective corporate action, the ratification of the defective corporate action approved in the action taken by the directors under subsection (a) of this

section shall be submitted to the shareholders for approval in accordance with section 6 of this act.

(d) Unless otherwise provided in the action taken by the board of directors under subsection (a) of this section, after the action by the board of directors has been taken and, if required, approved by the shareholders, the board of directors may abandon the ratification at any time before the validation effective time without further action of the shareholders.

Sec. 6. (MBCA 1.48) (a) The quorum and voting requirements applicable to a ratifying action by the board of directors under subsection (a) of section 5 of this act shall be the quorum and voting requirements applicable to the corporate action proposed to be ratified at the time such ratifying action is taken.

(b) If the ratification of the defective corporate action requires approval by the shareholders under subsection (c) of section 5 of this act, and if the approval is to be given at a meeting, the corporation shall notify each holder of valid and putative shares, regardless of whether entitled to vote, as of the record date for notice of the meeting and as of the date of the occurrence of defective corporate action, provided that notice shall not be required to be given to holders of valid or putative shares whose identities or addresses for notice cannot be determined from the records of the corporation. The notice must state that the purpose, or one of the purposes, of the meeting, is to consider ratification of a defective corporate action and must be accompanied by (i) either a copy of the action taken by the board of directors in accordance with subsection (c) of section 5 of this act or the information required by subdivisions (a)(1) through (4) of section 5 of this act, and (ii) a statement that any claim that the ratification of such defective corporate action should not be effective, or should be effective only on certain conditions, must be brought within one hundred twenty days from the applicable validation effective time.

(c) Except as provided in subsection (d) of this section with respect to the voting requirements to ratify the election of a director, the quorum and voting requirements applicable to the approval by the shareholders required by subsection (c) of section 5 of this act shall be the quorum and voting requirements applicable to the corporate action proposed to be ratified at the time of such shareholder approval.

(d) The approval by shareholders to ratify the election of a director requires that the votes cast within the voting group favoring such ratification exceed the votes cast opposing such ratification of the election at a meeting at which a quorum is present.

(e) Putative shares on the record date for determining the shareholders entitled to vote on any matter submitted to shareholders under subsection (c) of section 5 of this act, and without giving effect to any ratification of putative shares that becomes effective as a result of such vote, shall neither be entitled to vote nor counted for quorum purposes in any vote to approve the ratification of any defective corporate action.

(f) If the approval under this section of putative shares would result in an overissue, in addition to the approval required by section 5 of this act, approval of an amendment to the articles of incorporation under sections 21-2,150 to 21-2,160 to increase the number of shares of an authorized class or series or to authorize the creation of a class or series of shares so there would be no overissue shall also be required.

Sec. 7. (MBCA 1.49) (a) Unless shareholder approval is required under subsection (c) of section 5 of this act, prompt notice of an action taken under section 5 of this act shall be given to each holder of valid and putative shares, regardless of whether entitled to vote, as of (i) the date of such action by the board of directors and (ii) the date of the defective corporate action ratified, provided that notice shall not be required to be given to holders of valid and putative shares whose identities or addresses for notice cannot be determined from the records of the corporation.

(b) The notice must contain (i) either a copy of the action taken by the board of directors in accordance with subsection (a) or (b) of section 5 of this act or the information required by subdivisions (a)(1) through (4) or (b) (1) through (3) of section 5 of this act, as applicable, and (ii) a statement that any claim that the ratification of the defective corporate action and any putative shares issued as a result of such defective corporate action should not be effective, or should be effective only on certain conditions, must be brought within one hundred twenty days from the applicable validation effective time.

(c) No notice under this section is required with respect to any action required to be submitted to shareholders for approval under subsection (c) of section 5 of this act if notice is given in accordance with subsection (b) of section 6 of this act.

(d) A notice required by this section may be given in any manner permitted by section 21-215 and, for any corporation subject to the reporting requirements of section 13 or 15(d) of the Securities Exchange Act of 1934, may be given by means of a filing or furnishing of such notice with the United States Securities and Exchange Commission.

Sec. 8. (MBCA 1.50) From and after the validation effective time, and without regard to the one-hundred-twenty-day period during which a claim may be brought under section 10 of this act:

(a) Each defective corporate action ratified in accordance with section 5 of this act shall not be void or voidable as a result of the failure of

authorization identified in the action taken under subsection (a) or (b) of section 5 of this act and shall be deemed a valid corporate action effective as of the date of the defective corporate action;

(b) The issuance of each putative share or fraction of a putative share purportedly issued pursuant to a defective corporate action identified in the action taken under section 5 of this act shall not be void or voidable, and each such putative share or fraction of a putative share shall be deemed to be an identical share or fraction of a valid share as of the time it was purportedly issued; and

(c) Any corporate action taken subsequent to the defective corporate action ratified in accordance with sections 3 to 10 of this act in reliance on such defective corporate action having been validly effected and any subsequent defective corporate action resulting directly or indirectly from such original defective corporate action shall be valid as of the time taken.

Sec. 9. (MBCA 1.51) (a) If the defective corporate action ratified under sections 3 to 10 of this act would have required under any other section of the Nebraska Model Business Corporation Act a filing in accordance with the act, then, regardless of whether a filing was previously made in respect of such defective corporate action and in lieu of a filing otherwise required by the act, the corporation shall file articles of validation in accordance with this section, and such articles of validation shall serve to amend or substitute for any other filing with respect to such defective corporate action required by the act.

(b) The articles of validation must set forth:

(1) The defective corporate action that is the subject of the articles of validation, including, in the case of any defective corporate action involving the issuance of putative shares, the number and type of putative shares issued and the date or dates upon which such putative shares were purported to have been issued;

(2) The date of the defective corporate action;

(3) The nature of the failure of authorization in respect of the defective corporate action;

(4) A statement that the defective corporate action was ratified in accordance with section 5 of this act, including the date on which the board of directors ratified such defective corporate action and the date, if any, on which the shareholders approved the ratification of such defective corporate action; and

(5) The information required by subsection (c) of this section.

(c) The articles of validation must also contain the following information:

(1) If a filing was previously made in respect of the defective corporate action and no changes to such filing are required to give effect to the ratification of such defective corporate action in accordance with section 5 of this act, the articles of validation must set forth (i) the name, title, and filing date of the filing previously made and any articles of correction to that filing and (ii) a statement that a copy of the filing previously made, together with any articles of correction to that filing, is attached as an exhibit to the articles of validation;

(2) If a filing was previously made in respect of the defective corporate action and such filing requires any change to give effect to the ratification of such defective corporate action in accordance with section 5 of this act, the articles of validation must set forth (i) the name, title, and filing date of the filing previously made and any articles of correction to that filing and (ii) a statement that a filing containing all of the information required to be included under the applicable section or sections of the act to give effect to such defective corporate action is attached as an exhibit to the articles of validation, and (iii) the date and time that such filing is deemed to have become effective; or

(3) If a filing was not previously made in respect of the defective corporate action and the defective corporate action ratified under section 5 of this act would have required a filing under any other section of the act, the articles of validation must set forth (i) a statement that a filing containing all of the information required to be included under the applicable section or sections of the act to give effect to such defective corporate action is attached as an exhibit to the articles of validation, and (ii) the date and time that such filing is deemed to have become effective.

Sec. 10. (MBCA 1.52) (a) Upon application by the corporation, any successor entity to the corporation, a director of the corporation, any shareholder, beneficial shareholder, or unrestricted voting trust beneficial owner of the corporation, including any such shareholder, beneficial shareholder, or unrestricted voting trust beneficial owner as of the date of the defective corporate action ratified under section 5 of this act, or any other person claiming to be substantially and adversely affected by a ratification under section 5 of this act, the court may:

(1) Determine the validity and effectiveness of any corporate action or defective corporate action;

(2) Determine the validity and effectiveness of any ratification under section 5 of this act;

(3) Determine the validity of any putative shares; and

(4) Modify or waive any of the procedures specified in section 5 or 6 of this act to ratify a defective corporate action.

(b) In connection with an action under this section, the court may make such findings or orders, and take into account any factors or considerations,

regarding such matters as it deems proper under the circumstances.

(c) Service of process of the application under subsection (a) of this section on the corporation may be made in any manner provided by statute of this state or by rule of the applicable court for service on the corporation, and no other party need be joined in order for the court to adjudicate the matter. In an action filed by the corporation, the court may require notice of the action be provided to other persons specified by the court and permit such other persons to intervene in the action.

(d) Notwithstanding any other provision of this section or otherwise under applicable law, any action asserting that the ratification of any defective corporate action and any putative shares issued as a result of such defective corporate action should not be effective, or should be effective only on certain conditions, shall be brought within one hundred twenty days of the validation effective time.

Sec. 11. Sections 11 to 39 of this act shall be known and may be cited as the Uniform Trust Decanting Act.

Sec. 12. In the Uniform Trust Decanting Act:

(1) Appointive property means the property or property interest subject to a power of appointment.

(2) Ascertainable standard has the same meaning as in section 30-3803.

(3) Authorized fiduciary means:

(A) a trustee or other fiduciary, other than a settlor, that has discretion to distribute or direct a trustee to distribute part or all of the principal of the first trust to one or more current beneficiaries;

(B) a special fiduciary appointed under section 19 of this act; or

(C) a special-needs fiduciary under section 23 of this act.

(4) Beneficiary means a person that:

(A) has a present or future, vested or contingent, beneficial interest in a trust;

(B) holds a power of appointment over trust property; or

(C) is an identified charitable organization that will or may receive distributions under the terms of the trust.

(5) Charitable interest means an interest in a trust which:

(A) is held by an identified charitable organization and makes the organization a qualified beneficiary;

(B) benefits only charitable organizations and, if the interest were held by an identified charitable organization, would make the organization a qualified beneficiary; or

(C) is held solely for charitable purposes and, if the interest were held by an identified charitable organization, would make the organization a qualified beneficiary.

(6) Charitable organization means:

(A) a person, other than an individual, organized and operated exclusively for charitable purposes; or

(B) a government or governmental subdivision, agency, or instrumentality, to the extent it holds funds exclusively for a charitable purpose.

(7) Charitable purpose has the same meaning as the description of a charitable trust in section 30-3831.

(8) Court means the court in this state having jurisdiction in matters relating to trusts.

(9) Current beneficiary means a beneficiary that on the date the beneficiary's qualification is determined is a distributee or permissible distributee of trust income or principal. The term includes the holder of a presently exercisable general power of appointment but does not include a person that is a beneficiary only because the person holds any other power of appointment.

(10) Decanting power or the decanting power means the power of an authorized fiduciary under the act to distribute property of a first trust to one or more second trusts or to modify the terms of the first trust.

(11) Expanded distributive discretion means a discretionary power of distribution that is not limited to an ascertainable standard or a reasonably definite standard.

(12) First trust means a trust over which an authorized fiduciary may exercise the decanting power.

(13) First-trust instrument means the trust instrument for a first trust.

(14) General power of appointment means a power of appointment exercisable in favor of a powerholder, the powerholder's estate, a creditor of the powerholder, or a creditor of the powerholder's estate.

(15) Jurisdiction has the same meaning as in section 30-3803.

(16) Person means an individual, estate, business or nonprofit entity, public corporation, government or governmental subdivision, agency, or instrumentality, or other legal entity.

(17) Power of appointment means a power that enables a powerholder acting in a nonfiduciary capacity to designate a recipient of an ownership interest in or another power of appointment over the appointive property. The term does not include a power of attorney.

(18) Powerholder means a person in which a donor creates a power of appointment.

(19) Presently exercisable power of appointment means a power of appointment exercisable by the powerholder at the relevant time. The term:

(A) includes a power of appointment exercisable only after the occurrence of a specified event, the satisfaction of an ascertainable standard, or the passage of a specified time only after:

- (i) the occurrence of the specified event;
- (ii) the satisfaction of the ascertainable standard; or
- (iii) the passage of the specified time; and

(B) does not include a power exercisable only at the powerholder's death.

(20) Qualified beneficiary has the same meaning as in section 30-3803.

(21) Reasonably definite standard means a clearly measurable standard under which a holder of a power of distribution is legally accountable within the meaning of 26 U.S.C. 674(b)(5)(A), as such section existed on the operative date of this section, and any applicable regulations.

(22) Record means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(23) Second trust means:

(A) a first trust after modification under the Uniform Trust Decanting Act; or

(B) a trust to which a distribution of property from a first trust is or may be made under the act.

(24) Second-trust instrument means the trust instrument for a second trust.

(25) Settlor, except as otherwise provided in section 35 of this act, has the same meaning as in section 30-3803.

(26) Sign means, with present intent to authenticate or adopt a record:

(A) to execute or adopt a tangible symbol; or

(B) to attach to or logically associate with the record an electronic symbol, sound, or process.

(27) State has the same meaning as in section 30-3803.

(28) Terms of the trust means:

(A) Except as otherwise provided in subdivision (B) of this subdivision, the manifestation of the settlor's intent regarding a trust's provisions as:

(i) expressed in the trust instrument; or

(ii) established by other evidence that would be admissible in a judicial proceeding; or

(B) the trust's provisions as established, determined, or amended by:

(i) a trustee or other person in accordance with applicable law;

(ii) a court order; or

(iii) a nonjudicial settlement agreement under section 30-3811.

(29) Trust instrument means a record executed by the settlor to create a trust or by any person to create a second trust which contains some or all of the terms of the trust, including any amendments.

Sec. 13. (a) Except as otherwise provided in subsections (b) and (c) of this section, the Uniform Trust Decanting Act applies to an express trust that is irrevocable or revocable by the settlor only with the consent of the trustee or a person holding an adverse interest.

(b) The act does not apply to a trust held solely for charitable purposes.

(c) Subject to section 25 of this act, a trust instrument may restrict or prohibit exercise of the decanting power.

(d) The act does not limit the power of a trustee, powerholder, or other person to distribute or appoint property in further trust or to modify a trust under the trust instrument, law of this state other than the act, common law, a court order, or a nonjudicial settlement agreement.

(e) The act does not affect the ability of a settlor to provide in a trust instrument for the distribution of the trust property or appointment in further trust of the trust property or for modification of the trust instrument.

Sec. 14. (a) In exercising the decanting power, an authorized fiduciary shall act in accordance with its fiduciary duties, including the duty to act in accordance with the purposes of the first trust.

(b) The Uniform Trust Decanting Act does not create or imply a duty to exercise the decanting power or to inform beneficiaries about the applicability of the act.

(c) Except as otherwise provided in a first-trust instrument, for purposes of the act and section 30-3866 and subsection (a) of section 38-3867, the terms of the first trust are deemed to include the decanting power.

Sec. 15. The Uniform Trust Decanting Act applies to a trust created before, on, or after the operative date of this section which:

(1) has its principal place of administration in this state, including a trust whose principal place of administration has been changed to this state; or

(2) provides by its trust instrument that it is governed by the law of this state or is governed by the law of this state for the purpose of:

(A) administration, including administration of a trust whose governing law for purposes of administration has been changed to the law of this state;

(B) construction of terms of the trust; or

(C) determining the meaning or effect of terms of the trust.

Sec. 16. A trustee or other person that reasonably relies on the validity of a distribution of part or all of the property of a trust to another trust, or a modification of a trust, under the Uniform Trust Decanting Act, law of this state other than the act, or the law of another jurisdiction is not liable to any person for any action or failure to act as a result of the reliance.

Sec. 17. (a) In this section, a notice period begins on the day notice is given under subsection (c) of this section and ends fifty-nine days after the day notice is given.

(b) Except as otherwise provided in the Uniform Trust Decanting Act, an authorized fiduciary may exercise the decanting power without the consent of

any person and without court approval.

(c) Except as otherwise provided in subsection (f) of this section, an authorized fiduciary shall give notice in a record of the intended exercise of the decanting power not later than sixty days before the exercise to:

- (1) each settlor of the first trust, if living or then in existence;
- (2) each qualified beneficiary of the first trust;
- (3) each holder of a presently exercisable power of appointment over any part or all of the first trust;
- (4) each person that currently has the right to remove or replace the authorized fiduciary;
- (5) each other fiduciary of the first trust;
- (6) each fiduciary of the second trust;
- (7) each person acting as an advisor or protector of the first trust;
- (8) each person holding an adverse interest who has the power to consent to the revocation of the first trust; and
- (9) the Attorney General, if subsection (b) of section 24 of this act applies.

(d) An authorized fiduciary is not required to give notice under subsection (c) of this section to a person that is not known to the fiduciary or is known to the fiduciary but cannot be located by the fiduciary after reasonable diligence.

(e) A notice under subsection (c) of this section must:

- (1) specify the manner in which the authorized fiduciary intends to exercise the decanting power;
- (2) specify the proposed effective date for exercise of the power;
- (3) include a copy of the first-trust instrument; and
- (4) include a copy of all second-trust instruments.

(f) The decanting power may be exercised before expiration of the notice period under subsection (a) of this section if all persons entitled to receive notice waive the period in a signed record.

(g) The receipt of notice, waiver of the notice period, or expiration of the notice period does not affect the right of a person to file an application under section 19 of this act asserting that:

(1) an attempted exercise of the decanting power is ineffective because it did not comply with the act or was an abuse of discretion or breach of fiduciary duty; or

(2) section 32 of this act applies to the exercise of the decanting power.

(h) An exercise of the decanting power is not ineffective because of the failure to give notice to one or more persons under subsection (c) of this section if the authorized fiduciary acted with reasonable care to comply with subsection (c) of this section.

Sec. 18. (a) Notice to a person with authority to represent and bind another person under a first-trust instrument or sections 30-3822 to 30-3826 has the same effect as notice given directly to the person represented.

(b) Consent of or waiver by a person with authority to represent and bind another person under a first-trust instrument or sections 30-3822 to 30-3826 is binding on the person represented unless the person represented objects to the representation before the consent or waiver otherwise would become effective.

(c) A person with authority to represent and bind another person under a first-trust instrument or sections 30-3822 to 30-3826 may file an application under section 19 of this act on behalf of the person represented.

(d) A settlor may not represent or bind a beneficiary for purposes of the Uniform Trust Decanting Act.

Sec. 19. (a) On application of an authorized fiduciary, a person entitled to notice under subsection (c) of section 17 of this act, a beneficiary, or with respect to a charitable interest the Attorney General or other person that has standing to enforce the charitable interest, the court may:

(1) provide instructions to the authorized fiduciary regarding whether a proposed exercise of the decanting power is permitted under the Uniform Trust Decanting Act and consistent with the fiduciary duties of the authorized fiduciary;

(2) appoint a special fiduciary and authorize the special fiduciary to determine whether the decanting power should be exercised under the act and to exercise the decanting power;

(3) approve an exercise of the decanting power;

(4) determine that a proposed or attempted exercise of the decanting power is ineffective because:

(A) after applying section 32 of this act, the proposed or attempted exercise does not or did not comply with the act; or

(B) the proposed or attempted exercise would be or was an abuse of the fiduciary's discretion or a breach of fiduciary duty;

(5) determine the extent to which section 32 of this act applies to a prior exercise of the decanting power;

(6) provide instructions to the trustee regarding the application of section 32 of this act to a prior exercise of the decanting power; or

(7) order other relief to carry out the purposes of the act.

(b) On application of an authorized fiduciary, the court may approve:

(1) an increase in the fiduciary's compensation under section 26 of this act; or

(2) a modification under section 28 of this act of a provision granting a person the right to remove or replace the fiduciary.

Sec. 20. An exercise of the decanting power must be made in a record signed by an authorized fiduciary. The signed record must, directly or by

reference to the notice required by section 17 of this act, identify the first trust and the second trust or trusts and state the property of the first trust being distributed to each second trust and the property, if any, that remains in the first trust.

Sec. 21. (a) In this section:

(1) Noncontingent right means a right that is not subject to the exercise of discretion or the occurrence of a specified event that is not certain to occur. The term does not include a right held by a beneficiary if any person has discretion to distribute property subject to the right to any person other than the beneficiary or the beneficiary's estate.

(2) Presumptive remainder beneficiary means a qualified beneficiary other than a current beneficiary.

(3) Successor beneficiary means a beneficiary that is not a qualified beneficiary on the date the beneficiary's qualification is determined. The term does not include a person that is a beneficiary only because the person holds a nongeneral power of appointment.

(4) Vested interest means:

(A) a right to a mandatory distribution that is a noncontingent right as of the date of the exercise of the decanting power;

(B) a current and noncontingent right, annually or more frequently, to a mandatory distribution of income, a specified dollar amount, or a percentage of value of some or all of the trust property;

(C) a current and noncontingent right, annually or more frequently, to withdraw income, a specified dollar amount, or a percentage of value of some or all of the trust property;

(D) a presently exercisable general power of appointment; or

(E) a right to receive an ascertainable part of the trust property on the trust's termination which is not subject to the exercise of discretion or to the occurrence of a specified event that is not certain to occur.

(b) Subject to subsection (c) of this section and section 24 of this act, an authorized fiduciary that has expanded distributive discretion over the principal of a first trust for the benefit of one or more current beneficiaries may exercise the decanting power over the principal of the first trust.

(c) Subject to section 23 of this act, in an exercise of the decanting power under this section, a second trust may not:

(1) include as a current beneficiary a person that is not a current beneficiary of the first trust, except as otherwise provided in subsection (d) of this section;

(2) include as a presumptive remainder beneficiary or successor beneficiary a person that is not a current beneficiary, presumptive remainder beneficiary, or successor beneficiary of the first trust, except as otherwise provided in subsection (d) of this section; or

(3) reduce or eliminate a vested interest.

(d) Subject to subdivision (3) of subsection (c) of this section and section 24 of this act, in an exercise of the decanting power under this section, a second trust may be a trust created or administered under the law of any jurisdiction and may:

(1) retain a power of appointment granted in the first trust;

(2) omit a power of appointment granted in the first trust, other than a presently exercisable general power of appointment;

(3) create or modify a power of appointment if the powerholder is a current beneficiary of the first trust and the authorized fiduciary has expanded distributive discretion to distribute principal to the beneficiary; and

(4) create or modify a power of appointment if the powerholder is a presumptive remainder beneficiary or successor beneficiary of the first trust, but the exercise of the power may take effect only after the powerholder becomes, or would have become if then living, a current beneficiary.

(e) A power of appointment described in subdivisions (1) through (4) of subsection (d) of this section may be general or nongeneral. The class of permissible appointees in favor of which the power may be exercised may be broader than or different from the beneficiaries of the first trust.

(f) If an authorized fiduciary has expanded distributive discretion over part but not all of the principal of a first trust, the fiduciary may exercise the decanting power under this section over that part of the principal over which the authorized fiduciary has expanded distributive discretion.

Sec. 22. (a) In this section, limited distributive discretion means a discretionary power of distribution that is limited to an ascertainable standard or a reasonably definite standard.

(b) An authorized fiduciary that has limited distributive discretion over the principal of the first trust for benefit of one or more current beneficiaries may exercise the decanting power over the principal of the first trust.

(c) Under this section and subject to section 24 of this act, a second trust may be created or administered under the law of any jurisdiction. Under this section, the second trusts, in the aggregate, must grant each beneficiary of the first trust beneficial interests which are substantially similar to the beneficial interests of the beneficiary in the first trust.

(d) A power to make a distribution under a second trust for the benefit of a beneficiary who is an individual is substantially similar to a power under the first trust to make a distribution directly to the beneficiary. A distribution is for the benefit of a beneficiary if:

(1) the distribution is applied for the benefit of the beneficiary;

(2) the beneficiary is under a legal disability or the trustee reasonably believes the beneficiary is incapacitated, and the distribution is made as permitted under the Nebraska Uniform Trust Code; or

(3) the distribution is made as permitted under the terms of the first-trust instrument and the second-trust instrument for the benefit of the beneficiary.

(e) If an authorized fiduciary has limited distributive discretion over part but not all of the principal of a first trust, the fiduciary may exercise the decanting power under this section over that part of the principal over which the authorized fiduciary has limited distributive discretion.

Sec. 23. (a) In this section:

(1) Beneficiary with a disability means a beneficiary of a first trust who the special-needs fiduciary believes may qualify for governmental benefits based on disability, whether or not the beneficiary currently receives those benefits or is an individual who has been adjudicated incapacitated.

(2) Governmental benefits means financial aid or services from a state, federal, or other public agency.

(3) Special-needs fiduciary means, with respect to a trust that has a beneficiary with a disability:

(A) a trustee or other fiduciary, other than a settlor, that has discretion to distribute part or all of the principal of a first trust to one or more current beneficiaries;

(B) if no trustee or fiduciary has discretion under subdivision (3)(A) of this subsection, a trustee or other fiduciary, other than a settlor, that has discretion to distribute part or all of the income of the first trust to one or more current beneficiaries; or

(C) if no trustee or fiduciary has discretion under subdivisions (3)(A) and (B) of this subsection, a trustee or other fiduciary, other than a settlor, that is required to distribute part or all of the income or principal of the first trust to one or more current beneficiaries.

(4) Special-needs trust means a trust the trustee believes would not be considered a resource for purposes of determining whether a beneficiary with a disability is eligible for governmental benefits.

(b) A special-needs fiduciary may exercise the decanting power under section 21 of this act over the principal of a first trust as if the fiduciary had authority to distribute principal to a beneficiary with a disability subject to expanded distributive discretion if:

(1) a second trust is a special-needs trust that benefits the beneficiary with a disability; and

(2) the special-needs fiduciary determines that exercise of the decanting power will further the purposes of the first trust.

(c) In an exercise of the decanting power under this section, the following rules apply:

(1) Notwithstanding subdivision (c)(2) of section 21 of this act, the interest in the second trust of a beneficiary with a disability may:

(A) be a pooled trust as defined by medicaid law for the benefit of the beneficiary with a disability under 42 U.S.C. 1396p(d)(4)(C), as such section existed on the operative date of this section; or

(B) contain payback provisions complying with reimbursement requirements of medicaid law under 42 U.S.C. 1396p(d)(4)(A), as such section existed on the operative date of this section.

(2) Subdivision (c)(3) of section 21 of this act does not apply to the interests of the beneficiary with a disability.

(3) Except as affected by any change to the interests of the beneficiary with a disability, the second trust, or if there are two or more second trusts, the second trusts in the aggregate, must grant each other beneficiary of the first trust beneficial interests in the second trusts which are substantially similar to the beneficiary's beneficial interests in the first trust.

Sec. 24. (a) In this section:

(1) Determinable charitable interest means a charitable interest that is a right to a mandatory distribution currently, periodically, on the occurrence of a specified event, or after the passage of a specified time and which is unconditional or will be held solely for charitable purposes.

(2) Unconditional means not subject to the occurrence of a specified event that is not certain to occur, other than a requirement in a trust instrument that a charitable organization be in existence or qualify under a particular provision of the Internal Revenue Code of 1986, as amended, on the date of the distribution, if the charitable organization meets the requirement on the date of determination.

(b) If a first trust contains a determinable charitable interest, the Attorney General has the rights of a qualified beneficiary and may represent and bind the charitable interest.

(c) If a first trust contains a charitable interest, the second trust or trusts may not:

(1) diminish the charitable interest;

(2) diminish the interest of an identified charitable organization that holds the charitable interest;

(3) alter any charitable purpose stated in the first-trust instrument; or

(4) alter any condition or restriction related to the charitable interest.

(d) If there are two or more second trusts, the second trusts shall be treated as one trust for purposes of determining whether the exercise of the decanting power diminishes the charitable interest or diminishes the interest of an identified charitable organization for purposes of subsection (c) of this

section.

(e) If a first trust contains a determinable charitable interest, the second trust or trusts that include a charitable interest pursuant to subsection (c) of this section must be administered under the law of this state unless:

(1) the Attorney General, after receiving notice under section 17 of this act, fails to object in a signed record delivered to the authorized fiduciary within the notice period;

(2) the Attorney General consents in a signed record to the second trust or trusts being administered under the law of another jurisdiction; or

(3) the court approves the exercise of the decanting power.

(f) The Uniform Trust Decanting Act does not limit the powers and duties of the Attorney General under law of this state other than the act.

Sec. 25. (a) An authorized fiduciary may not exercise the decanting power to the extent the first-trust instrument expressly prohibits exercise of:

(1) the decanting power; or

(2) a power granted by state law to the fiduciary to distribute part or all of the principal of the trust to another trust or to modify the trust.

(b) Exercise of the decanting power is subject to any restriction in the first-trust instrument that expressly applies to exercise of:

(1) the decanting power; or

(2) a power granted by state law to a fiduciary to distribute part or all of the principal of the trust to another trust or to modify the trust.

(c)(1) An authorized fiduciary who is a current beneficiary of the first trust or a beneficiary to which the net income or principal of the first trust would be distributed if the first trust were terminated may not exercise the decanting power under the Uniform Trust Decanting Act in a manner to eliminate or restrict a spendthrift clause or a clause restraining the voluntary or involuntary transfer of a beneficiary's interest in the first trust.

(2) Subject to subdivision (c)(1) of this section, a general prohibition of the amendment or revocation of a first trust, a spendthrift clause, or a clause restraining the voluntary or involuntary transfer of a beneficiary's interest does not preclude exercise of the decanting power.

(d) Subject to subsections (a) and (b) of this section, an authorized fiduciary may exercise the decanting power under the Uniform Trust Decanting Act even if the first-trust instrument permits the authorized fiduciary or another person to modify the first-trust instrument or to distribute part or all of the principal of the first trust to another trust.

(e) If a first-trust instrument contains an express prohibition described in subsection (a) of this section or an express restriction described in subsection (b) of this section, the provision must be included in the second-trust instrument.

Sec. 26. (a) If a first-trust instrument specifies an authorized fiduciary's compensation, the fiduciary may not exercise the decanting power to increase the fiduciary's compensation above the specified compensation unless:

(1) all qualified beneficiaries of the second trust consent to the increase in a signed record; or

(2) the increase is approved by the court.

(b) If a first-trust instrument does not specify an authorized fiduciary's compensation, the fiduciary may not exercise the decanting power to increase the fiduciary's compensation above the compensation permitted by the Nebraska Uniform Trust Code unless:

(1) all qualified beneficiaries of the second trust consent to the increase in a signed record; or

(2) the increase is approved by the court.

(c) A change in an authorized fiduciary's compensation which is incidental to other changes made by the exercise of the decanting power is not an increase in the fiduciary's compensation for purposes of subsections (a) and (b) of this section.

Sec. 27. (a) Except as otherwise provided in this section, a second-trust instrument may not relieve an authorized fiduciary from liability for breach of trust to a greater extent than the first-trust instrument.

(b) A second-trust instrument may provide for indemnification of an authorized fiduciary of the first trust or another person acting in a fiduciary capacity under the first trust for any liability or claim that would have been payable from the first trust if the decanting power had not been exercised.

(c) A second-trust instrument may not reduce fiduciary liability in the aggregate.

(d) Subject to subsection (c) of this section, a second-trust instrument may divide and reallocate fiduciary powers among fiduciaries, including one or more trustees, distribution advisors, investment advisors, trust protectors, or other persons, and relieve a fiduciary from liability for an act or failure to act of another fiduciary as permitted by law of this state other than the Uniform Trust Decanting Act.

Sec. 28. An authorized fiduciary may not exercise the decanting power to modify a provision in a first-trust instrument granting another person power to remove or replace the fiduciary unless:

(1) the person holding the power consents to the modification in a signed record and the modification applies only to the person;

(2) the person holding the power and the qualified beneficiaries of the second trust consent to the modification in a signed record and the modification grants a substantially similar power to another person; or

(3) the court approves the modification and the modification grants a

substantially similar power to another person.

Sec. 29. (a) In this section:

(1) Grantor trust means a trust as to which a settlor of a first trust is considered the owner under 26 U.S.C. 671 to 677 or 26 U.S.C. 679, as such sections existed on the operative date of this section.

(2) Internal Revenue Code means the Internal Revenue Code of 1986, as amended.

(3) Nongrantor trust means a trust that is not a grantor trust.

(4) Qualified benefits property means property subject to the minimum distribution requirements of 26 U.S.C. 401(a)(9) and any applicable regulations, or to any similar requirements that refer to 26 U.S.C. 401(a)(9) or the regulations, as such section and regulations existed on the operative date of this section.

(b) An exercise of the decanting power is subject to the following limitations:

(1) If a first trust contains property that qualified, or would have qualified but for provisions of the Uniform Trust Decanting Act other than this section, for a marital deduction for purposes of the gift or estate tax under the Internal Revenue Code or a state gift, estate, or inheritance tax, the second-trust instrument must not include or omit any term that, if included in or omitted from the trust instrument for the trust to which the property was transferred, would have prevented the transfer from qualifying for the deduction, or would have reduced the amount of the deduction, under the same provisions of the Internal Revenue Code or state law under which the transfer qualified.

(2) If the first trust contains property that qualified, or would have qualified but for provisions of the Uniform Trust Decanting Act other than this section, for a charitable deduction for purposes of the income, gift, or estate tax under the Internal Revenue Code or a state income, gift, estate, or inheritance tax, the second-trust instrument must not include or omit any term that, if included in or omitted from the trust instrument for the trust to which the property was transferred, would have prevented the transfer from qualifying for the deduction, or would have reduced the amount of the deduction, under the same provisions of the Internal Revenue Code or state law under which the transfer qualified.

(3) If the first trust contains property that qualified, or would have qualified but for provisions of the Uniform Trust Decanting Act other than this section, for the exclusion from the gift tax described in 26 U.S.C. 2503(b), as such section existed on the operative date of this section, the second-trust instrument must not include or omit a term that, if included in or omitted from the trust instrument for the trust to which the property was transferred, would have prevented the transfer from qualifying under 26 U.S.C. 2503(b), as such section existed on the operative date of this section. If the first trust contains property that qualified, or would have qualified but for provisions of the Uniform Trust Decanting Act other than this section, for the exclusion from the gift tax described in 26 U.S.C. 2503(b), as such section existed on the operative date of this section, by application of 26 U.S.C. 2503(c), as such section existed on the operative date of this section, the second-trust instrument must not include or omit a term that, if included or omitted from the trust instrument for the trust to which the property was transferred, would have prevented the transfer from qualifying under 26 U.S.C. 2503(c), as such section existed on the operative date of this section.

(4) If the property of the first trust includes shares of stock in an S corporation, as defined in 26 U.S.C. 1361, as such section existed on the operative date of this section, and the first trust is, or but for provisions of the Uniform Trust Decanting Act other than this section would be, a permitted shareholder under any provision of 26 U.S.C. 1361, as such section existed on the operative date of this section, an authorized fiduciary may exercise the power with respect to part or all of the S-corporation stock only if any second trust receiving the stock is a permitted shareholder under 26 U.S.C. 1361(c)(2), as such section existed on the operative date of this section. If the property of the first trust includes shares of stock in an S corporation and the first trust is, or but for provisions of the Uniform Trust Decanting Act other than this section would be, a qualified subchapter-S trust within the meaning of 26 U.S.C. 1361(d), as such section existed on the operative date of this section, the second-trust instrument must not include or omit a term that prevents the second trust from qualifying as a qualified subchapter-S trust.

(5) If the first trust contains property that qualified, or would have qualified but for provisions of the Uniform Trust Decanting Act other than this section, for a zero inclusion ratio for purposes of the generation-skipping transfer tax under 26 U.S.C. 2642(c), as such section existed on the operative date of this section, the second-trust instrument must not include or omit a term that, if included in or omitted from the first-trust instrument, would have prevented the transfer to the first trust from qualifying for a zero inclusion ratio under 26 U.S.C. 2642(c), as such section existed on the operative date of this section.

(6) If the first trust is directly or indirectly the beneficiary of qualified benefits property, the second-trust instrument may not include or omit any term that, if included in or omitted from the first-trust instrument, would have increased the minimum distributions required with respect to the qualified benefits property under 26 U.S.C. 401(a)(9), as such section existed on the operative date of this section, and any applicable regulations, or any

similar requirements that refer to 26 U.S.C. 401(a)(9), as such section existed on the operative date of this section, or the regulations. If an attempted exercise of the decanting power violates the preceding sentence, the trustee is deemed to have held the qualified benefits property and any reinvested distributions of the property as a separate share from the date of the exercise of the power and section 32 of this act applies to the separate share.

(7) If the first trust qualifies as a grantor trust because of the application of 26 U.S.C. 672(f)(2)(A), as such section existed on the operative date of this section, the second trust may not include or omit a term that, if included in or omitted from the first-trust instrument, would have prevented the first trust from qualifying under 26 U.S.C. 672(f)(2)(A), as such section existed on the operative date of this section.

(8) In this subdivision, tax benefit means a federal or state tax deduction, exemption, exclusion, or other benefit not otherwise listed in this section, except for a benefit arising from being a grantor trust. Subject to subdivision (9) of this subsection, a second-trust instrument may not include or omit a term that, if included in or omitted from the first-trust instrument, would have prevented qualification for a tax benefit if:

(A) the first-trust instrument expressly indicates an intent to qualify for the benefit or the first-trust instrument clearly is designed to enable the first trust to qualify for the benefit; and

(B) the transfer of property held by the first trust or the first trust qualified, or but for provisions of the Uniform Trust Decanting Act other than this section, would have qualified for the tax benefit.

(9) Subject to subdivision (4) of this subsection:

(A) except as otherwise provided in subdivision (7) of this subsection, the second trust may be a nongrantor trust, even if the first trust is a grantor trust; and

(B) except as otherwise provided in subdivision (10) of this subsection, the second trust may be a grantor trust, even if the first trust is a nongrantor trust.

(10) An authorized fiduciary may not exercise the decanting power if a settlor objects in a signed record delivered to the fiduciary within the notice period and:

(A) the first trust and a second trust are both grantor trusts, in whole or in part, the first trust grants the settlor or another person the power to cause the first trust to cease to be a grantor trust, and the second trust does not grant an equivalent power to the settlor or other person; or

(B) the first trust is a nongrantor trust and a second trust is a grantor trust, in whole or in part, with respect to the settlor, unless:

(i) the settlor has the power at all times to cause the second trust to cease to be a grantor trust; or

(ii) the first-trust instrument contains a provision granting the settlor or another person a power that would cause the first trust to cease to be a grantor trust and the second-trust instrument contains the same provision.

Sec. 30. (a) Subject to subsection (b) of this section, a second trust may have a duration that is the same as or different from the duration of the first trust.

(b) To the extent that property of a second trust is attributable to property of the first trust, the property of the second trust is subject to any rules governing maximum perpetuity, accumulation, or suspension of the power of alienation which apply to property of the first trust.

Sec. 31. An authorized fiduciary may exercise the decanting power whether or not under the first trust's discretionary distribution standard the fiduciary would have made or could have been compelled to make a discretionary distribution of principal at the time of the exercise.

Sec. 32. (a) If exercise of the decanting power would be effective under the Uniform Trust Decanting Act except that the second-trust instrument in part does not comply with the act, the exercise of the power is effective and the following rules apply with respect to the principal of the second trust attributable to the exercise of the power:

(1) A provision in the second-trust instrument which is not permitted under the act is void to the extent necessary to comply with the act.

(2) A provision required by the act to be in the second-trust instrument which is not contained in the instrument is deemed to be included in the instrument to the extent necessary to comply with the act.

(b) If a trustee or other fiduciary of a second trust determines that subsection (a) of this section applies to a prior exercise of the decanting power, the fiduciary shall take corrective action consistent with the fiduciary's duties.

Sec. 33. (a) In this section:

(1) Animal trust means a trust or an interest in a trust created to provide for the care of one or more animals.

(2) Protector means a person appointed in an animal trust to enforce the trust on behalf of the animal or, if no such person is appointed in the trust, a person appointed by the court for that purpose.

(b) The decanting power may be exercised over an animal trust that has a protector to the extent the trust could be decanted under the Uniform Trust Decanting Act if each animal that benefits from the trust were an individual, if the protector consents in a signed record to the exercise of the power.

(c) A protector for an animal has the rights under the act of a qualified beneficiary.

(d) Notwithstanding any other provision of the act, if a first trust is an

animal trust, in an exercise of the decanting power, the second trust must provide that trust property may be applied only to its intended purpose for the period the first trust benefited the animal.

Sec. 34. A reference in the Nebraska Uniform Trust Code to a trust instrument or terms of the trust includes a second-trust instrument and the terms of the second trust.

Sec. 35. (a) For purposes of law of this state other than the Uniform Trust Decanting Act and subject to subsection (b) of this section, a settlor of a first trust is deemed to be the settlor of the second trust with respect to the portion of the principal of the first trust subject to the exercise of the decanting power.

(b) In determining settlor intent with respect to a second trust, the intent of a settlor of the first trust, a settlor of the second trust, and the authorized fiduciary may be considered.

Sec. 36. (a) Except as otherwise provided in subsection (c) of this section, if exercise of the decanting power was intended to distribute all the principal of the first trust to one or more second trusts, later-discovered property belonging to the first trust and property paid to or acquired by the first trust after the exercise of the power is part of the trust estate of the second trust or trusts.

(b) Except as otherwise provided in subsection (c) of this section, if exercise of the decanting power was intended to distribute less than all the principal of the first trust to one or more second trusts, later-discovered property belonging to the first trust or property paid to or acquired by the first trust after exercise of the power remains part of the trust estate of the first trust.

(c) An authorized fiduciary may provide in an exercise of the decanting power or by the terms of a second trust for disposition of later-discovered property belonging to the first trust or property paid to or acquired by the first trust after exercise of the power.

Sec. 37. A debt, liability, or other obligation enforceable against property of a first trust is enforceable to the same extent against the property when held by the second trust after exercise of the decanting power.

Sec. 38. In applying and construing the Uniform Trust Decanting Act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

Sec. 39. The Uniform Trust Decanting Act modifies, limits, or supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001 et seq., but does not modify, limit, or supersede section 101(c) of that act, 15 U.S.C. 7001(c), or authorize electronic delivery of any of the notices described in section 103(b) of that act, 15 U.S.C. 7003(b), as such sections existed on the operative date of this section.

Sec. 40. Section 25-223, Reissue Revised Statutes of Nebraska, is amended to read:

25-223 (1) Any action to recover damages based on any alleged breach of warranty on improvements to real property or based on any alleged deficiency in the design, planning, supervision, or observation of construction, or construction of an improvement to real property, except improvements to real property subject to the Nebraska Condominium Act, shall be commenced within four years after any alleged act or omission constituting such breach of warranty or deficiency. If such cause of action is not discovered and could not be reasonably discovered within such four-year period, or within one year preceding the expiration of such four-year period, then the cause of action may be commenced within two years from the date of such discovery or from the date of discovery of facts which would reasonably lead to such discovery, whichever is earlier. In no event may any action be commenced to recover damages for an alleged breach of warranty on improvements to real property or deficiency in the design, planning, supervision, or observation of construction, or construction of an improvement to real property more than ten years beyond the time of the act giving rise to the cause of action.

(2)(a) Any action to recover damages based on any alleged breach of warranty on improvements to real property or based on any alleged deficiency in the design, planning, supervision, or observation of construction, or construction of an improvement to real property that is a condominium or part of a condominium project subject to the Nebraska Condominium Act shall be commenced within two years after any alleged act or omission constituting such breach of warranty or deficiency. If such cause of action is not discovered and could not be reasonably discovered within such two-year period, or within one year preceding the expiration of such two-year period, then the cause of action may be commenced within one year from the date of such discovery or from the date of discovery of facts which would reasonably lead to such discovery, whichever is earlier. In no event may any action be commenced to recover damages for an alleged breach of warranty on improvements to real property or deficiency in the design, planning, supervision, or observation of construction, or construction of an improvement to real property more than five years beyond the time of the act giving rise to the cause of action.

(b) Any action brought under this section shall also comply with section 76-890.

Sec. 41. Section 76-842, Reissue Revised Statutes of Nebraska, is amended to read:

76-842 (a) The declaration for a condominium must contain:

(1) the name of the condominium, which must include the word condominium or be followed by the words a condominium, and the name of the association;

(2) the name of every county in which any part of the condominium is situated;

(3) a legally sufficient description of the real estate included in the condominium;

(4) a statement of the anticipated number of units which the declarant reserves the right to create, subject to an amendment of the declaration to add more units pursuant to the Nebraska Condominium Act;

(5) a description of the boundaries of each unit created by the declaration, including the unit's identifying number;

(6) a description of any limited common elements, other than those specified in subdivision (b)(8) of section 76-846;

(7) a general description of any development rights and other special declarant rights defined in subdivision subsection (23) of section 76-827 reserved by the declarant;

(8) an allocation to each unit of the allocated interests in the manner described in section 76-844;

(9) any restrictions on use, occupancy, and alienation of the units; ~~and~~

(10) for a condominium project with more than fifteen units, exclusive of common area, a plan prepared by a licensed engineer or architect for the preventive maintenance of the condominium and all common elements therein, including, but not limited to, depreciation studies and reserve analyses, an annually updated five-year capital plan, and minimum financial reserves based on the reserve analyses; and

~~(11) (10)~~ all matters required by sections 76-843 to 76-846, 76-852, and 76-853, and subsection (d) of section 76-861.

(b) Except as otherwise provided in section 76-856, the declaration may contain any other matters the declarant deems appropriate.

Sec. 42. Section 76-844, Reissue Revised Statutes of Nebraska, is amended to read:

76-844 (a) The declaration shall allocate a fraction or percentage of undivided interests in the common elements and in the common expenses of the association, and a portion of the votes in the association, to each unit and state the formulas used to establish those allocations. ~~Those allocations may not discriminate in favor of units owned by the declarant.~~

(b) If units may be added to or withdrawn from the condominium, the declaration must state the formulas to be used to reallocate the allocated interests among all units included in the condominium after the addition or withdrawal.

(c) The declaration may provide: (i) that different allocations of votes shall be made to the units on particular matters specified in the declaration; (ii) for cumulative voting only for the purpose of electing members of the executive board; and (iii) for class voting on specified issues affecting the class if necessary to protect valid interests of the class. A declarant may not utilize cumulative or class voting for the purpose of evading any limitation imposed on declarants by the Nebraska Condominium Act sections 76-825 to 76-894, nor may units constitute a class because they are owned by a declarant.

(d) Except for minor variations due to rounding, the sum of the undivided interests in the common elements and common expense liabilities allocated at any time to all the units must equal one if stated as fractions or one hundred percent if stated as percentages. In the event of discrepancy between an allocated interest and the result derived from application of the pertinent formula, the allocated interest prevails.

(e) The common elements are not subject to partition, and any purported conveyance, encumbrance, judicial sale, or other voluntary or involuntary transfer of an undivided interest in the common elements made without the unit to which that interest is allocated, is void.

Sec. 43. Section 76-854, Reissue Revised Statutes of Nebraska, is amended to read:

76-854 (a) Except in cases of amendments that may be executed by (1) a declarant under subsection (f) of section 76-846 or under section 76-847, (2) the association under section 76-831 or 76-850, subsection (d) of section 76-843, subsection (c) of section 76-845, or subsection (a) of section 76-849, or (3) certain unit owners under subsection (b) of section 76-845, subsection (a) of section 76-849, subsection (b) of section 76-850, or subsection (b) of section 76-855, and except as limited by subsection (d) of this section, the declaration, including the plats and plans, may be amended only by vote or agreement of unit owners of units to which at least sixty-seven percent of the votes in the association are allocated or any larger majority the declaration specifies up to eighty percent of the votes in the association exclusive of the declarant. The declaration may specify a smaller number only if all of the units are restricted exclusively to nonresidential use.

(b) No action to challenge the validity of an amendment adopted by the association pursuant to this section may be brought more than one year after the amendment is recorded.

(c) Every amendment to the declaration must be recorded in every county in which any portion of the condominium is located and is effective only upon recordation.

(d) Except to the extent expressly permitted or required by other provisions of the Nebraska Condominium Act, no amendment may create or increase special declarant rights, increase the number of units, or change the boundaries of any unit, the allocated interests of a unit, or the uses to which any unit is restricted in the absence of the unanimous consent of the unit owners. In addition, no amendment may change the boundaries of any unit,

increase the allocated interests of any unit, or change the uses to which any unit is restricted, without the consent of the owner of the unit.

(e) Amendments to the declaration required by the act to be recorded by the association shall be prepared, executed, recorded, and certified on behalf of the association by any officer of the association designated for that purpose or, in the absence of designation, by the president of the association.

Sec. 44. Section 76-857, Reissue Revised Statutes of Nebraska, is amended to read:

76-857 (a) If the declaration for a condominium provides that any of the powers described in section 76-860 are to be exercised by or may be delegated to a profit or nonprofit corporation, or unincorporated association, which exercises those or other powers on behalf of one or more condominiums or for the benefit of the unit owners of one or more condominiums, all provisions of the Nebraska Condominium Act sections 76-825 to 76-894 applicable to unit owners associations apply to any such corporation or unincorporated association, except as modified by this section. However, in no case shall the declaration provide that the power to institute or intervene as a plaintiff in litigation or administrative proceedings, other than litigation or administrative proceedings to enforce covenants, bylaws, or rules against unit owners or the unit owners association, be delegated to or exercised by any party other than the unit owners or the declarant.

(b) Unless a master association is acting in the capacity of an association described in section 76-859, it may exercise the powers set forth in subdivision (a)(2) of section 76-860 only to the extent expressly permitted in the declarations of condominiums which are part of the master association or expressly described in the delegations of power from those condominiums to the master association.

(c) If the declaration of any condominium provides that the executive board may delegate certain powers to a master association, the members of the executive board have no liability for the acts or omissions of the master association with respect to those powers following delegation.

(d) The rights and responsibilities of unit owners with respect to the unit owners association set forth in sections 76-861, 76-866 to 76-868, and 76-870 apply in the conduct of the affairs of a master association only to those persons who elect the board of a master association, whether or not those persons are otherwise unit owners within the meaning of the act sections 76-825 to 76-894.

(e) Notwithstanding the provisions of subsection (f) of section 76-861 with respect to the election of the executive board of an association, by all unit owners after the period of declarant control ends, and even if a master association is also an association described in section 76-859, the articles of incorporation or other instrument creating the master association and the declaration of each condominium the powers of which are assigned by the declaration or delegated to the master association may provide that the executive board of the master association must be elected after the period of declarant control in any of the following ways:

(1) All unit owners of all condominiums subject to the master association may elect all members of that executive board.

(2) All members of the executive boards of all condominiums subject to the master association may elect all members of that executive board.

(3) All unit owners of each condominium subject to the master association may elect specified members of that executive board.

(4) All members of the executive board of each condominium subject to the master association may elect specified members of that executive board.

Sec. 45. Section 76-859, Reissue Revised Statutes of Nebraska, is amended to read:

76-859 A unit owners association must be organized no later than the date the units first unit in the condominium equal to one-half of the total number of units plus one are is conveyed. The membership of the association at all times shall consist exclusively of all the unit owners or, following termination of the condominium, of all former unit owners entitled to distributions of proceeds under section 76-855 or their heirs, successors, or assigns. The association shall be organized as a profit or nonprofit corporation or as an unincorporated association.

Sec. 46. Section 76-860, Reissue Revised Statutes of Nebraska, is amended to read:

76-860 (a) Except as provided in subsection (b) of this section and subject to the provisions of the declaration, the association, even if unincorporated, may:

(1) Adopt and amend bylaws and rules and regulations;

(2) Adopt and amend budgets for revenue, expenditures, and reserves and collect assessments for common expenses from unit owners;

(3) Hire and discharge managing agents and other employees, agents, and independent contractors;

(4) Institute, defend, or intervene as a plaintiff in litigation or administrative proceedings, other than litigation or administrative proceedings to enforce covenants, bylaws, or rules against unit owners or the unit owners association, in its own name on behalf of itself or two or more unit owners on matters affecting the condominium upon the affirmative vote of at least eighty percent of the votes in the association exclusive of the declarant;

(5) Make contracts and incur liabilities;

(6) Regulate the use, maintenance, repair, replacement, and modification of common elements;

(7) Cause additional improvements to be made as a part of the common elements;

(8) Acquire, hold, encumber, and convey in its own name any right, title, or interest to real or personal property, but common elements may be encumbered, conveyed, or subjected to a security interest only pursuant to section 76-870;

(9) Grant easements, leases, licenses, and concessions through or over the common elements;

(10) Impose and receive any payments, fees, or charges for the use, rental, or operation of the common elements, other than limited common elements described in subdivisions (2) and (4) of section 76-839, and for services provided to unit owners;

(11) Impose charges for late payment of assessments and, after notice and opportunity to be heard, levy reasonable fines for violations of the declaration, bylaws, and rules and regulations for the association;

(12) Impose reasonable charges for the preparation and recordation of amendments to the declaration, resale statements required by section 76-884, or statements of unpaid assessments;

(13) Provide for the indemnification of its officers and executive board and maintain directors' and officers' liability insurance;

(14) Assign its right to future income, including the right to receive common expense assessments, but only to the extent the declaration expressly so provides;

(15) Exercise any other powers conferred by the declaration or bylaws;

(16) Exercise all other powers that may be exercised in this state by legal entities of the same type as the association; and

(17) Exercise any other powers necessary and proper for the governance and operation of the association.

(b) The declaration may not impose limitations on the power of the association to deal with the declarant which are more restrictive than the limitations imposed on the power of the association to deal with other persons.

Sec. 47. Section 76-861, Revised Statutes Supplement, 2019, is amended to read:

76-861 (a) Except as provided in the declaration, the bylaws, subsection (b) of this section, or other provisions of the Nebraska Condominium Act, the executive board may act in all instances on behalf of the association. In the performance of their duties, the officers and members of the executive board are required to exercise ordinary and reasonable care.

(b) The executive board may not act on behalf of the association to commence litigation on behalf of the unit owners or the unit owners association, to amend the declaration pursuant to section 76-854, to terminate the condominium pursuant to section 76-855, or to elect members of the executive board or determine the qualifications, powers and duties, or terms of office of executive board members pursuant to subsection (f) of this section, but the executive board may fill vacancies in its membership for the unexpired portion of any term.

(c) Within thirty days after adoption of any proposed budget for the condominium, the executive board shall provide a summary of the budget to all the unit owners, and shall set a date for a meeting of the unit owners to consider ratification of the budget not less than fourteen nor more than thirty days after mailing of the summary. Unless at that meeting a majority of all votes in the association or any larger vote specified in the declaration reject the budget, the budget is ratified, whether or not a quorum is present. In the event the proposed budget is rejected, the periodic budget last ratified by the unit owners shall be continued until such time as the unit owners ratify a subsequent budget proposed by the executive board.

(d) Subject to subsection (e) of this section, the declaration may provide for a period of declarant control of the association, during which period a declarant, or persons designated by him or her, may appoint and remove the officers and members of the executive board. Regardless of the period provided in the declaration, a period of declarant control terminates no later than the earlier of: (i) Sixty days after conveyance of ninety percent of the units which may be created to unit owners other than a declarant; or (ii) two years after all declarants have ceased to offer units for sale in the ordinary course of business. A declarant may voluntarily surrender the right to appoint and remove officers and members of the executive board before termination of that period, but in that event he or she may require, for the duration of the period of declarant control, that specified actions of the association or executive board, as described in a recorded instrument executed by the declarant, be approved by the declarant before they become effective. Successor boards following declarant control may not discriminate nor act arbitrarily with respect to units still owned by a declarant or a successor declarant.

(e) Not later than sixty days after conveyance of fifty ~~twenty-five~~ percent of the units which may be created to unit owners other than a declarant, at least one member and not less than twenty-five percent of the members of the executive board shall be elected exclusively by unit owners other than the declarant. ~~Not later than sixty days after conveyance of fifty percent of the units which may be created to unit owners other than a declarant, not less than thirty-three and one-third percent of the members of the executive board shall be elected exclusively by unit owners other than the declarant.~~

(f) Not later than the termination of any period of declarant control, the unit owners shall elect an executive board of at least three members, at least

a majority of whom must be unit owners. The executive board shall elect the officers. The executive board members and officers shall take office upon election.

(g) Notwithstanding any provision of the declaration or bylaws to the contrary, the unit owners, by a two-thirds vote of all persons present and entitled to vote at any meeting of the unit owners at which a quorum is present, may remove any member of the executive board with or without cause, other than a member appointed by the declarant.

(h) The association shall file with the register of deeds of the county in which the condominium is located a condominium statement listing the name of the association and the names and addresses of the current officers of the association. Such filing shall be made every year on or before December 31. The receipt of any legal notice by or service of process on such officer personally or at such officer's filed address shall constitute notice to the association. If the association fails to make the filing required by this subsection, the posting of the legal notice or process at the entrance, main office, or other prominent location in the common area of the condominium shall constitute notice to the association until such filing is made.

Sec. 48. Section 76-867, Reissue Revised Statutes of Nebraska, is amended to read:

76-867 (a) Unless the bylaws provide otherwise, a quorum is present throughout any meeting of the association if persons entitled to cast thirty-five ~~twenty~~ percent of the votes which may be cast for election of the executive board are present in person or by proxy at the beginning of the meeting.

(b) Unless the bylaws specify a larger percentage, a quorum is deemed present throughout any meeting of the executive board if persons entitled to cast fifty percent of the votes on that board are present at the beginning of the meeting.

Sec. 49. Section 76-869, Reissue Revised Statutes of Nebraska, is amended to read:

76-869 (a) Neither the association nor any unit owner except the declarant is liable for that declarant's torts in connection with any part of the condominium which that declarant has the responsibility to maintain. Otherwise, an action alleging a wrong done by the association must be brought against the association and not against any unit owner. If the wrong occurred during any period of declarant control and the association gives the declarant reasonable notice of and an opportunity to defend against the action, the declarant who then controlled the association is liable to the association or to any unit owner only : ~~(i) For all tort losses not covered by insurance suffered by the association or that unit owner, and (ii) for all costs which the association would not have incurred but for a breach of contract or other negligent wrongful act or omission by the declarant. Whenever the declarant is liable to the association under this section, the declarant is also liable for all litigation expenses, including reasonable attorney's fees, incurred by the association. Any statute of limitation affecting the association's right of action under this section is tolled until the period of declarant control terminates.~~ A unit owner is not precluded from bringing an action contemplated by this section because he or she is a unit owner or a member or officer of the association. Liens resulting from judgments against the association are governed by section 76-875.

(b) The declarant shall not be liable for any action, loss, or cost pursuant to this section if at the time the loss occurred, insurance required by section 76-871 was in place.

Sec. 50. Section 76-870, Reissue Revised Statutes of Nebraska, is amended to read:

76-870 (a) Portions of the common elements may be encumbered or conveyed or otherwise subjected to a security interest by the association if persons entitled to cast at least sixty-seven ~~eighty~~ percent of the votes in the association, including sixty-seven ~~eighty~~ percent of the votes allocated to units not owned by a declarant, or any larger percentage the declaration specifies, agree to that action; but all the owners of units to which any limited common element is allocated must agree ~~in order to encumber or convey~~ that limited common element or subject it to a security interest. The declaration may specify a smaller percentage only if all of the units are restricted exclusively to nonresidential uses. Proceeds of the sale are an asset of the association.

(b) An agreement to encumber or convey common elements or subject them to a security interest must be evidenced by the execution of an agreement, or ratifications thereof, in the same manner as a deed, by the requisite number of unit owners. The agreement must specify a date after which the agreement will be void unless recorded before that date. The agreement and all ratifications thereof must be recorded in every county in which a portion of the condominium is situated and is effective only upon recordation.

(c) The association, on behalf of the unit owners, may contract to encumber or convey common elements or subject them to a security interest, but the contract is not enforceable against the association until approved pursuant to subsections (a) and (b) of this section. Thereafter, the association has all powers necessary and appropriate to effect the conveyance or encumbrance, including the power to execute deeds or other instruments.

(d) Any purported conveyance, encumbrance, judicial sale, or other voluntary transfer of common elements, unless made pursuant to this section, is void.

(e) A conveyance or an encumbrance of common elements pursuant to this section does not deprive any unit of its rights of access and support.

(f) Unless the declaration otherwise provides, a conveyance or an encumbrance of common elements pursuant to this section does not affect the priority or validity of preexisting encumbrances.

Sec. 51. Section 76-884, Reissue Revised Statutes of Nebraska, is amended to read:

76-884 (a) Except in the case of a sale where delivery of a public-offering statement is required or unless exempt under subsection (b) of section 76-878, the unit owner and any other person in the business of selling real estate who offers a unit to a purchaser shall furnish to a purchaser before conveyance a copy of the declaration other than the plats and plans, the bylaws, the rules or regulations of the association, and the following information:

(1) a statement setting forth the amount of the monthly common expense assessment and any unpaid common expense or special assessment currently due and payable from the selling unit owner;

(2) any other fees payable by unit owners;

(3) the most recent regularly prepared balance sheet and income and expense statement, if any, of the association;

(4) the current operating budget of the association, if any;

(5) a statement that a copy of any insurance policy provided for the benefit of unit owners is available from the association upon request; ~~and~~

(6) a statement of the remaining term of any leasehold estate affecting the condominium and the provisions governing any extension or renewal thereof; ~~and~~ -

(7) a disclosure of any threatened or pending litigation involving the unit or the association.

(b) The association, within ten days after a request by a unit owner, shall furnish in writing the information necessary to enable the unit owner to comply with this section. A unit owner providing information pursuant to subsection (a) of this section is not liable to the purchaser for any erroneous information provided by the association and included in the certificate.

(c) A purchaser is not liable for any unpaid assessment or fee greater than the amount set forth in the information prepared by the association. The unit owner or any other person in the business of selling real estate who offers a unit to a purchaser is not liable to a purchaser for the failure or delay of the association to provide such information in a timely manner.

Sec. 52. Section 76-890, Reissue Revised Statutes of Nebraska, is amended to read:

76-890 (a) A judicial proceeding for breach of any obligation arising under section 76-887 or 76-888 must be commenced within two ~~four~~ years after the cause of action accrues, but the parties may agree to reduce the period of limitation to not less than one year ~~two years~~. With respect to a unit that may be occupied for residential use, an agreement to reduce the period of limitation must be evidenced by an instrument executed by the purchaser. Prior to commencing any judicial proceeding under this section, the person seeking to commence the judicial proceeding must (1) provide written notice of the proposed proceeding and the specific alleged defect or defects to the prospective defendant or defendants and (2) give the prospective defendant or defendants at least three months to cure the alleged defect or defects. If the defect or defects are such that they cannot reasonably be cured within three months, the cure period shall extend as long as the prospective defendant has commenced and is diligently proceeding with repairs. Providing the notice in this section in a manner reasonably understood to inform the prospective defendant of the specific alleged defect or defects shall toll any applicable statute of limitations until the alleged defect or defects are cured. Any proceeding commenced without strict compliance with this section is subject to dismissal for such noncompliance.

(b) Subject to subsection (c) of this section, a cause of action for breach of warranty, regardless of the purchaser's lack of knowledge of the breach, accrues:

(1) as to a unit, at the time the purchaser to whom the warranty is first made enters into possession if a possessory interest was conveyed or at the time of acceptance of the instrument of conveyance if a nonpossessory interest was conveyed; and

(2) as to each common element, at the time the common element is completed or, if later, (i) as to a common element that may be added to the condominium or portion thereof, at the time the first unit therein is conveyed to a bona fide purchaser, or (ii) as to a common element within any other portion of the condominium, at the time the first unit in the condominium is conveyed to a bona fide purchaser.

(c) If a warranty explicitly extends to future performance or duration of any improvement or component of the condominium, the cause of action accrues at the time the breach is discovered or at the end of the period for which the warranty explicitly extends, whichever is earlier.

Sec. 53. Section 76-2202, Reissue Revised Statutes of Nebraska, is amended to read:

76-2202 The Legislature finds that as a result of the enactment of the Dodd-Frank Wall Street Reform and Consumer Protection Act and the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Nebraska's laws providing for regulation of real property appraisers require restructuring and updating in order to comply with such acts. Compliance with the acts is

necessary to ensure an adequate number of real property appraisers in Nebraska to conduct appraisals of real estate involved in federally related transactions as defined in such acts.

Sec. 54. Section 76-2204, Reissue Revised Statutes of Nebraska, is amended to read:

76-2204 Appraisal means (1) as a noun, an opinion of value or the act or process of developing an opinion of value or (2) as an adjective, pertaining to appraising and related functions such as real property appraisal practice ~~or real property appraisal activity~~. An appraisal ~~is~~ must be numerically expressed as a specific amount, as a range of numbers, or as a relationship to a previous value opinion or numerical benchmark.

Sec. 55. Section 76-2205.02, Reissue Revised Statutes of Nebraska, is amended to read:

76-2205.02 Appraisal review means (1) as a noun, the act or process of developing an opinion about the quality of a real property appraiser's work that was performed as part of real property appraisal practice ~~a valuation assignment, evaluation assignment, or appraisal review assignment~~ or (2) as an adjective, of or pertaining to an opinion about the quality of another real property appraiser's work that was performed as part of real property appraisal practice ~~a valuation assignment, evaluation assignment, or appraisal review assignment~~.

Sec. 56. Section 76-2207.01, Reissue Revised Statutes of Nebraska, is amended to read:

76-2207.01 Assignment means a valuation service that is performed by a real property ~~an~~ appraiser as a consequence of an agreement with a client.

Sec. 57. Section 76-2207.17, Reissue Revised Statutes of Nebraska, is amended to read:

76-2207.17 Assignment results means the opinions or conclusions, not limited to value, developed by a real property appraiser when performing valuation services specific to real property appraisal practice ~~an assignment not limited to value for an appraisal assignment, and not limited to an opinion about the quality of another appraiser's work for an appraisal review assignment~~.

Sec. 58. Section 76-2207.22, Reissue Revised Statutes of Nebraska, is amended to read:

76-2207.22 Client means the person or persons who engage a real property appraiser ~~, by employment or contract, a real property appraiser in a specific assignment whether~~ . The client may engage and communicate with the appraiser directly or through an agent.

Sec. 59. Section 76-2207.26, Reissue Revised Statutes of Nebraska, is amended to read:

76-2207.26 Credential holder means (1) any person who holds a valid credential as a trainee real property appraiser, licensed real property appraiser, certified residential real property appraiser, or certified general real property appraiser and (2) any person who holds a temporary credential permit to engage in real property appraisal practice activity within this state.

Sec. 60. Section 76-2207.27, Revised Statutes Supplement, 2019, is amended to read:

76-2207.27 Education provider means: Any real property appraisal or real-estate-related organization; proprietary school; accredited degree-awarding community college, college, or university; state or federal agency; or such other provider that may be approved by the board that provides real property appraiser training or education.

Sec. 61. Section 76-2207.30, Revised Statutes Supplement, 2019, is amended to read:

76-2207.30 Financial Institutions Reform, Recovery, and Enforcement Act of 1989 means the act as it existed on January 1, 2020 ~~2019~~.

Sec. 62. Section 76-2212.03, Reissue Revised Statutes of Nebraska, is amended to read:

76-2212.03 Jurisdiction of practice means any jurisdiction in which an appraiser devotes his or her time engaged in real property appraisal practice activity.

Sec. 63. Section 76-2215, Reissue Revised Statutes of Nebraska, is amended to read:

76-2215 Real property appraisal practice activity means any act or process performed by a real property appraiser involved in developing and reporting an analysis, opinion, or conclusion relating to the specified interests in or aspects of identified real estate or identified real property or an appraisal review. Real property appraisal practice activity includes, but is not limited to, evaluation assignments, valuation assignments, and appraisal review assignments.

Sec. 64. Section 76-2216, Reissue Revised Statutes of Nebraska, is amended to read:

76-2216 Real property appraiser means a person who is a credential holder ~~.~~

- ~~(1) Engages in real property appraisal activity;~~
- ~~(2) Advertises or holds himself or herself out to the general public as a real property appraiser; or~~
- ~~(3) Offers, attempts, or agrees to perform or performs real property appraisal activity.~~

Sec. 65. Section 76-2216.02, Reissue Revised Statutes of Nebraska, is amended to read:

76-2216.02 Report means any communication, written, oral, or by electronic means, of assignment results ~~an appraisal or appraisal review that is transmitted to the client or a party authorized by the client upon completion of an assignment. Testimony related to assignment results ~~an appraisal or appraisal review~~~~ is deemed to be an oral report.

Sec. 66. Section 76-2218.02, Reissue Revised Statutes of Nebraska, is amended to read:

76-2218.02 Uniform Standards of Professional Appraisal Practice means the standards adopted and promulgated by The Appraisal Foundation as the standards existed on January 1, 2020 ~~2018~~.

Sec. 67. Section 76-2219.01, Reissue Revised Statutes of Nebraska, is amended to read:

76-2219.01 Valuation services means all services pertaining to an aspect ~~aspects~~ of property value, including a service ~~services~~ performed by real property appraisers.

Sec. 68. Section 76-2219.02, Reissue Revised Statutes of Nebraska, is amended to read:

76-2219.02 Workfile means data, information, and documentation necessary to support a real property appraiser's opinions analyses, ~~opinion,~~ and conclusions, and to show compliance with the Uniform Standards of Professional Appraisal Practice as it applies to an assignment.

Sec. 69. Section 76-2220, Reissue Revised Statutes of Nebraska, is amended to read:

76-2220 (1) Except as provided in section 76-2221, it shall be unlawful for anyone to act as a real property appraiser in this state without first obtaining proper credentialing as required under the Real Property Appraiser Act.

(2) Except as provided in section 76-2221, any person who, directly or indirectly for another, offers, attempts, ~~or~~ agrees to engage, or engages in real property appraisal practice, or who advertises or holds himself or herself out to the general public as a real property appraiser, perform any act described in section 76-2216 shall be deemed a real property appraiser within the meaning of the Real Property Appraiser Act, and such action shall constitute sufficient contact with this state for the exercise of personal jurisdiction over such person in any action arising out of such act. Committing a single act described in this such section by a person required to be credentialed under the Real Property Appraiser Act and not so credentialed shall constitute a violation of the act for which the board may impose sanctions pursuant to this section for the protection of the public health, safety, or welfare.

(3) The board may issue a cease and desist order against any person who violates this section ~~by performing any action described in section 76-2216 without the appropriate credential~~. Such order shall be final ten days after issuance unless such person requests a hearing pursuant to section 76-2240. The board may, through the Attorney General, obtain an order from the district court for the enforcement of the cease and desist order.

Sec. 70. Section 76-2221, Reissue Revised Statutes of Nebraska, is amended to read:

76-2221 The Real Property Appraiser Act shall not apply to:

(1) Any real property appraiser who is a salaried employee of (a) the federal government, (b) any agency of the state government or a political subdivision which appraises real estate, (c) any insurance company authorized to do business in this state, or (d) any bank, savings bank, savings and loan association, building and loan association, credit union, or small loan company licensed by this state or supervised or regulated by or through federal enactments covering financial institutions, except that any employee of the entities listed in subdivisions (a) through (d) of this subdivision who signs a report as a credentialed real property appraiser shall be subject to the act and the Uniform Standards of Professional Appraisal Practice. Any salaried employee of the entities listed in subdivisions (a) through (d) of this subdivision who is a credentialed real property appraiser and who does not sign a report as a credentialed real property appraiser shall include the following disclosure prominently with such report: This opinion of value may not meet the minimum standards contained in the Uniform Standards of Professional Appraisal Practice and is not governed by the Real Property Appraiser Act;

(2) A person referred to in subsection (1) of section 81-885.16;

(3) Any person who provides assistance (a) in obtaining the data upon which assignment results ~~are an appraisal~~ is based, (b) in the physical preparation of a report, such as taking photographs, preparing charts, maps, or graphs, or typing or printing the report, or (c) that does not directly involve the exercise of judgment in arriving at the assignment results ~~analyses, opinions, or conclusions concerning real estate or real property set forth in the report;~~

(4) Any owner of real estate, employee of the owner, or attorney licensed to practice law in this state representing the owner who renders an estimate or opinion of value of the real estate or any interest in the real estate when such estimate or opinion is for the purpose of real estate taxation, or any other person who renders such an estimate or opinion of value when that estimate or opinion requires a specialized knowledge that a real property appraiser would not have, except that a real property appraiser or a person licensed under the Nebraska Real Estate License Act is not exempt under this subdivision;

(5) Any owner of real estate, employee of the owner, or attorney licensed

to practice law in this state representing the owner who renders an estimate or opinion of value of real estate or any interest in real estate or damages thereto when such estimate or opinion is offered as testimony in any condemnation proceeding, or any other person who renders such an estimate or opinion when that estimate or opinion requires a specialized knowledge that a real property appraiser would not have, except that a real property appraiser or a person licensed under the Nebraska Real Estate License Act is not exempt under this subdivision;

(6) Any owner of real estate, employee of the owner, or attorney licensed to practice law in this state representing the owner who renders an estimate or opinion of value of the real estate or any interest in the real estate when such estimate or opinion is offered in connection with a legal matter involving real property;

(7) Any person appointed by a county board of equalization to act as a referee pursuant to section 77-1502.01, except that any person who also practices as an independent real property appraiser for others shall be subject to the Real Property Appraiser Act and shall be credentialed prior to engaging in such other real property appraisal practice appraising. Any real property appraiser appointed to act as a referee pursuant to section 77-1502.01 and who prepares a report for the county board of equalization shall not sign such report as a credentialed real property appraiser and shall include the following disclosure prominently with such report: This opinion of value may not meet the minimum standards contained in the Uniform Standards of Professional Appraisal Practice and is not governed by the Real Property Appraiser Act;

(8) Any person who is appointed to serve as an appraiser pursuant to section 76-706, except that if such person is a credential holder, he or she shall (a) be subject to the scope of practice applicable to his or her classification of credential and (b) comply with the Uniform Standards of Professional Appraisal Practice, excluding standards 1 through 10; or

(9) Any person, including an independent contractor, retained by a county to assist in the appraisal of real property as performed by the county assessor of such county subject to the standards established by the Tax Commissioner pursuant to section 77-1301.01. A person so retained shall be under the direction and responsibility of the county assessor.

Sec. 71. Section 76-2223, Reissue Revised Statutes of Nebraska, is amended to read:

76-2223 (1) The Real Property Appraiser Board shall administer and enforce the Real Property Appraiser Act and may:

(a) Receive applications for credentialing under the act, process such applications and regulate the issuance of credentials to qualified applicants, and maintain a directory of the names and addresses of persons who receive credentials under the act;

(b) Hold meetings, public hearings, informal conferences, and administrative hearings, prepare or cause to be prepared specifications for all real property appraiser classifications, solicit bids and enter into contracts with one or more testing services, and administer or contract for the administration of examinations approved by the Appraiser Qualifications Board in such places and at such times as deemed appropriate;

(c) Develop the specifications for credentialing examinations, including timing, location, and security necessary to maintain the integrity of the examinations;

(d) Review the procedures and criteria of a contracted testing service to ensure that the testing meets with the approval of the Appraiser Qualifications Board;

(e) Collect all fees required or permitted by the act. The Real Property Appraiser Board shall remit all such receipts to the State Treasurer for credit to the Real Property Appraiser Fund. In addition, the board may collect and transmit to the appropriate federal authority any fees established under the Financial Institutions Reform, Recovery, and Enforcement Act of 1989;

(f) Establish appropriate administrative procedures for disciplinary proceedings conducted pursuant to the Real Property Appraiser Act;

(g) Issue subpoenas to compel the attendance of witnesses and the production of books, documents, records, and other papers, administer oaths, and take testimony and require submission of and receive evidence concerning all matters within its jurisdiction. In case of disobedience of a subpoena, the Real Property Appraiser Board may make application to the district court of Lancaster County to require the attendance and testimony of witnesses and the production of documentary evidence. If any person fails to obey an order of the court, he or she may be punished by the court as for contempt thereof;

(h) Deny an application or censure, suspend, or revoke a credential if it finds that the applicant or credential holder has committed any of the acts or omissions set forth in section 76-2238 or otherwise violated the act. Any disciplinary matter may be resolved through informal disposition pursuant to section 84-913;

(i) Take appropriate disciplinary action against a credential holder if the Real Property Appraiser Board determines that a credential holder has violated any provision of the act or the Uniform Standards of Professional Appraisal Practice;

(j) Enter into consent decrees and issue cease and desist orders upon a determination that a violation of the act has occurred;

(k) Promote research and conduct studies relating to the profession of real property appraisal, sponsor real property appraisal educational

activities, and incur, collect fees for, and pay the necessary expenses in connection with activities which shall be open to all credential holders;

(1) Establish and adopt minimum standards for appraisals as required under section 76-2237;

(m) Adopt and promulgate rules and regulations to carry out the act. The rules and regulations may include provisions establishing minimum standards for education providers, courses, and instructors. The rules and regulations shall be adopted and promulgated pursuant to the Administrative Procedure Act; and

(n) Do all other things necessary to carry out the Real Property Appraiser Act.

(2) The Real Property Appraiser Board shall also administer and enforce the Nebraska Appraisal Management Company Registration Act.

Sec. 72. Section 76-2227, Reissue Revised Statutes of Nebraska, is amended to read:

76-2227 (1) Applications for initial credentials, upgrade of credentials, credentials through reciprocity, temporary credentials, and renewal of credentials, including authorization to take the appropriate examination, shall be made in writing to the board on forms approved by the board. The payment of the appropriate fee in an amount established by the board pursuant to section 76-2241 shall accompany all applications.

(2) Applications for credentials shall include the applicant's social security number and such other information as the board may require.

(3) At the time of filing an application for a credential, the applicant shall sign a pledge that he or she has read and will comply with the Uniform Standards of Professional Appraisal Practice. Each applicant shall also certify that he or she understands the types of misconduct for which disciplinary proceedings may be initiated.

(4) To qualify for an initial credential, an upgrade of a credential, a credential through reciprocity, a temporary credential, or a renewal of a credential, an applicant shall:

(a) Certify that disciplinary proceedings are not pending against him or her in any jurisdiction or state the nature of any pending disciplinary proceedings;

(b) Certify that he or she has not surrendered an appraiser credential, or any other registration, license, or certification, issued by any other regulatory agency or held in any other jurisdiction, in lieu of disciplinary action pending or threatened within the five-year period immediately preceding the date of application;

(c) Certify that his or her appraiser credential, or any other registration, license, or certification, issued by any other regulatory agency or held in any other jurisdiction, has not been revoked or suspended within the five-year period immediately preceding the date of application;

(d) Not have been convicted of, including a conviction based upon a plea of guilty or nolo contendere:

(i) Any felony or, if so convicted, has had his or her civil rights restored;

(ii) Any crime of fraud, dishonesty, breach of trust, money laundering, misrepresentation, or deceit involving real estate, financial services, or in the making of an appraisal within the five-year period immediately preceding the date of application; or

(iii) Any other crime which is related to the qualifications, functions, or duties of a real property appraiser within the five-year period immediately preceding the date of application;

(e) Certify that no civil judicial actions, including dismissal with settlement, in connection with real estate, financial services, or in the making of an appraisal have been brought against him or her within the five-year period immediately preceding the date of application;

(f) Demonstrate character and general fitness such as to command the confidence and trust of the public; and

(g) Not possess a background that would call into question public trust or a credential holder's fitness for credentialing.

(5) Credentials shall be issued only to persons who have a good reputation for honesty, trustworthiness, integrity, and competence to perform real property appraisal practice assignments in such manner as to safeguard the interest of the public and only after satisfactory proof of such qualification has been presented to the board upon request and a completed application has been approved.

(6) No credential shall be issued to a person other than an individual.

Sec. 73. Section 76-2228.01, Revised Statutes Supplement, 2019, is amended to read:

76-2228.01 (1) To qualify for a credential as a trainee real property appraiser, an applicant shall:

(a) Be at least nineteen years of age;

(b) Hold a high school diploma or a certificate of high school equivalency or have education acceptable to the Real Property Appraiser Board;

(c)(i) Have successfully completed and passed examination for no fewer than seventy-five class hours in Real Property Appraiser Board-approved qualifying education courses conducted by education providers as prescribed by rules and regulations of the Real Property Appraiser Board and completed the fifteen-hour National Uniform Standards of Professional Appraisal Practice Course. Each course shall include a proctored, closed-book examination pertinent to the material presented. Except for the fifteen-hour National Uniform Standards of Professional Appraisal Practice Course, which shall be

completed within the two-year period immediately preceding submission of the application, all class hours shall be completed within the five-year period immediately preceding submission of the application; or

(ii) Hold a bachelor's degree or higher in real estate from an accredited degree-awarding college or university that has had all or part of its curriculum approved by the Appraiser Qualifications Board as required core curriculum or the equivalent as determined by the Appraiser Qualifications Board. The degree shall be conferred within the five-year period immediately preceding submission of the application. If the degree in real estate or equivalent as approved by the Appraiser Qualifications Board does not satisfy all required qualifying education for credentialing, the remaining class hours shall be completed in Real Property Appraiser Board-approved qualifying education pursuant to subdivision (c)(i) of this subsection;

(d) As prescribed by rules and regulations of the Real Property Appraiser Board, successfully complete a Real Property Appraiser Board-approved supervisory real property appraiser and trainee course within one year immediately preceding the date of application; and

(e) Submit two copies of legible ink-rolled fingerprint cards or equivalent electronic fingerprint submissions to the Real Property Appraiser Board for delivery to the Nebraska State Patrol in a form approved by both the Nebraska State Patrol and the Federal Bureau of Investigation. A fingerprint-based national criminal history record check shall be conducted through the Nebraska State Patrol and the Federal Bureau of Investigation with such record check to be carried out by the Real Property Appraiser Board.

(2) Prior to engaging in ~~appraisal practice or~~ real property appraisal practice activity, a trainee real property appraiser shall submit a written request for supervisory real property appraiser approval on a form approved by the board. The request for supervisory real property appraiser approval may be made at the time of application or any time after approval as a trainee real property appraiser.

(3) To qualify for an upgraded credential, a trainee real property appraiser shall satisfy the appropriate requirements as follows:

(a) Submit two copies of legible ink-rolled fingerprint cards or equivalent electronic fingerprint submissions to the Real Property Appraiser Board for delivery to the Nebraska State Patrol in a form approved by both the Nebraska State Patrol and the Federal Bureau of Investigation. A fingerprint-based national criminal history record check shall be conducted through the Nebraska State Patrol and the Federal Bureau of Investigation with such record check to be carried out by the Real Property Appraiser Board; and

(b) Within the twelve months following approval of the applicant's education and experience by the Real Property Appraiser Board for an upgraded credential, pass an appropriate examination approved by the Appraiser Qualifications Board for that upgraded credential, prescribed by rules and regulations of the Real Property Appraiser Board, and administered by a contracted testing service.

(4) To qualify for a credential as a licensed residential real property appraiser, a trainee real property appraiser shall:

(a) Successfully complete and pass proctored, closed-book examinations for no fewer than seventy-five additional class hours in board-approved qualifying education courses conducted by education providers as prescribed by rules and regulations of the board, or hold a bachelor's degree in real estate from an accredited degree-awarding college or university or equivalent pursuant to subdivision (1)(c)(ii) of section 76-2230; and

(b) Meet the experience requirements pursuant to subdivision (1)(d) of section 76-2230.

(5) To qualify for a credential as a certified residential real property appraiser, a trainee real property appraiser shall:

(a) Meet the postsecondary educational requirements pursuant to subdivisions (1)(b) and (c) of section 76-2231.01;

(b) Successfully complete and pass proctored, closed-book examinations for no fewer than one hundred twenty-five additional class hours in board-approved qualifying education courses conducted by education providers as prescribed by rules and regulations of the board, or hold a bachelor's degree in real estate from an accredited degree-awarding college or university or equivalent pursuant to subdivision (1)(d)(ii) of section 76-2231.01; and

(c) Meet the experience requirements pursuant to subdivision (1)(e) of section 76-2231.01.

(6) To qualify for a credential as a certified general real property appraiser, a trainee real property appraiser shall:

(a) Meet the postsecondary educational requirements pursuant to subdivisions (1)(b) and (c) of section 76-2232;

(b) Successfully complete and pass proctored, closed-book examinations for no fewer than two hundred twenty-five additional class hours in board-approved qualifying education courses conducted by education providers as prescribed by rules and regulations of the board, or hold a bachelor's degree in real estate from an accredited degree-awarding college or university or equivalent pursuant to subdivision (1)(d)(ii) of section 76-2232; and

(c) Meet the experience requirements pursuant to subdivision (1)(e) of section 76-2232.

(7) The scope of practice for the trainee real property appraiser shall be limited to real property appraisal practice assignments ~~the appraisal of the types of real property or real estate~~ that the supervisory certified real property appraiser is permitted to engage in appraise by his or her current

credential and that the supervisory real property appraiser is competent to engage in appraise.

Sec. 74. Section 76-2228.02, Revised Statutes Supplement, 2019, is amended to read:

76-2228.02 (1) Each trainee real property appraiser's experience shall be subject to direct supervision by a supervisory real property appraiser. To qualify as a supervisory real property appraiser, a real property appraiser shall:

(a) Be a certified residential real property appraiser or certified general real property appraiser in good standing;

(b) Have held a certified real property appraiser credential in this state, or the equivalent in any other jurisdiction, for a minimum of three years immediately preceding the date of the written request for approval as supervisory real property appraiser;

(c) Have not successfully completed disciplinary action by the board or any other jurisdiction, which action limited the real property appraiser's legal eligibility to engage in real property appraisal practice activity within three years immediately preceding the date the written request for approval as supervisory real property appraiser is submitted by the applicant or trainee real property appraiser on a form approved by the board;

(d) As prescribed by rules and regulations of the board, have successfully completed a board-approved supervisory real property appraiser and trainee course preceding the date the written request for approval as supervisory real property appraiser is submitted by the applicant or trainee real property appraiser on a form approved by the board; and

(e) Certify that he or she understands his or her responsibilities and obligations under the Real Property Appraiser Act as a supervisory real property appraiser and applies his or her signature to the written request for approval as supervisory real property appraiser submitted by the applicant or trainee real property appraiser.

(2) The supervisory real property appraiser shall be responsible for the training and direct supervision of the trainee real property appraiser's experience by:

(a) Accepting responsibility for the report by applying his or her signature and certifying that the report is in compliance with the Uniform Standards of Professional Appraisal Practice;

(b) Reviewing the trainee real property appraiser reports; and

(c) Personally inspecting each appraised property with the trainee real property appraiser as is consistent with his or her scope of practice until the supervisory real property appraiser determines that the trainee real property appraiser is competent in accordance with the competency rule of the Uniform Standards of Professional Appraisal Practice.

(3) A certified real property appraiser disciplined by the board or any other appraiser regulatory agency in another jurisdiction, which discipline may or may not have limited the real property appraiser's legal eligibility to engage in real property appraisal practice activity, shall not be eligible as a supervisory real property appraiser as of the date disciplinary action was imposed against the appraiser by the board or any other appraiser regulatory agency. The certified real property appraiser shall be considered to be in good standing and eligible as a supervisory real property appraiser upon the successful completion of disciplinary action that does not limit the real property appraiser's legal eligibility to engage in real property appraisal practice activity, or three years after the successful completion of disciplinary action that limits the real property appraiser's legal eligibility to engage in real property appraisal practice activity.

(4) The trainee real property appraiser may have more than one supervisory real property appraiser, but a supervisory real property appraiser may not supervise more than three trainee real property appraisers at one time.

(5) As prescribed by rules and regulations of the board, an appraisal experience log shall be maintained jointly by the supervisory real property appraiser and the trainee real property appraiser.

Sec. 75. Section 76-2230, Revised Statutes Supplement, 2019, is amended to read:

76-2230 (1) To qualify for a credential as a licensed residential real property appraiser, an applicant shall:

(a) Be at least nineteen years of age;

(b) Hold a high school diploma or a certificate of high school equivalency or have education acceptable to the Real Property Appraiser Board;

(c)(i) Have successfully completed and passed examination for no fewer than one hundred fifty class hours in Real Property Appraiser Board-approved qualifying education courses conducted by education providers as prescribed by rules and regulations of the Real Property Appraiser Board and completed the fifteen-hour National Uniform Standards of Professional Appraisal Practice Course. Each course shall include a proctored, closed-book examination pertinent to the material presented; or

(ii) Hold a bachelor's degree or higher in real estate from an accredited degree-awarding college or university that has had all or part of its curriculum approved by the Appraiser Qualifications Board as required core curriculum or the equivalent as determined by the Appraiser Qualifications Board. If the degree in real estate or equivalent as approved by the Appraiser Qualifications Board does not satisfy all required qualifying education for credentialing, the remaining class hours shall be completed in Real Property Appraiser Board-approved qualifying education pursuant to subdivision (c)(i) of

this subsection;

(d) Have no fewer than one thousand hours of experience as prescribed by rules and regulations of the Real Property Appraiser Board. The required experience shall be acceptable to the Real Property Appraiser Board and subject to review and determination as to conformity with the Uniform Standards of Professional Appraisal Practice. The experience shall have occurred during a period of no fewer than six months;

(e) Submit two copies of legible ink-rolled fingerprint cards or equivalent electronic fingerprint submissions to the Real Property Appraiser Board for delivery to the Nebraska State Patrol in a form approved by both the Nebraska State Patrol and the Federal Bureau of Investigation. A fingerprint-based national criminal history record check shall be conducted through the Nebraska State Patrol and the Federal Bureau of Investigation with such record check to be carried out by the Real Property Appraiser Board; and

(f) Within the twelve months following approval of the applicant's education and experience by the Real Property Appraiser Board, pass a licensed residential real property appraiser examination, certified residential real property appraiser examination, or certified general real property appraiser examination, approved by the Appraiser Qualifications Board, prescribed by rules and regulations of the Real Property Appraiser Board, and administered by a contracted testing service.

(2) To qualify for an upgraded credential, a licensed residential real property appraiser shall satisfy the appropriate requirements as follows:

(a) Submit two copies of legible ink-rolled fingerprint cards or equivalent electronic fingerprint submissions to the Real Property Appraiser Board for delivery to the Nebraska State Patrol in a form approved by both the Nebraska State Patrol and the Federal Bureau of Investigation. A fingerprint-based national criminal history record check shall be conducted through the Nebraska State Patrol and the Federal Bureau of Investigation with such record check to be carried out by the Real Property Appraiser Board; and

(b) Within the twelve months following approval of the applicant's education and experience by the Real Property Appraiser Board for an upgraded credential, pass an appropriate examination approved by the Appraiser Qualifications Board for that upgraded credential, prescribed by rules and regulations of the Real Property Appraiser Board, and administered by a contracted testing service.

(3) To qualify for a credential as a certified residential real property appraiser, a licensed residential real property appraiser shall:

(a)(i) Meet the postsecondary educational requirements pursuant to subdivisions (1)(b) and (c) of section 76-2231.01; or

(ii)(A) Have held a credential as a licensed residential real property appraiser for a minimum of five years; and

(B) Not have been subject to a nonappealable disciplinary action by the board or any other jurisdiction, which action limited the real property appraiser's legal eligibility to engage in real property appraisal practice activity within five years immediately preceding the date of application for the certified residential real property appraiser credential;

(b) Successfully complete and pass proctored, closed-book examinations for no fewer than fifty additional class hours in board-approved qualifying education courses conducted by education providers as prescribed by rules and regulations of the board, or hold a bachelor's degree in real estate from an accredited degree-awarding college or university or equivalent pursuant to subdivision (1)(d)(ii) of section 76-2231.01; and

(c) Meet the experience requirements pursuant to subdivision (1)(e) of section 76-2231.01.

(4) To qualify for a credential as a certified general real property appraiser, a licensed residential real property appraiser shall:

(a) Meet the postsecondary educational requirements pursuant to subdivisions (1)(b) and (c) of section 76-2232;

(b) Successfully complete and pass proctored, closed-book examinations for no fewer than one hundred fifty additional class hours in board-approved qualifying education courses conducted by education providers as prescribed by rules and regulations of the board, or hold a bachelor's degree in real estate from an accredited degree-awarding college or university or equivalent pursuant to subdivision (1)(d)(ii) of section 76-2232; and

(c) Meet the experience requirements pursuant to subdivision (1)(e) of section 76-2232.

(5) An appraiser holding a valid licensed residential real property appraiser credential shall satisfy the requirements for the trainee real property appraiser credential for a downgraded credential.

(6) The scope of practice for a licensed residential real property appraiser shall be limited to real property appraisal practice concerning the appraisal of, and review of appraisal of, noncomplex residential real property or real estate having no more than four units, if any, with a transaction value of less than one million dollars and complex residential real property or real estate having no more than four units, if any, with a transaction value of less than two hundred fifty thousand dollars. The appraisal of subdivisions for which a development analysis or appraisal is necessary is not included in the scope of practice for a licensed residential real property appraiser.

Sec. 76. Section 76-2231.01, Revised Statutes Supplement, 2019, is amended to read:

76-2231.01 (1) To qualify for a credential as a certified residential real property appraiser, an applicant shall:

- (a) Be at least nineteen years of age;
 - (b)(i) Hold a bachelor's degree, or higher, from an accredited degree-awarding college or university;
 - (ii) Hold an associate's degree from an accredited degree-awarding community college, college, or university in the study of business administration, accounting, finance, economics, or real estate;
 - (iii) Successfully complete thirty semester hours of college-level education from an accredited degree-awarding community college, college, or university that includes:
 - (A) Three semester hours in each of the following: English composition; microeconomics; macroeconomics; finance; algebra, geometry, or higher mathematics; statistics; computer science; and business law or real estate law; and
 - (B) Three semester hours each in two elective courses in any of the topics listed in subdivision (b)(iii)(A) of this subsection, or in accounting, geography, agricultural economics, business management, or real estate;
 - (iv) Successfully complete thirty semester hours of the College-Level Examination Program from an accredited degree-awarding community college, college, or university that includes three semester hours in each of the following subject matter areas: College algebra; college composition; college composition modular; college mathematics; principles of macroeconomics; principles of microeconomics; introductory business law; and information systems; or
 - (v) Successfully complete any combination of subdivisions (b)(iii) and (iv) of this subsection that ensures coverage of all topics and hours identified in subdivision (b)(iii) of this subsection;
 - (c) Have his or her education evaluated for equivalency by one of the following if the college degree is from a foreign country:
 - (i) An accredited degree-awarding college or university;
 - (ii) A foreign degree credential evaluation service company that is a member of the National Association of Credential Evaluation Services; or
 - (iii) A foreign degree credential evaluation service company that provides equivalency evaluation reports accepted by an accredited degree-awarding college or university;
 - (d)(i) Have successfully completed and passed examination for no fewer than two hundred class hours in Real Property Appraiser Board-approved qualifying education courses conducted by education providers as prescribed by rules and regulations of the Real Property Appraiser Board and completed the fifteen-hour National Uniform Standards of Professional Appraisal Practice Course. Each course shall include a proctored, closed-book examination pertinent to the material presented; or
 - (ii) Hold a bachelor's degree or higher in real estate from an accredited degree-awarding college or university that has had all or part of its curriculum approved by the Appraiser Qualifications Board as required core curriculum or the equivalent as determined by the Appraiser Qualifications Board. If the degree in real estate or equivalent as approved by the Appraiser Qualifications Board does not satisfy all required qualifying education for credentialing, the remaining class hours shall be completed in Real Property Appraiser Board-approved qualifying education pursuant to subdivision (d)(i) of this subsection;
 - (e) Have no fewer than one thousand five hundred hours of experience as prescribed by rules and regulations of the Real Property Appraiser Board. The required experience shall be acceptable to the Real Property Appraiser Board and subject to review and determination as to conformity with the Uniform Standards of Professional Appraisal Practice. The experience shall have occurred during a period of no fewer than twelve months;
 - (f) Submit two copies of legible ink-rolled fingerprint cards or equivalent electronic fingerprint submissions to the Real Property Appraiser Board for delivery to the Nebraska State Patrol in a form approved by both the Nebraska State Patrol and the Federal Bureau of Investigation. A fingerprint-based national criminal history record check shall be conducted through the Nebraska State Patrol and the Federal Bureau of Investigation with such record check to be carried out by the Real Property Appraiser Board; and
 - (g) Within the twelve months following approval of the applicant's education and experience by the Real Property Appraiser Board, pass a certified residential real property appraiser examination or certified general real property appraiser examination, approved by the Appraiser Qualifications Board, prescribed by rules and regulations of the Real Property Appraiser Board, and administered by a contracted testing service.
- (2) To qualify for an upgraded credential, a certified residential real property appraiser shall satisfy the following requirements:
- (a) Submit two copies of legible ink-rolled fingerprint cards or equivalent electronic fingerprint submissions to the Real Property Appraiser Board for delivery to the Nebraska State Patrol in a form approved by both the Nebraska State Patrol and the Federal Bureau of Investigation. A fingerprint-based national criminal history record check shall be conducted through the Nebraska State Patrol and the Federal Bureau of Investigation with such record check to be carried out by the Real Property Appraiser Board; and
 - (b) Within the twelve months following approval of the applicant's education and experience by the Real Property Appraiser Board for an upgrade to a certified general real property appraiser credential, pass a certified general real property appraiser examination approved by the Appraiser Qualifications Board, prescribed by rules and regulations of the Real Property

Appraiser Board, and administered by a contracted testing service.

(3) To qualify for a credential as a certified general real property appraiser, a certified residential real property appraiser shall:

(a) Meet the postsecondary educational requirements pursuant to subdivisions (1)(b) and (c) of section 76-2232;

(b) Successfully complete and pass proctored, closed-book examinations for no fewer than one hundred additional class hours in board-approved qualifying education courses conducted by education providers as prescribed by rules and regulations of the board, or hold a bachelor's degree in real estate from an accredited degree-awarding college or university or equivalent pursuant to subdivision (1)(d)(ii) of section 76-2232; and

(c) Meet the experience requirements pursuant to subdivision (1)(e) of section 76-2232.

(4) ~~A An appraiser holding a valid~~ certified residential real property appraiser credential shall satisfy the requirements for the trainee real property appraiser credential and licensed residential real property appraiser credential for a downgraded credential. If requested, evidence acceptable to the Real Property Appraiser Board concerning the experience shall be presented along with an application in the form of written reports or file memoranda.

(5) The scope of practice for a certified residential real property appraiser shall be limited to real property appraisal practice concerning the appraisal of, and review of appraisal of, residential real property or real estate having no more than four residential units, if any, without regard to transaction value or complexity. The appraisal of subdivisions for which a development analysis or appraisal is necessary is not included in the scope of practice for a certified residential real property appraiser.

Sec. 77. Section 76-2232, Revised Statutes Supplement, 2019, is amended to read:

76-2232 (1) To qualify for a credential as a certified general real property appraiser, an applicant shall:

(a) Be at least nineteen years of age;

(b) Hold a bachelor's degree, or higher, from an accredited degree-awarding college or university;

(c) Have his or her education evaluated for equivalency by one of the following if the college degree is from a foreign country:

(i) An accredited degree-awarding college or university;

(ii) A foreign degree credential evaluation service company that is a member of the National Association of Credential Evaluation Services; or

(iii) A foreign degree credential evaluation service company that provides equivalency evaluation reports accepted by an accredited degree-awarding college or university;

(d)(i) Have successfully completed and passed examination for no fewer than three hundred class hours in Real Property Appraiser Board-approved qualifying education courses conducted by education providers as prescribed by rules and regulations of the Real Property Appraiser Board and completed the fifteen-hour National Uniform Standards of Professional Appraisal Practice Course. Each course shall include a proctored, closed-book examination pertinent to the material presented; or

(ii) Hold a bachelor's degree or higher in real estate from an accredited degree-awarding college or university that has had all or part of its curriculum approved by the Appraiser Qualifications Board as required core curriculum or the equivalent as determined by the Appraiser Qualifications Board. If the degree in real estate or equivalent as approved by the Appraiser Qualifications Board does not satisfy all required qualifying education for credentialing, the remaining class hours shall be completed in Real Property Appraiser Board-approved qualifying education pursuant to subdivision (d)(i) of this subsection;

(e) Have no fewer than three thousand hours of experience, of which one thousand five hundred hours shall be in nonresidential appraisal work, as prescribed by rules and regulations of the Real Property Appraiser Board. The required experience shall be acceptable to the Real Property Appraiser Board and subject to review and determination as to conformity with the Uniform Standards of Professional Appraisal Practice. The experience shall have occurred during a period of no fewer than eighteen months;

(f) Submit two copies of legible ink-rolled fingerprint cards or equivalent electronic fingerprint submissions to the Real Property Appraiser Board for delivery to the Nebraska State Patrol in a form approved by both the Nebraska State Patrol and the Federal Bureau of Investigation. A fingerprint-based national criminal history record check shall be conducted through the Nebraska State Patrol and the Federal Bureau of Investigation with such record check to be carried out by the Real Property Appraiser Board; and

(g) Within the twelve months following approval of the applicant's education and experience by the Real Property Appraiser Board, pass a certified general real property appraiser examination, approved by the Appraiser Qualifications Board, prescribed by rules and regulations of the Real Property Appraiser Board, and administered by a contracted testing service.

(2) ~~A An appraiser holding a valid~~ certified general real property appraiser credential shall satisfy the requirements for the trainee real property appraiser credential, licensed residential real property appraiser credential, and certified residential real property appraiser credential for a downgraded credential. If requested, evidence acceptable to the Real Property Appraiser Board concerning the experience shall be presented along with an application in the form of written reports or file memoranda.

(3) The scope of practice for the certified general real property appraiser ~~shall include real property appraisal practice concerning is the appraisal of~~ all types of real property or real estate that appraiser is competent to engage in appraise.

Sec. 78. Section 76-2233, Reissue Revised Statutes of Nebraska, is amended to read:

76-2233 (1) A person currently credentialed to engage in real property appraisal practice concerning appraise real estate and real property under the laws of another jurisdiction may qualify for a credential through reciprocity as a licensed residential real property appraiser, a certified residential real property appraiser, or a certified general real property appraiser by complying with all of the provisions of the Real Property Appraiser Act relating to the appropriate classification of credentialing.

(2) An applicant under this section may qualify for a credential if, in the determination of the board:

(a) The requirements for credentialing in the applicant's jurisdiction of practice specified in an application for credentialing meet or exceed the minimum requirements of the Real Property Appraiser Qualification Criteria as adopted and promulgated by the Appraiser Qualifications Board of The Appraisal Foundation; and

(b) The regulatory program of the applicant's jurisdiction of practice specified in an application for credentialing is determined to be effective in accordance with Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 by the Appraisal Subcommittee of the Federal Financial Institutions Examination Council.

(3) The status of an applicant's jurisdiction of practice specified in an application for credentialing through reciprocity shall be verified through the most recent Compliance Review Report issued by the Appraisal Subcommittee of the Federal Financial Institutions Examination Council. In the case that findings pertaining to the adoption or implementation of the Real Property Appraiser Qualification Criteria indicate that one or more credentialing requirements do not meet or exceed the Real Property Appraiser Qualification Criteria as promulgated by the Appraiser Qualifications Board of The Appraisal Foundation, the board may request evidence from the jurisdiction of practice or the Appraisal Subcommittee of the Federal Financial Institutions Examination Council showing that progress has been made to mitigate the findings in the Compliance Review Report.

(4) To qualify for a credential through reciprocity, the applicant shall:

(a) Submit two copies of legible ink-rolled fingerprint cards or equivalent electronic fingerprint submissions to the board for delivery to the Nebraska State Patrol in a form approved by both the Nebraska State Patrol and the Federal Bureau of Investigation. A fingerprint-based national criminal history record check shall be conducted through the Nebraska State Patrol and the Federal Bureau of Investigation with such record check to be carried out by the board;

(b) Submit an irrevocable consent that service of process upon him or her may be made by delivery of the process to the director of the board if the plaintiff cannot, in the exercise of due diligence, effect personal service upon the applicant in an action against the applicant in a court of this state arising out of the applicant's activities as a real property appraiser in this state; and

(c) Comply with such other terms and conditions as may be determined by the board.

(5) The credential status of an applicant under this section, including current standing and any disciplinary action imposed against his or her credentials, shall be verified through the National Registry of the Appraisal Subcommittee of the Federal Financial Institutions Examination Council.

Sec. 79. Section 76-2233.01, Reissue Revised Statutes of Nebraska, is amended to read:

76-2233.01 (1) A nonresident currently credentialed to engage in real property appraisal practice concerning appraise real estate and real property under the laws of another jurisdiction may obtain a temporary credential as a licensed residential real property appraiser, a certified residential real property appraiser, or a certified general real property appraiser to engage in real property appraisal practice activity in this state.

(2) To qualify for the issuance of a temporary credential, an applicant shall:

(a) Submit an application on a form approved by the board;

(b) Submit a letter of engagement or a contract indicating the location of the real property appraisal practice assignment and completion date;

(c) Submit an irrevocable consent that service of process upon him or her may be made by delivery of the process to the director of the board if the plaintiff cannot, in the exercise of due diligence, effect personal service upon the applicant in an action against the applicant in a court of this state arising out of the applicant's activities in this state; and

(d) Pay the appropriate application fee in an amount established by the board pursuant to section 76-2241.

(3) The credential status of an applicant under this section, including current standing and any disciplinary action imposed against his or her credentials, shall be verified through the National Registry of the Appraisal Subcommittee of the Federal Financial Institutions Examination Council.

(4) Application for a temporary credential is valid for one year from the date application is made to the board or upon the expiration of the assignment

specified in the letter of engagement, whichever occurs first.

(5) A temporary credential issued under this section shall be expressly limited to a grant of authority to engage in real property appraisal practice activity required for an assignment in this state. Each temporary credential shall expire upon the completion of the assignment or upon the expiration of a period of six months from the date of issuance, whichever occurs first. A temporary credential may be renewed for one additional six-month period.

(6) Any person issued a temporary credential to engage in real property appraisal practice activity in this state shall comply with all of the provisions of the Real Property Appraiser Act relating to the appropriate classification of credentialing. The board may, upon its own motion, and shall, upon the written complaint of any aggrieved person, cause an investigation to be made with respect to an alleged violation of the act by a person who is engaged in, or who has engaged in, real property appraisal practice activity as a temporary credential holder, and that person shall be deemed a real property appraiser within the meaning of the act.

Sec. 80. Section 76-2233.02, Reissue Revised Statutes of Nebraska, is amended to read:

76-2233.02 (1) A credential issued under the Real Property Appraiser Act other than a temporary credential shall remain in effect until December 31 of the designated year unless surrendered, revoked, suspended, or canceled prior to such date. To renew a valid credential, the credential holder shall file an application on a form approved by the board and pay the appropriate renewal fee in an amount established by the board pursuant to section 76-2241. The credential holder shall also pay the criminal history record check fee in an amount established by the board pursuant to section 76-2241 for maintenance of the random fingerprint audit program to the board not later than November 30 of the designated year. A credential may be renewed for one year or two years. In every second year of the two-year continuing education period, as specified in section 76-2236, evidence of completion of continuing education requirements shall accompany renewal application or be on file with the board prior to renewal.

(2) The board shall establish a number of credential holders to be selected at random to submit, along with the application for renewal, two copies of legible ink-rolled fingerprint cards or equivalent electronic fingerprint submissions to the board for delivery to the Nebraska State Patrol in a form approved by both the Nebraska State Patrol and the Federal Bureau of Investigation. A fingerprint-based national criminal history record check shall be conducted through the Nebraska State Patrol and the Federal Bureau of Investigation with such record check to be carried out by the board.

(3) If a credential holder fails to apply and meet the requirements for renewal by November 30 of the designated year, such credential holder may obtain a renewal of such credential by satisfying all of the requirements for renewal and paying the appropriate late processing fee in an amount established by the board pursuant to section 76-2241 if such late renewal takes place prior to July 1 of the following year. A credential holder selected at random to submit fingerprint cards or equivalent electronic fingerprints that has applied and met all other requirements for renewal prior to November 30 of the designated year shall not pay a late processing fee if fingerprint cards or equivalent electronic fingerprints are received prior to November 30 of the designated year. If a credential holder that first obtained his or her credential at the current level on or after November 1 fails to apply and meet the requirements for renewal by December 31 of the designated year, such credential holder may obtain a renewal of such credential by satisfying all the requirements for renewal and paying a late processing fee if such late renewal takes place prior to July 1 of the following year. The board may refuse to renew any credential if the credential holder has continued to, directly or indirectly for another, offer, attempt, agree to engage in, or engage in perform real property appraisal practice activities or other related activities in this state following the expiration of his or her credential. If a credential is not renewed prior to July 1, a credential holder shall reapply for credentialing and meet the current requirements in place at the time of application, except as provided in section 76-2233.03.

Sec. 81. Section 76-2233.03, Reissue Revised Statutes of Nebraska, is amended to read:

76-2233.03 (1) A credential holder may request that his or her credential be placed on inactive status for a period not to exceed two years. Such requests shall be submitted to the board on an application form prescribed by the board. The payment of the appropriate fee in an amount established by the board pursuant to section 76-2241 shall accompany all applications for requests of inactive status.

(2) A credential holder whose credential is placed on inactive status shall not:

(a) Assume or use any title, designation, or abbreviation likely to create the impression that such person holds an active credential issued by the board; or

(b) Engage in ~~appraisal practice~~ or real property appraisal practice activity or act as a credentialed real property appraiser.

(3) A credential holder whose credential is placed on inactive status may make a request to the board that such credential be reinstated to active status on an application form prescribed by the board. The payment of the appropriate fee in an amount established by the board pursuant to section 76-2241 shall accompany all applications for reinstatement of a credential.

(4) A credential holder's application for reinstatement shall include evidence that he or she has met the continuing education requirements as specified in section 76-2236 while the credential was on inactive status.

(5) If a credential holder's credential expires during the inactive period, an application for renewal of the credential shall accompany the application for reinstatement. All requirements for renewal specified in section 76-2233.02 shall be met, except for the requirement to pay a late processing fee for applications received after November 30 of the designated year.

(6) If a credential holder fails to reinstate his or her credential to active status prior to the completion of the two-year period, his or her credential will return to the status as if the credential was not placed on inactive status. If a credential holder's credential is expired at the completion of the two-year period, the credential holder shall reapply for credentialing and meet the current requirements in place at the time of application.

Sec. 82. Section 76-2236, Revised Statutes Supplement, 2019, is amended to read:

76-2236 (1) Every credential holder shall furnish evidence to the board that he or she has satisfactorily completed no fewer than twenty-eight hours of approved continuing education activities in each two-year continuing education period. The continuing education period begins on January 1 of the next year for any credential holder who first obtained his or her credential at the current level on or after July 1. Hours of satisfactorily completed approved continuing education activities cannot be carried over from one two-year continuing education period to another. Evidence of successful completion of such continuing education activities for the two-year continuing education period, including passing examination if applicable, shall be submitted to the board in the manner prescribed by the board. No continuing education activity shall be less than two hours in duration. A person who holds a temporary credential does not have to meet any continuing education requirements in the Real Property Appraiser Act.

(2) As prescribed by rules and regulations of the Real Property Appraiser Board and at least once every two years, the seven-hour National Uniform Standards of Professional Appraisal Practice Update Course as approved by the Appraiser Qualifications Board or the equivalent of the course as approved by the Real Property Appraiser Board, shall be included in the continuing education requirement of each credential holder. An instructor certified by the Appraiser Qualifications Board satisfies this requirement by successfully completing a seven-hour instructor recertification course and examination as approved by the Appraiser Qualifications Board.

(3) A continuing education activity conducted in another jurisdiction in which the activity is approved to meet the continuing education requirements for renewal of a credential in such other jurisdiction shall be accepted by the board if that jurisdiction has adopted and enforces standards for such continuing education activity that meet or exceed the standards established by the Real Property Appraiser Act and the rules and regulations of the board.

(4) The board may adopt a program of continuing education for individual credentials as long as the program is compliant with the Appraiser Qualifications Board's criteria specific to continuing education.

(5) No more than fourteen hours may be approved by the Real Property Appraiser Board as continuing education in each two-year continuing education period for participation, other than as a student, in appraisal educational processes and programs, which includes teaching, program development, authorship of textbooks, or similar activities that are determined by the board to be equivalent to obtaining continuing education. Evidence of participation shall be submitted to the board upon completion of the appraisal educational process or program. No preapproval will be granted for participation in appraisal educational processes or programs.

(6) Qualifying education, as approved by the board, successfully completed by a credential holder to fulfill the class-hour requirement to upgrade to a higher classification than his or her current classification, shall be approved by the board as continuing education.

(7) Qualifying education, as approved by the board, taken by a credential holder not to fulfill the class-hour requirement to upgrade to a higher classification, shall be approved by the board as continuing education if the credential holder completes the examination.

(8) A board-approved supervisory real property appraiser and trainee course successfully completed by a certified real property appraiser shall be approved by the board as continuing education no more than once during each two-year continuing education period.

(9) The Real Property Appraiser Board shall approve continuing education activities and instructors which it determines would protect the public by improving the competency of credential holders.

Sec. 83. Section 76-2238, Revised Statutes Supplement, 2019, is amended to read:

76-2238 The following acts and omissions shall be considered grounds for disciplinary action or denial of an application by the board:

(1) Failure to meet the minimum qualifications for credentialing established by or pursuant to the Real Property Appraiser Act;

(2) Procuring or attempting to procure a credential under the act by knowingly making a false statement, submitting false information, or making a material misrepresentation in an application filed with the board or procuring

or attempting to procure a credential through fraud or misrepresentation;

(3) Paying money or other valuable consideration other than the fees provided for by the act to any member or employee of the board to procure a credential;

(4) An act or omission involving real estate or real property appraisal practice which constitutes dishonesty, fraud, or misrepresentation with or without the intent to substantially benefit the credential holder or another person or with the intent to substantially injure another person;

(5) Failure to demonstrate character and general fitness such as to command the confidence and trust of the public;

(6) Conviction, including a conviction based upon a plea of guilty or nolo contendere, of any felony unless his or her civil rights have been restored;

(7) Entry of a final civil or criminal judgment, including dismissal with settlement, on grounds of fraud, dishonesty, breach of trust, money laundering, misrepresentation, or deceit involving real estate, financial services, or real property in the making of an appraisal practice;

(8) Conviction, including a conviction based upon a plea of guilty or nolo contendere, of a crime which is related to the qualifications, functions, or duties of a real property appraiser;

(9) Performing valuation services as a credentialed real property appraiser under an assumed or fictitious name;

(10) Paying a finder's fee or a referral fee to any person in connection with a real property appraisal practice assignment ~~the appraisal of real estate or real property or an appraisal review~~, except that an intracompany payment for business development shall not be considered to be unethical or a violation of this subdivision;

(11) Making a false or misleading statement in that portion of a written report that deals with professional qualifications or in any testimony concerning professional qualifications;

(12) Any violation of the act or any rules and regulations adopted and promulgated pursuant to the act;

~~(13) Violation of the confidential nature of any information to which a credential holder gained access through employment for evaluation assignments or valuation assignments;~~

~~(14) Acceptance of a fee for performing a real property appraisal valuation assignment, evaluation assignment, or appraisal review assignment when the fee is or was contingent upon (a) the real property appraiser reporting a predetermined analysis, opinion, or conclusion, (b) the analysis, opinion, conclusion, or valuation reached, or (c) the consequences resulting from an appraisal or appraisal review;~~

~~(15) Failure or refusal to exercise reasonable diligence in developing an appraisal or appraisal review, preparing a report, or communicating a report or assignment results;~~

~~(16) Negligence or incompetence in developing an appraisal or appraisal review, preparing a report, or communicating a report or assignment results, including failure to follow the standards and ethical rules adopted by the board;~~

~~(13)~~ (17) Failure to maintain, or to make available for inspection and copying, records required by the board;

~~(14)~~ (18) Demonstrating negligence, incompetence, or unworthiness to act as a real property appraiser, whether of the same or of a different character as otherwise specified in this section;

~~(15)~~ (19) Suspension or revocation of an appraisal credential or a license in another regulated occupation, trade, or profession in this or any other jurisdiction or disciplinary action taken by another jurisdiction that limits the real property appraiser's ability to engage in real property appraisal practice activity;

~~(16)~~ (20) Failure to renew or surrendering an appraisal credential or any other registration, license, or certification issued by any other regulatory agency or held in any other jurisdiction in lieu of disciplinary action pending or threatened;

~~(17)~~ (21) Failure to report disciplinary action taken against an appraisal credential or any other registration, license, or certification issued by any other regulatory agency or held in any other jurisdiction within sixty days of receiving notice of such disciplinary action;

~~(18)~~ (22) Failure to comply with terms of a consent agreement or settlement agreement;

~~(19)~~ (23) Failure to submit or produce books, records, documents, workfiles, reports, or other materials requested by the board concerning any matter under investigation;

~~(20)~~ (24) Failure of an education provider to produce records, documents, reports, or other materials, including, but not limited to, required student attendance reports, to the board;

~~(21)~~ (25) Knowingly offering or attempting to offer a qualifying or continuing education course or activity as being approved by the board to a real property ~~an appraiser credentialed under the Real Property Appraiser Act,~~ or an applicant, without first obtaining approval of the activity from the board, except for courses required by an accredited degree-awarding college or university for completion of a degree in real estate, if the college or university had its curriculum approved by the Appraiser Qualifications Board as qualifying education;

~~(22)~~ (26) Presentation to the Real Property Appraiser Board of any check which is returned to the State Treasurer unpaid, whether payment of fee is for

an initial or renewal credential or for examination; and

~~(23) (27)~~ Failure to pass the examination.

Sec. 84. Section 76-2239, Reissue Revised Statutes of Nebraska, is amended to read:

76-2239 (1) The board may, upon its own motion, and shall, upon the written complaint of any aggrieved person, cause an investigation to be made with respect to an alleged violation of the Real Property Appraiser Act. The board may revoke or suspend the credential or otherwise discipline a credential holder, revoke or suspend a qualifying or continuing education course or activity, deny any application, or issue a cease and desist order for any violation of the Real Property Appraiser Act. Any disciplinary action taken against a credentialed real property appraiser, including any action that limits a credentialed real property appraiser's ability to engage in real property appraisal practice, shall be reported to federal authorities as required by Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989. Upon receipt of information indicating that a person may have violated any provision of the Real Property Appraiser Act, the board shall make an investigation of the facts to determine whether or not there is evidence of a violation. If technical assistance is required, the board may contract with or use qualified persons.

(2)(a) If an investigation indicates that a person may have violated a provision of the act, the board may offer the person an opportunity to voluntarily and informally discuss the alleged violation before the board. The board may enter into consent agreements or negotiate settlements.

(b) If an investigation indicates that a person not holding a credential under the act has violated a provision of the act, the board may issue a cease and desist order or refer the investigation to the appropriate county attorney for the consideration of formal charges.

(c) If an investigation indicates that a credential holder has violated a provision of the act, a formal complaint shall be prepared by the board and served upon the credential holder. The complaint shall require the credential holder to file an answer within thirty days of the date of service. In responding to a complaint, the credential holder may admit the allegations of the complaint, deny the allegations of the complaint, or plead otherwise. Failure to make a timely response shall be deemed an admission of the allegations of the complaint. Upon receipt of an answer to the complaint, the director or chairperson of the board shall set a date, time, and place for an administrative hearing on the complaint. The date of the hearing shall not be less than thirty nor more than one hundred twenty days from the date that the answer is filed unless such date is extended for good cause.

Sec. 85. Section 76-2243, Reissue Revised Statutes of Nebraska, is amended to read:

76-2243 Nothing contained in the Real Property Appraiser Act shall be deemed to prohibit any credential holder under the act from engaging in real property appraisal practice as a professional corporation in accordance with the Nebraska Professional Corporation Act.

Sec. 86. Section 76-2245, Reissue Revised Statutes of Nebraska, is amended to read:

76-2245 No person engaged in real property appraisal practice activities in this state or acting in the capacity of a real property appraiser in this state may bring or maintain any action in any court of this state to collect compensation for the performance of valuation services for which credentialing is required by the Real Property Appraiser Act without alleging and proving that he or she was duly credentialed under the act in this state at all times during the performance of such services.

Sec. 87. Section 76-2246, Reissue Revised Statutes of Nebraska, is amended to read:

76-2246 Any person required to be credentialed by the Real Property Appraiser Act who, directly or indirectly for another, offers, attempts, agrees to engage in, or engages in real property appraisal practice activity or who advertises or holds himself or herself out to the general public as a real property appraiser in this state without obtaining proper credentialing under the act shall be guilty of a Class III misdemeanor and shall be ineligible to apply for credentialing under the act for a period of one year from the date of his or her conviction of such offense. The board may, in its discretion, credential such person within such one-year period upon application and after an administrative hearing.

Sec. 88. Section 76-2247.01, Reissue Revised Statutes of Nebraska, is amended to read:

76-2247.01 (1) A person may retain or employ a real property appraiser credentialed under the Real Property Appraiser Act to perform valuation services. In each case, the valuation services specific to real property appraisal practice, including any appraisal, appraisal review, and report, shall comply with the Real Property Appraiser Act and the Uniform Standards of Professional Appraisal Practice.

(2) In a valuation assignment, the real property appraiser shall remain an impartial, disinterested third party. When providing an evaluation assignment, the real property appraiser may respond to a client's stated objective but shall also remain an impartial, disinterested third party.

Sec. 89. Section 76-3202, Revised Statutes Supplement, 2019, is amended to read:

76-3202 For purposes of the Nebraska Appraisal Management Company Registration Act:

(1) Affiliate means any person that controls, is controlled by, or is under common control with, another person;

(2) AMC appraiser means a person who holds a valid credential or equivalent to appraise real estate and real property under the laws of this state or another jurisdiction, and holds the status of active on the National Registry of the Appraisal Subcommittee of the Federal Financial Institutions Examination Council in one or more jurisdictions;

(3) AMC final rule means, collectively, the rules adopted by the federal agencies as required in section 1124 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as such rules existed on January 1, 2019;

(4) AMC National Registry means the registry of appraisal management companies that hold a registration as an appraisal management company issued by the board or the equivalent issued in another jurisdiction, and federally regulated appraisal management companies, maintained by the Appraisal Subcommittee;

(5) Appraisal has the same meaning as in section 76-2204;

(6) Appraisal management company means a person that:

(a) Provides appraisal management services to creditors or to secondary mortgage market participants, including affiliates;

(b) Provides appraisal management services in connection with valuing a consumer's principal dwelling as security for a consumer credit transaction or incorporating such transactions into securitizations; and

(c) Within a twelve-month period, oversees an appraiser panel of:

(i) More than fifteen AMC appraisers who each hold a credential in this state; or

(ii) Twenty-five or more AMC appraisers who each hold a credential or equivalent in two or more jurisdictions;

(7) Appraisal management services means one or more of the following:

(a) To recruit, select, and retain AMC appraisers;

(b) To contract with AMC appraisers to perform assignments;

(c) To manage the process of having an appraisal performed, including providing administrative services such as receiving appraisal orders and reports, submitting completed reports to creditors and secondary mortgage market participants, collecting fees from creditors and secondary mortgage market participants for services provided, and paying AMC appraisers for valuation services performed; or

(d) To review and verify the work of AMC appraisers;

~~(8) Appraisal practice has the same meaning as in section 76-2205.01;~~

~~(8)~~ (9) Appraisal Subcommittee means the Appraisal Subcommittee of the Federal Financial Institutions Examination Council;

~~(9)~~ (10) Appraiser panel means a network, list, or roster of AMC appraisers approved by an appraisal management company to perform appraisals as independent contractors for the appraisal management company;

~~(10)~~ (11) Assignment has the same meaning as in section 76-2207.01;

~~(11)~~ (12) Board has the same meaning as in section 76-2207.18;

~~(12)~~ (13) Consumer credit means credit offered or extended to a consumer primarily for personal, family, or household purposes;

~~(13)~~ (14) Contact person means a person designated by the appraisal management company as the main contact for all communication between the appraisal management company and the board;

~~(14)~~ (15) Covered transaction means any consumer credit transaction secured by the consumer's principal dwelling;

~~(15)~~ (16) Credential has the same meaning as in section 76-2207.25;

~~(16)~~ (17) Creditor means a person who regularly extends consumer credit that is subject to a finance charge or is payable by written agreement in more than four installments, not including a downpayment, and to whom the obligation is initially payable, either on the face of the note or contract or by agreement when there is no note or contract. A person regularly extends consumer credit if:

(a) The person extended credit, other than credit subject to the requirements of 12 C.F.R. 1026.32, as such regulation existed on January 1, 2019, more than five times for transactions secured by a dwelling in the preceding calendar year, or in the current calendar year if a person did not meet these standards in the preceding calendar year; and

(b) In any twelve-month period, the person originates more than one credit extension that is subject to the requirements of 12 C.F.R. 1026.32, as such regulation existed on January 1, 2019, or one or more such credit extensions through a mortgage broker;

~~(17)~~ (18) Dwelling means a residential structure that contains one to four units, whether or not that structure is attached to real property, including an individual condominium unit, cooperative unit, mobile home, or trailer if used as a residence. With respect to a dwelling:

(a) A consumer may have only one principal dwelling at a time;

(b) A vacation or secondary dwelling is not a principal dwelling; and

(c) A dwelling bought or built by a consumer with the intention of that dwelling becoming the consumer's principal dwelling within one year, or upon completion of construction, is considered to be the consumer's principal dwelling for the purpose of the Nebraska Appraisal Management Company Registration Act;

~~(18)~~ (19) Federally regulated appraisal management company means an appraisal management company that is:

(a) Owned and controlled by an insured depository institution as defined

in 12 U.S.C. 1813, as such section existed on January 1, 2019; and

(b) Regulated by the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, or the successor of any such agencies;

~~(19)~~ ~~(20)~~ Federal agencies means the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, the National Credit Union Administration, the Consumer Financial Protection Bureau, the Federal Housing Finance Agency, or the successor of any of such agencies;

~~(20)~~ ~~(21)~~ Financial Institutions Reform, Recovery, and Enforcement Act of 1989 has the same meaning as in section 76-2207.30;

~~(21)~~ ~~(22)~~ Independent contractor means a person established as an independent contractor by the appraisal management company for the purpose of federal income taxation;

~~(22)~~ ~~(23)~~ Jurisdiction has the same meaning as in section 76-2207.32;

~~(23)~~ ~~(24)~~ Person has the same meaning as in section 76-2213.02;

~~(24)~~ ~~(25)~~ Real estate has the same meaning as in section 76-2214;

~~(25)~~ ~~(26)~~ Real property has the same meaning as in section 76-2214.01;

~~(26)~~ ~~(27)~~ Real property appraisal practice activity has the same meaning as in section 76-2215;

~~(27)~~ ~~(28)~~ Registration means a registration as an appraisal management company in this state issued by the board if all requirements for approval as an appraisal management company required in the Nebraska Appraisal Management Company Registration Act have been met by a person making application to the board, including the submission of all required fees, and the board has granted all rights to the person to operate as an appraisal management company in this state as allowed under the act;

~~(28)~~ ~~(29)~~ Report has the same meaning as in section 76-2216.02;

~~(29)~~ ~~(30)~~ Secondary mortgage market participant means a guarantor or insurer of mortgage-backed securities, or an underwriter or issuer of mortgage-backed securities, and only includes an individual investor in a mortgage-backed security if that investor also serves in the capacity of a guarantor, insurer, underwriter, or issuer for the mortgage-backed security;

~~(30)~~ ~~(31)~~ Uniform Standards of Professional Appraisal Practice has the same meaning as in section 76-2218.02; and

~~(31)~~ ~~(32)~~ Valuation services has the same meaning as in section 76-2219.01.

Sec. 90. Section 76-3203.01, Revised Statutes Supplement, 2019, is amended to read:

76-3203.01 (1) Only AMC appraisers considered to be in good standing in all jurisdictions in which an active credential is held shall be included on an appraisal management company's appraiser panel.

(2) An appraisal management company shall remove any AMC appraiser from its appraiser panel within thirty days after receiving notice that the AMC appraiser:

(a) Is no longer considered to be in good standing in one or more jurisdictions in which he or she holds an active credential or equivalent;

(b) The AMC appraiser's credential or equivalent has been refused, denied, canceled, or revoked; or

(c) The AMC appraiser has surrendered his or her credential or equivalent in lieu of revocation.

(3) Pursuant to subdivision (6)(c) of section 76-3202, an appraiser panel shall include each AMC appraiser as of the earliest date on which such person was accepted by the appraisal management company:

(a) For consideration for future assignments in covered transactions or for secondary mortgage market participants in connection with covered transactions; or

(b) For engagement to perform one or more appraisals on behalf of a creditor for a covered transaction or for a secondary mortgage market participant in connection with covered transactions.

(4) Any AMC appraiser included on an appraisal management company's appraiser panel pursuant to subsection (3) of this section shall remain on such appraiser panel until the date on which the appraisal management company:

(a) Sends written notice to the AMC appraiser removing him or her from the appraiser panel. Such written notice shall include an explanation of the action taken by the appraisal management company;

(b) Receives written notice from the AMC appraiser requesting that he or she be removed from the appraiser panel. Such written notice shall include an explanation of the action requested by the AMC appraiser; or

(c) Receives written notice on behalf of the AMC appraiser of the death or incapacity of the AMC appraiser. Such written notice shall include an explanation on behalf of the AMC appraiser.

(5) Upon receipt of notice that he or she has been removed from the appraisal management company's appraiser panel, an AMC appraiser shall have thirty days to provide a response to the appraisal management company that removed the AMC appraiser from its appraiser panel. Upon receipt of the AMC appraiser's response, the appraisal management company shall have thirty days to reconsider the removal and provide a written response to the AMC appraiser.

(6) If an AMC appraiser is removed from an appraisal management company's appraiser panel pursuant to subsection (4) of this section, nothing shall prevent the appraisal management company at any time during the twelve months after removal from the appraiser panel from considering such person for future assignments in covered transactions or for secondary mortgage market

participants in connection with covered transactions, or for engagement to perform one or more appraisals on behalf of a creditor for a covered transaction or for a secondary mortgage market participant in connection with covered transactions. If such consideration or engagement takes place, the removal shall be deemed not to have occurred and such person shall be deemed to have been included on the appraiser panel without interruption.

(7) Any AMC appraiser included on an appraisal management company's appraiser panel engaged in ~~appraisal practice~~ or real property appraisal practice activity as a result of an assignment provided by an appraisal management company shall be free from inappropriate influence and coercion as required by the appraisal independence standards established under section 129E of the federal Truth in Lending Act, as such section existed on January 1, 2018, including the requirements for payment of a reasonable and customary fee to AMC appraisers when the appraisal management company is engaged in providing appraisal management services.

(8) An appraisal management company shall select an AMC appraiser from its appraiser panel for an assignment who is independent of the transaction and who has the requisite education, expertise, and experience necessary to competently complete the assignment for the particular market and property type.

Sec. 91. Section 76-3207, Reissue Revised Statutes of Nebraska, is amended to read:

76-3207 (1) A person applying for issuance of a registration or renewal of a registration shall not:

(a) In whole or in part, directly or indirectly, be owned by any person who has had a credential or equivalent refused, denied, canceled, or revoked or who has surrendered a credential or equivalent in lieu of revocation in any jurisdiction for a substantive cause as determined by the board; and

(b) Be more than ten percent owned by a person who is not of good moral character, which for purposes of this section shall require that such person has not been convicted of, or entered a plea of nolo contendere to, a felony relating to the ~~appraisal practice~~ or real property appraisal practice activity or any crime involving fraud, misrepresentation, or moral turpitude or failed to submit to a criminal history record check through the Nebraska State Patrol and the Federal Bureau of Investigation.

(2) For purposes of subdivision (1)(b) of this section, each individual owner of more than ten percent of an appraisal management company shall, at the time an application for issuance of a registration is made, submit two copies of legible ink-rolled fingerprint cards or equivalent electronic fingerprint submissions to the board for delivery to the Nebraska State Patrol in a form approved by both the Nebraska State Patrol and the Federal Bureau of Investigation. The board shall pay the Nebraska State Patrol the costs associated with conducting a fingerprint-based national criminal history record check through the Nebraska State Patrol and the Federal Bureau of Investigation with such record check to be carried out by the board.

(3) For the purpose of subdivision (1)(a) of this section, a person is not barred from issuance of a registration if the credential or equivalent of the person with an ownership interest was not refused, denied, canceled, revoked, or surrendered in lieu of revocation for a substantive cause as determined by the board and has been reinstated by the jurisdiction in which the action was taken.

Sec. 92. Section 76-3210, Reissue Revised Statutes of Nebraska, is amended to read:

76-3210 Any employee of or independent contractor to an appraisal management company that holds a registration, including any AMC appraiser included on an appraisal management company's appraiser panel engaged in ~~appraisal practice~~ or real property appraisal practice activity, shall comply with the Real Property Appraiser Act, including the Uniform Standards of Professional Appraisal Practice.

Sec. 93. Section 77-2387, Revised Statutes Supplement, 2019, is amended to read:

77-2387 For purposes of the Public Funds Deposit Security Act, unless the context otherwise requires:

(1) Affiliate means any entity that controls, is controlled by, or is under common control with another entity;

(2) Bank means any state-chartered or federally chartered bank which has a main chartered office in this state, any branch thereof in this state, or any branch in this state of a state-chartered or federally chartered bank which maintained a main chartered office in this state prior to becoming a branch of such state-chartered or federally chartered bank;

(3) Capital stock financial institution means a capital stock state building and loan association, a capital stock federal savings and loan association, a capital stock federal savings bank, and a capital stock state savings bank, which has a main chartered office in this state, any branch thereof in this state, or any branch in this state of a capital stock financial institution which maintained a main chartered office in this state prior to becoming a branch of such capital stock financial institution;

(4) Control means to own directly or indirectly or to control in any manner twenty-five percent of the voting shares of any bank, capital stock financial institution, or holding company or to control in any manner the election of the majority of directors of any bank, capital stock financial institution, or holding company;

(5) Custodial official means an officer or an employee of the State of Nebraska or any political subdivision who, by law, is made custodian of or has

control over public money or public funds subject to the act or the security for the deposit of public money or public funds subject to the act;

(6) Deposit guaranty bond means a bond underwritten by an insurance company authorized to do business in this state which provides coverage for deposits of a governing authority which are in excess of the amounts insured or guaranteed by the Federal Deposit Insurance Corporation;

(7) Director means the Director of Banking and Finance;

(8) Event of default means the issuance of an order by a supervisory authority or a receiver which restrains a bank, capital stock financial institution, or qualifying mutual financial institution from paying its deposit liabilities;

(9) Governing authority means the official, or the governing board, council, or other body or group of officials, authorized to designate a bank, capital stock financial institution, or qualifying mutual financial institution as a depository of public money or public funds subject to the act;

(10) Governmental unit means the State of Nebraska or any political subdivision thereof;

(11) Political subdivision means any county, city, village, township, district, authority, or other public corporation or entity, whether organized and existing under direct provisions of the Constitution of Nebraska or laws of the State of Nebraska or by virtue of a charter, corporate articles, or other legal instruments executed under authority of the constitution or laws, including any entity created pursuant to the Interlocal Cooperation Act or the Joint Public Agency Act;

(12) Qualifying mutual financial institution shall have the same meaning as in section 77-2365.01;

(13) Repurchase agreement means an agreement to purchase securities by the governing authority by which the counterparty bank, capital stock financial institution, or qualifying mutual financial institution will repurchase the securities on or before a specified date and for a specified amount and the counterparty bank, capital stock financial institution, or qualifying mutual financial institution will deliver the underlying securities to the governing authority by book entry, physical delivery, or third-party custodial agreement. The transfer of underlying securities to the counterparty bank's, capital stock financial institution's, or qualifying mutual financial institution's customer book entry account may be used for book entry delivery if the governing authority so chooses; and

(14) Securities means:

(a) Bonds or obligations fully and unconditionally guaranteed both as to principal and interest by the United States Government;

(b) United States Government notes, certificates of indebtedness, or treasury bills of any issue;

(c) United States Government bonds;

(d) United States Government guaranteed bonds or notes;

(e) Bonds or notes of United States Government agencies;

(f) Bonds of any state or political subdivision which are fully defeased as to principal and interest by any combination of bonds or notes authorized in subdivision (c), (d), or (e) of this subdivision;

(g) Bonds or obligations, including mortgage-backed securities and collateralized mortgage obligations, issued by or backed by collateral one hundred percent guaranteed by the Federal Home Loan Mortgage Corporation, the Federal Farm Credit System, a Federal Home Loan Bank, or the Federal National Mortgage Association;

(h) Student loans backed or partially guaranteed by the United States Department of Education;

(i) {h} Repurchase agreements the subject securities of which are any of the securities described in subdivisions (a) through (g) of this subdivision;

(j) {i} Securities issued under the authority of the Federal Farm Loan Act;

(k) {j} Loan participations which carry the guarantee of the Commodity Credit Corporation, an instrumentality of the United States Department of Agriculture;

(l) {k} Guaranty agreements of the Small Business Administration of the United States Government;

(m) {l} Bonds or obligations of any county, city, village, metropolitan utilities district, public power and irrigation district, sewer district, fire protection district, rural water district, or school district in this state which have been issued as required by law;

(n) {m} Bonds of the State of Nebraska or of any other state which are purchased by the Board of Educational Lands and Funds of this state for investment in the permanent school fund or which are purchased by the state investment officer of this state for investment in the permanent school fund;

(o) {n} Bonds or obligations of another state, or a political subdivision of another state, which are rated within the two highest classifications by at least one of the standard rating services;

(p) {o} Warrants of the State of Nebraska;

(q) {p} Warrants of any county, city, village, local hospital district, or school district in this state;

(r) {q} Irrevocable, nontransferable, unconditional standby letters of credit issued by a Federal Home Loan Bank; and

(s) {r} Certificates of deposit fully insured or guaranteed by the Federal Deposit Insurance Corporation that are issued to a bank, capital stock financial institution, or qualifying mutual financial institution furnishing

securities pursuant to the Public Funds Deposit Security Act.

Sec. 94. Section 81-885.04, Reissue Revised Statutes of Nebraska, is amended to read:

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

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

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

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

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

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

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

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

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

(9) Any person not required to be licensed under the act who provides a list or lists of potential purchasers to a broker or salesperson or who makes calls or facilitates the initial contact between a potential client or customer as defined in sections 76-2407 and 76-2409, respectively, and a broker or salesperson. The unlicensed person may only provide information regarding the broker or salesperson and the broker's or salesperson's services in written information created by the broker or salesperson that identifies the broker or salesperson and the broker's or salesperson's place of business and which is sent by email, United States mail, or by link to a web site created by the broker or salesperson. The unlicensed person is not permitted to discuss with such potential client or customer the services offered or to be offered by the broker or salesperson. The unlicensed person acting under this exemption may not discuss with such potential client or customer the client's or customer's motivation, motivating factors, or price such potential client or customer is willing to offer or accept. The unlicensed person does not have the authority and shall not purport to have the authority to obligate any such potential client or customer to work with a particular broker or salesperson or particular broker's or salesperson's place of business. The unlicensed person shall, at the beginning of any contact with such potential client or customer, identify who the unlicensed person is, the name of the entity that employs the unlicensed person, the name of the broker or salesperson, and the name of the broker's or salesperson's real estate business on whose behalf the contact is being made. The unlicensed person shall not perform any other activity of a broker or salesperson described in section 81-885.01, except those acts specifically provided for in this subdivision.

Sec. 95. Section 81-885.24, Revised Statutes Cumulative Supplement, 2018, is amended to read:

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

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

(2) Intentionally using advertising which is misleading or inaccurate in any material particular or in any way misrepresents any property, terms,

values, policies, or services of the business conducted;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(22) Making any substantial misrepresentations;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 96. Sections 1, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 94, 95, and 98 of this act become operative three calendar months after the adjournment of this legislative session. Sections 2, 3, 4, 5, 6, 7, 8, 9, 10, and 99 of this act become operative on July 1, 2021. The other sections of this act become operative on their effective date.

Sec. 97. If any section in this act or any part of any section is declared invalid or unconstitutional, the declaration shall not affect the validity or constitutionality of the remaining portions.

Sec. 98. Original sections 25-223, 76-842, 76-844, 76-854, 76-857, 76-859, 76-860, 76-867, 76-869, 76-870, 76-884, 76-890, and 81-885.04, Reissue Revised Statutes of Nebraska, sections 1-116 and 81-885.24, Revised Statutes Cumulative Supplement, 2018, and section 76-861, Revised Statutes Supplement, 2019, are repealed.

Sec. 99. Original section 21-201, Revised Statutes Cumulative Supplement, 2018, is repealed.

Sec. 100. Original sections 76-2202, 76-2204, 76-2205.02, 76-2207.01, 76-2207.17, 76-2207.22, 76-2207.26, 76-2212.03, 76-2215, 76-2216, 76-2216.02, 76-2218.02, 76-2219.01, 76-2219.02, 76-2220, 76-2221, 76-2223, 76-2227, 76-2233, 76-2233.01, 76-2233.02, 76-2233.03, 76-2239, 76-2243, 76-2245, 76-2246, 76-2247.01, 76-3207, and 76-3210, Reissue Revised Statutes of Nebraska, and sections 76-2207.27, 76-2207.30, 76-2228.01, 76-2228.02, 76-2230, 76-2231.01, 76-2232, 76-2236, 76-2238, 76-3202, 76-3203.01, and 77-2387, Revised Statutes Supplement, 2019, are repealed.

Sec. 101. The following sections are outright repealed: Sections 76-2205.01 and 76-2216.03, Reissue Revised Statutes of Nebraska.

Sec. 102. Since an emergency exists, this act takes effect when passed and approved according to law.