

LEGISLATURE OF NEBRASKA
ONE HUNDRED SECOND LEGISLATURE
FIRST SESSION
LEGISLATIVE BILL 25

Introduced by Langemeier, 23.

Read first time January 06, 2011

Committee: Banking, Commerce and Insurance

A BILL

1 FOR AN ACT relating to real property; to amend sections 76-2402,
2 76-2405, 76-2407, 76-2416, 76-2417, 76-2418, 76-2421,
3 76-2422, 76-2423, 76-2425, 76-2427, 76-2429, 76-2430, and
4 81-885.17, Reissue Revised Statutes of Nebraska, and
5 section 81-885.24, Revised Statutes Supplement, 2010; to
6 define a term; to provide exemptions from certain
7 requirements for asset management companies; to harmonize
8 provisions; and to repeal the original sections.
9 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 76-2402, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 76-2402 For purposes of sections 76-2401 to 76-2430 and
4 sections 2 and 10 of this act, the definitions found in sections
5 76-2403 to 76-2415 shall be used.

6 Sec. 2. Asset management company means a business firm or
7 association that, pursuant to a contractual agreement, common-law
8 agency agreement, power of attorney, or other legal authorization,
9 sells, conveys, or otherwise offers an interest in real property that
10 belongs to a (a) bank, savings and loan association, or other
11 financial institution created and regulated pursuant to state or
12 federal law, (b) mortgage-holding entity chartered by Congress, or
13 (c) federal, state, or local governmental entity.

14 Sec. 3. Section 76-2405, Reissue Revised Statutes of
15 Nebraska, is amended to read:

16 76-2405 Brokerage relationship shall mean the
17 relationship created between a designated broker and a client
18 pursuant to sections 76-2401 to 76-2430 and sections 2 and 10 of this
19 act relating to the performance of services of a broker as defined in
20 section 81-885.01 and shall also mean the relationship created
21 between the client and the designated broker's affiliated licensees
22 pursuant to sections 76-2401 to 76-2430 and sections 2 and 10 of this
23 act.

24 Sec. 4. Section 76-2407, Reissue Revised Statutes of
25 Nebraska, is amended to read:

1 76-2407 Client shall mean a seller, landlord, buyer, or
2 tenant who has entered into a brokerage relationship with a licensee
3 pursuant to sections 76-2401 to 76-2430 and sections 2 and 10 of this
4 act and is the seller, landlord, buyer, or tenant to whom the
5 licensee owes the duty as set forth in such sections.

6 Sec. 5. Section 76-2416, Reissue Revised Statutes of
7 Nebraska, is amended to read:

8 76-2416 (1) When engaged in any of the activities
9 enumerated in subdivision (2) of section 81-885.01, a licensee may
10 act as a limited agent in any transaction as a single agent,
11 subagent, or dual agent. The licensee's general duties and
12 obligations arising from the limited agency relationship shall be
13 disclosed to the seller and the buyer or to the landlord and the
14 tenant pursuant to sections 76-2420 to 76-2422. Alternatively, when
15 engaged in any of the activities enumerated in subdivision (2) of
16 section 81-885.01, a licensee may act as an agent in any transaction
17 in accordance with a written contract as described in subsection (6)
18 of section 76-2422.

19 (2) A licensee shall be considered a buyer's or tenant's
20 limited agent unless:

21 (a) The designated broker enters into a written seller's
22 agent or landlord's agent agreement with the party to be represented
23 pursuant to subsection (2) of section 76-2422;

24 (b) The designated broker enters into a subagency
25 agreement with another designated broker pursuant to subsection (5)

1 of section 76-2422;

2 (c) The designated broker enters into a written dual
3 agency agreement with the parties to be represented pursuant to
4 subsection (4) of section 76-2422; or

5 (d) The designated broker enters into a written agency
6 agreement pursuant to subsection (6) of section 76-2422.

7 (3) Sections 76-2401 to 76-2430 and sections 2 and 10 of
8 this act shall not obligate any buyer or tenant to pay compensation
9 to a licensee unless the buyer or tenant has entered into a written
10 agreement with the designated broker specifying the compensation
11 terms in accordance with subsection (3) of section 76-2422.

12 (4) A licensee may work with a single party in separate
13 transactions pursuant to different relationships, including, but not
14 limited to, selling one property as a seller's agent and working with
15 that seller in buying another property as a buyer's agent or as a
16 subagent if the licensee complies with sections 76-2401 to 76-2430
17 and sections 2 and 10 of this act in establishing the relationships
18 for each transaction.

19 Sec. 6. Section 76-2417, Reissue Revised Statutes of
20 Nebraska, is amended to read:

21 76-2417 (1) A licensee representing a seller or landlord
22 as a seller's agent or a landlord's agent shall be a limited agent
23 with the following duties and obligations:

24 (a) To perform the terms of the written agreement made
25 with the client;

1 (b) To exercise reasonable skill and care for the client;

2 (c) To promote the interests of the client with the
3 utmost good faith, loyalty, and fidelity, including:

4 (i) Seeking a price and terms which are acceptable to the
5 client, except that the licensee shall not be obligated to seek
6 additional offers to purchase the property while the property is
7 subject to a contract for sale or to seek additional offers to lease
8 the property while the property is subject to a lease or letter of
9 intent to lease;

10 (ii) ~~Presenting~~ Except as provided in section 10 of this
11 act, presenting all written offers to and from the client in a timely
12 manner regardless of whether the property is subject to a contract
13 for sale or lease or a letter of intent to lease;

14 (iii) Disclosing in writing to the client all adverse
15 material facts actually known by the licensee; and

16 (iv) Advising the client to obtain expert advice as to
17 material matters about which the licensee knows but the specifics of
18 which are beyond the expertise of the licensee;

19 (d) To account in a timely manner for all money and
20 property received;

21 (e) To comply with all requirements of sections 76-2401
22 to 76-2430 and sections 2 and 10 of this act, the Nebraska Real
23 Estate License Act, and any rules and regulations promulgated
24 pursuant to such sections or act; and

25 (f) To comply with any applicable federal, state, and

1 local laws, rules, regulations, and ordinances, including fair
2 housing and civil rights statutes and regulations.

3 (2) A licensee acting as a seller's or landlord's agent
4 shall not disclose any confidential information about the client
5 unless disclosure is required by statute, rule, or regulation or
6 failure to disclose the information would constitute fraudulent
7 misrepresentation. No cause of action for any person shall arise
8 against a licensee acting as a seller's or landlord's agent for
9 making any required or permitted disclosure.

10 (3)(a) A licensee acting as a seller's or landlord's
11 agent owes no duty or obligation to a buyer, a tenant, or a
12 prospective buyer or tenant, except that a licensee shall disclose in
13 writing to the buyer, tenant, or prospective buyer or tenant all
14 adverse material facts actually known by the licensee. The adverse
15 material facts may include, but are not limited to, adverse material
16 facts pertaining to: (i) Any environmental hazards affecting the
17 property which are required by law to be disclosed; (ii) the physical
18 condition of the property; (iii) any material defects in the
19 property; (iv) any material defects in the title to the property; or
20 (v) any material limitation on the client's ability to perform under
21 the terms of the contract.

22 (b) A seller's or landlord's agent owes no duty to
23 conduct an independent inspection of the property for the benefit of
24 the buyer, tenant, or prospective buyer or tenant and owes no duty to
25 independently verify the accuracy or completeness of any statement

1 made by the client or any independent inspector.

2 (4) A seller's or landlord's agent may show alternative
3 properties not owned by the client to prospective buyers or tenants
4 and may list competing properties for sale or lease without breaching
5 any duty or obligation to the client.

6 (5)(a) A seller or landlord may agree in writing with a
7 seller's or landlord's agent that other designated brokers may be
8 retained and compensated as subagents.

9 (b) Any designated broker acting as a subagent on the
10 seller's or landlord's behalf shall be a limited agent with the
11 obligations and responsibilities set forth in subsections (1) through
12 (4) of this section.

13 Sec. 7. Section 76-2418, Reissue Revised Statutes of
14 Nebraska, is amended to read:

15 76-2418 (1) A licensee representing a buyer or tenant as
16 a buyer's or tenant's agent shall be a limited agent with the
17 following duties and obligations:

18 (a) To perform the terms of any written agreement made
19 with the client;

20 (b) To exercise reasonable skill and care for the client;

21 (c) To promote the interests of the client with the
22 utmost good faith, loyalty, and fidelity, including:

23 (i) Seeking a price and terms which are acceptable to the
24 client, except that the licensee shall not be obligated to seek other
25 properties while the client is a party to a contract to purchase

1 property or to a lease or letter of intent to lease;

2 (ii) ~~Presenting~~ Except as provided in section 10 of this
3 act, presenting all written offers to and from the client in a timely
4 manner regardless of whether the client is already a party to a
5 contract to purchase property or is already a party to a contract or
6 a letter of intent to lease;

7 (iii) Disclosing in writing to the client adverse
8 material facts actually known by the licensee; and

9 (iv) Advising the client to obtain expert advice as to
10 material matters about which the licensee knows but the specifics of
11 which are beyond the expertise of the licensee;

12 (d) To account in a timely manner for all money and
13 property received;

14 (e) To comply with all requirements of sections 76-2401
15 to 76-2430 and sections 2 and 10 of this act, the Nebraska Real
16 Estate License Act, and any rules and regulations promulgated
17 pursuant to such sections or act; and

18 (f) To comply with any applicable federal, state, and
19 local laws, rules, regulations, and ordinances, including fair
20 housing and civil rights statutes or regulations.

21 (2) A licensee acting as a buyer's or tenant's agent
22 shall not disclose any confidential information about the client
23 unless disclosure is required by statute, rule, or regulation or
24 failure to disclose the information would constitute fraudulent
25 misrepresentation. No cause of action for any person shall arise

1 against a licensee acting as a buyer's or tenant's agent for making
2 any required or permitted disclosure.

3 (3)(a) A licensee acting as a buyer's or tenant's agent
4 owes no duty or obligation to a seller, a landlord, or a prospective
5 seller or landlord, except that the licensee shall disclose in
6 writing to any seller, landlord, or prospective seller or landlord
7 all adverse material facts actually known by the licensee. The
8 adverse material facts may include, but are not limited to, adverse
9 material facts concerning the client's financial ability to perform
10 the terms of the transaction.

11 (b) A buyer's or tenant's agent owes no duty to conduct
12 an independent investigation of the client's financial condition for
13 the benefit of the customer and owes no duty to independently verify
14 the accuracy or completeness of statements made by the client or any
15 independent inspector.

16 (4) A buyer's or tenant's agent may show properties in
17 which the client is interested to other prospective buyers or tenants
18 without breaching any duty or obligation to the client. This section
19 shall not be construed to prohibit a buyer's or tenant's agent from
20 showing competing buyers or tenants the same property and from
21 assisting competing buyers or tenants in attempting to purchase or
22 lease a particular property.

23 (5)(a) A client may agree in writing with a buyer's or
24 tenant's agent that other designated brokers may be retained and
25 compensated as subagents.

1 (b) Any designated broker acting as a subagent on the
2 buyer's or tenant's behalf shall be a limited agent with the
3 obligations and responsibilities set forth in subsections (1) through
4 (4) of this section.

5 Sec. 8. Section 76-2421, Reissue Revised Statutes of
6 Nebraska, is amended to read:

7 76-2421 (1) At the earliest practicable opportunity
8 during or following the first substantial contact with a seller,
9 landlord, buyer, or tenant who has not entered into a written
10 agreement for brokerage services with a designated broker, the
11 licensee who is offering brokerage services to that person or who is
12 providing brokerage services for that property shall:

13 (a) Provide that person with a written copy of the
14 current brokerage disclosure pamphlet which has been prepared and
15 approved by the commission; and

16 (b) Disclose in writing to that person the types of
17 brokerage relationships the designated broker and affiliated
18 licensees are offering to that person or disclose in writing to that
19 person which party the licensee is representing.

20 (2) When a seller, landlord, buyer, or tenant has already
21 entered into a written agreement for brokerage services with a
22 designated broker or when a buyer or tenant has a brokerage
23 relationship under sections 76-2401 to 76-2430 and sections 2 and 10
24 of this act without a written agreement, no other licensee shall be
25 required to make the disclosures required by this section.

1 (3) Before engaging in any of the activities enumerated
2 in subdivision (2) of section 81-885.01, a licensee working as an
3 agent or subagent of the seller or landlord with a buyer or tenant
4 who is not represented by a licensee shall provide a written
5 disclosure to the customer which contains the following:

6 (a) A statement that the licensee is an agent for the
7 seller or landlord and is not an agent for the customer; and

8 (b) A list of the tasks that the agent acting as a
9 seller's or landlord's agent or subagent may perform with the
10 customer.

11 (4) Before engaging in any of the activities enumerated
12 in subdivision (2) of section 81-885.01, a licensee working as an
13 agent or subagent of the buyer or tenant with a seller or landlord
14 who is not represented by a licensee shall provide a written
15 disclosure to the customer which contains the following:

16 (a) A statement that the licensee is an agent for the
17 buyer or tenant and is not an agent for the customer; and

18 (b) A list of the tasks that the agent acting as a
19 buyer's or tenant's agent or subagent may perform with the customer.

20 (5) The written disclosure required pursuant to
21 subsections (1), (3), and (4) of this section shall contain a
22 signature block for the client or customer to acknowledge receipt of
23 the disclosure. The customer's acknowledgment of disclosure shall not
24 constitute a contract with the licensee. If the customer fails or
25 refuses to sign the disclosure, the licensee shall note that fact on

1 a copy of the disclosure and retain the copy.

2 (6) A licensee shall not be required to give the written
3 disclosures required by this section to a corporation, limited
4 liability company, partnership, limited liability partnership, or
5 similar entity or to any entity which, if doing business in the State
6 of Nebraska, would be required to be registered with the Secretary of
7 State when such corporation, limited liability company, partnership,
8 limited liability partnership, or entity is purchasing, leasing, or
9 selling real property (a) on which there are five or more residential
10 dwelling units, (b) which is subdivided for five or more residential
11 dwelling units, or (c) any portion of which is zoned or assessed by
12 the county assessor as commercial or industrial property.

13 (7) Disclosures made in accordance with sections 76-2401
14 to 76-2430 and sections 2 and 10 of this act shall be sufficient to
15 disclose brokerage relationships to the public.

16 Sec. 9. Section 76-2422, Reissue Revised Statutes of
17 Nebraska, is amended to read:

18 76-2422 (1) All written agreements for brokerage services
19 on behalf of a seller, landlord, buyer, or tenant shall be entered
20 into by the designated broker on behalf of that broker and affiliated
21 licensees, except that the designated broker may authorize affiliated
22 licensees in writing to enter into the written agreements on behalf
23 of the designated broker. A copy of a written agreement for brokerage
24 services shall be left with the client or clients.

25 (2) Before engaging in any of the activities enumerated

1 in subdivision (2) of section 81-885.01, a designated broker
2 intending to establish a single agency relationship with a seller or
3 landlord shall enter into a written agency agreement with the party
4 to be represented. ~~The~~ Except as provided in section 10 of this act,
5 the agreement shall include a licensee's duties and responsibilities
6 specified in section 76-2417, the terms of compensation, a fixed date
7 of expiration of the agreement, and whether an offer of subagency may
8 be made to any other designated broker, except that if a licensee is
9 a limited seller's agent for a builder, the terms of compensation may
10 be established for a specific new construction property on or before
11 the builder's acceptance of a contract to sell.

12 (3) Before or while engaging in any of the acts
13 enumerated in subdivision (2) of section 81-885.01, a designated
14 broker acting as a single agent for a buyer or tenant may enter into
15 a written agency agreement with the party to be represented. The
16 agreement shall include a licensee's duties and responsibilities
17 specified in section 76-2418, the terms of compensation, a fixed date
18 of expiration of the agreement, and whether an offer of subagency may
19 be made to any other designated broker.

20 (4) Before engaging in any of the activities enumerated
21 in subdivision (2) of section 81-885.01, a designated broker
22 intending to act as a dual agent shall obtain the written consent of
23 the seller and buyer or landlord and tenant permitting the designated
24 broker to serve as a dual agent. The consent shall include a
25 licensee's duties and responsibilities specified in section 76-2419.

1 The requirements of this subsection are met as to a seller or
2 landlord if the written agreement entered into with the seller or
3 landlord complies with this subsection. The requirements of this
4 subsection are met as to a buyer or tenant if a consent or buyer's or
5 tenant's agency agreement is signed by a potential buyer or tenant
6 which complies with this subsection. The consent of the buyer or
7 tenant does not need to refer to a specific property and may refer
8 generally to all properties for which the buyer's or tenant's agent
9 may also be acting as a seller's or landlord's agent and would be a
10 dual agent. If a licensee is acting as a dual agent with regard to a
11 specific property, the seller and buyer or landlord and tenant shall
12 confirm in writing the dual-agency status and the party or parties
13 responsible for paying any compensation prior to or at the time a
14 contract to purchase property or a lease or letter of intent to lease
15 is entered into for the specific property.

16 (5) Before engaging in any of the activities enumerated
17 in subdivision (2) of section 81-885.01, a designated broker
18 intending to act as a subagent shall enter into a written contract
19 with the primary designated broker for the client. If a designated
20 broker has made a unilateral offer of subagency, another designated
21 broker can enter into the subagency relationship by the act of
22 disclosing to the customer that he or she is a subagent of the
23 client.

24 (6) Before engaging in any of the activities enumerated
25 in subdivision (2) of section 81-885.01, a designated broker who

1 intends to establish an agency relationship with any party or parties
2 to a transaction in which the designated broker's duties and
3 responsibilities exceed those contained in sections 76-2417 and
4 76-2418 shall enter into a written agency agreement with a party or
5 parties to the transaction to perform services on their behalf. The
6 agreement shall specify the agent's duties and responsibilities,
7 including any duty of confidentiality, and the terms of compensation.
8 Any agreement under this subsection shall be subject to the common-
9 law requirements of agency applicable to real estate licensees.

10 Sec. 10. (1) A licensee shall be exempt from the
11 requirements of subdivision (1)(c)(ii) of section 76-2417 and
12 subdivision (1)(c)(ii) of section 76-2418 if the client to whom the
13 written offer is required to be presented by such licensee is an
14 asset management company.

15 (2) A licensee shall be exempt from the provision
16 contained in subsection (2) of section 76-2422 that requires the
17 inclusion of specific duties and responsibilities specified in
18 section 76-2417 in the written agreement if the client is an asset
19 management company.

20 Sec. 11. Section 76-2423, Reissue Revised Statutes of
21 Nebraska, is amended to read:

22 76-2423 (1)(a) The relationships set forth in sections
23 76-2401 to 76-2430 and sections 2 and 10 of this act shall commence
24 at the time that the licensee begins representing a client and
25 continue until performance or completion of the representation.

1 (b) If the representation is not performed or completed
2 for any reason, the relationship shall end at the earlier of:

3 (i) The date of expiration agreed upon by the parties; or

4 (ii) The termination or relinquishment of the
5 relationship by the parties.

6 (2) Except as otherwise agreed in writing, a licensee
7 shall owe no further duty or obligation after termination or
8 expiration of the contract or representation or completion of
9 performance except the duties of:

10 (a) Accounting for all money and property related to and
11 received during the relationship; and

12 (b) Keeping confidential all information received during
13 the course of the relationship which was made confidential by
14 sections 76-2401 to 76-2430 and sections 2 and 10 of this act, by
15 instructions from the client, or by the policy of the designated
16 broker unless:

17 (i) The client to whom the information pertains grants
18 written consent to disclose the information; or

19 (ii) Disclosure of the information is required by law.

20 Sec. 12. Section 76-2425, Reissue Revised Statutes of
21 Nebraska, is amended to read:

22 76-2425 Violation of any provision of sections 76-2401 to
23 76-2430 and sections 2 and 10 of this act by a licensee shall
24 constitute an unfair trade practice pursuant to section 81-885.24 for
25 which the commission may investigate and take administrative action

1 against the licensee pursuant to the Nebraska Real Estate License
2 Act.

3 Sec. 13. Section 76-2427, Reissue Revised Statutes of
4 Nebraska, is amended to read:

5 76-2427 A designated broker entering into a limited
6 agency agreement with a client for the listing of property or for the
7 purpose of representing that person in the buying, selling,
8 exchanging, renting, or leasing of real estate may appoint in writing
9 those affiliated licensees who will be acting as limited agents of
10 that client to the exclusion of all other affiliated licensees. A
11 designated broker shall not be considered to be a dual agent solely
12 because he or she makes an appointment under this section, except
13 that any licensee who personally represents both the seller and buyer
14 or both the landlord and tenant in a particular transaction shall be
15 a dual agent and shall be required to comply with the provisions of
16 sections 76-2401 to 76-2430 and sections 2 and 10 of this act
17 governing dual agents.

18 Sec. 14. Section 76-2429, Reissue Revised Statutes of
19 Nebraska, is amended to read:

20 76-2429 Sections 76-2401 to 76-2430 and sections 2 and 10
21 of this act shall supersede the duties and responsibilities of the
22 parties under the common law, including fiduciary responsibilities of
23 an agent to a principal, except as provided in subsection (6) of
24 section 76-2422. Sections 76-2401 to 76-2430 and sections 2 and 10 of
25 this act shall be construed broadly to accomplish their purposes.

1 Sec. 15. Section 76-2430, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 76-2430 The commission shall adopt and promulgate rules
4 and regulations to carry out sections 76-2401 to 76-2430 and sections
5 2 and 10 of this act.

6 Sec. 16. Section 81-885.17, Reissue Revised Statutes of
7 Nebraska, is amended to read:

8 81-885.17 (1)(a) A nonresident of this state who is
9 actively engaged in the real estate business, who maintains a place
10 of business in his or her resident regulatory jurisdiction, and who
11 has been duly licensed in that regulatory jurisdiction to conduct
12 such business in that regulatory jurisdiction may, in the discretion
13 of the commission, be issued a nonresident broker's license.

14 (b) A nonresident salesperson employed by a broker
15 holding a nonresident broker's license may, in the discretion of the
16 commission, be issued a nonresident salesperson's license under such
17 nonresident broker.

18 (c) A nonresident who becomes a resident of the State of
19 Nebraska and who holds a broker's or salesperson's license in his or
20 her prior resident regulatory jurisdiction shall be issued a resident
21 broker's or salesperson's license upon filing an application, paying
22 the applicable license fee, complying with the criminal history
23 record information check under subsection (4) of this section, filing
24 the affidavit required by subsection (7) of this section, and
25 providing to the commission adequate proof of completion of a three-

1 hour class approved by the commission specific to the Nebraska Real
2 Estate License Act and sections 76-2401 to 76-2430 and sections 2 and
3 10 of this act.

4 (2) Obtaining a nonresident broker's license shall
5 constitute sufficient contact with this state for the exercise of
6 personal jurisdiction over the licensee in any action arising out of
7 the licensee's activity in this state.

8 (3) Prior to the issuance of any license to any
9 nonresident, he or she shall file with the commission a duly
10 certified copy of the license issued to the applicant by the resident
11 regulatory jurisdiction, pay to the commission the nonresident
12 license fee as provided in section 81-885.14 for the obtaining of a
13 broker's or salesperson's license, and provide to the commission
14 adequate proof of completion of a three-hour class approved by the
15 commission specific to the Nebraska Real Estate License Act and
16 sections 76-2401 to 76-2430 and sections 2 and 10 of this act.

17 (4) An applicant for an original nonresident broker's or
18 salesperson's license shall be subject to fingerprinting and a check
19 of his or her criminal history record information maintained by the
20 Federal Bureau of Investigation through the Nebraska State Patrol.
21 Each applicant shall furnish to the Nebraska State Patrol a full set
22 of fingerprints to enable a criminal background investigation to be
23 conducted. The applicant shall request that the Nebraska State Patrol
24 submit the fingerprints to the Federal Bureau of Investigation for a
25 national criminal history record check. The applicant shall pay the

1 actual cost, if any, of the fingerprinting and check of his or her
2 criminal history record information. The applicant shall authorize
3 release of the national criminal history record check to the
4 commission. The criminal history record information check shall be
5 completed within ninety days preceding the date the original
6 application for a license is received in the commission's office, and
7 if not, the application shall be returned to the applicant.

8 (5) Nothing in this section shall preclude the commission
9 from entering into reciprocal agreements with other regulatory
10 jurisdictions when such agreements are necessary to provide Nebraska
11 residents authority to secure licenses in other regulatory
12 jurisdictions.

13 (6) Nonresident licenses granted as provided in this
14 section shall remain in force for only as long as the requirements of
15 issuing and maintaining a license are met unless (a) suspended or
16 revoked by the commission for just cause or (b) lapsed for failure to
17 pay the annual renewal fee.

18 (7) Prior to the issuance of any license to a nonresident
19 applicant, an affidavit shall be filed by the applicant with the
20 commission certifying that the applicant has reviewed and is familiar
21 with the Nebraska Real Estate License Act and the rules and
22 regulations of the commission and agrees to be bound by the act,
23 rules, and regulations. Within ninety days after the issuance of a
24 license to a nonresident licensee prior to July 18, 2008, the
25 licensee shall provide to the commission adequate proof of completion

1 of a three-hour class approved by the commission specific to the
2 Nebraska Real Estate License Act and the law of agency relationships
3 enumerated in sections 76-2401 to 76-2430 and sections 2 and 10 of
4 this act. If the licensee fails to provide adequate proof of
5 completion of the approved class to the commission within the ninety-
6 day period, the director of the commission or his or her designee
7 shall place the license on inactive status and notify the licensee
8 that he or she must show cause why the license should not be revoked.

9 Sec. 17. Section 81-885.24, Revised Statutes Cumulative
10 Supplement, 2010, is amended to read:

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

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

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

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

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

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

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

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

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

25 (9) Acting in the dual capacity of agent and undisclosed

1 principal in any transaction;

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

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

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

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

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

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

1 (16) Violating any provision of sections 76-2401 to
2 76-2430 and sections 2 and 10 of this act;

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

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

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

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

23 (21) Failing by a broker to deliver to the seller in
24 every real estate transaction, at the time the transaction is
25 consummated, a complete, detailed closing statement showing all of

1 the receipts and disbursements handled by such broker for the seller,
2 failing to deliver to the buyer a complete statement showing all
3 money received in the transaction from such buyer and how and for
4 what the same was disbursed, and failing to retain true copies of
5 such statements in his or her files;

6 (22) Making any substantial misrepresentations;

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

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

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

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

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

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

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

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

15 Sec. 18. Original sections 76-2402, 76-2405, 76-2407,
16 76-2416, 76-2417, 76-2418, 76-2421, 76-2422, 76-2423, 76-2425,
17 76-2427, 76-2429, 76-2430, and 81-885.17, Reissue Revised Statutes of
18 Nebraska, and section 81-885.24, Revised Statutes Cumulative
19 Supplement, 2010, are repealed.