

AMENDMENTS TO LB678

Introduced by Banking, Commerce and Insurance.

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

3 Section 1. Section 81-885, Reissue Revised Statutes of Nebraska, is
4 amended to read:

5 81-885 Sections 81-885 to 81-885.55 and section 3 of this act shall
6 be known and may be cited as the Nebraska Real Estate License Act.

7 Sec. 2. Section 81-885.01, Revised Statutes Supplement, 2015, is
8 amended to read:

9 81-885.01 For purposes of the Nebraska Real Estate License Act,
10 unless the context otherwise requires:

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

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

1 parcels or make other disposition thereof; (b) who auctions, offers,
2 attempts, or agrees to auction real estate; or (c) who buys or offers to
3 buy or sell or otherwise deals in options to buy real estate;

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

7 (4) Designated broker means an individual holding a broker's license
8 who has full authority to conduct the real estate activities of a real
9 estate business. In a sole proprietorship, the owner, or broker
10 identified by the owner, shall be the designated broker. In the event the
11 owner identifies the designated broker, the owner shall file a statement
12 with the commission subordinating to the designated broker full authority
13 to conduct the real estate activities of the sole proprietorship. In a
14 partnership, limited liability company, or corporation, the partners,
15 limited liability company members, or board of directors shall identify
16 the designated broker for its real estate business by filing a statement
17 with the commission subordinating to the designated broker full authority
18 to conduct the real estate activities of the partnership, limited
19 liability company, or corporation. The designated broker shall also be
20 responsible for supervising the real estate activities of any associate
21 brokers or salespersons;

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

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

31 (7) Inactive salesperson means a salesperson whose license has been

1 returned to the commission by the licensee's broker, a salesperson who
2 has requested the commission to place the license on inactive status, a
3 new licensee who has failed to designate an employing broker, or a
4 salesperson whose license has been placed on inactive status under
5 statute, rule, or regulation;

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

9 (9) Team means two or more persons licensed by the commission who
10 (a) work under the supervision of the same broker, (b) work together on
11 real estate transactions to provide real estate brokerage services, (c)
12 represent themselves to the public as being part of a team, and (d) are
13 designated by a team name;

14 (10) Team leader means any person licensed by the commission and
15 appointed or recognized by his or her broker as the leader for his or her
16 team;

17 (11 9) Subdivision or subdivided land means any real estate offered
18 for sale and which has been registered under the Interstate Land Sales
19 Full Disclosure Act, ~~82 Stat. 590 and following,~~ 15 U.S.C. 1701 et seq.
20 and following, as such act existed on January 1, 1973, or real estate
21 located out of this state which is divided or proposed to be divided into
22 twenty-five or more lots, parcels, or units;

23 (12 10) Subdivider means any person who causes land to be subdivided
24 into a subdivision for himself, herself, or others or who undertakes to
25 develop a subdivision but does not include a public agency or officer
26 authorized by law to create subdivisions;

27 (13 11) Purchaser means a person who acquires or attempts to acquire
28 or succeeds to an interest in land;

29 (14 12) Commission means the State Real Estate Commission;

30 (15 13) Broker's price opinion means an analysis, opinion, or
31 conclusion prepared by a person licensed under the Nebraska Real Estate

1 License Act in the ordinary course of his or her business relating to the
2 price of specified interests in or aspects of identified real estate or
3 identified real property for the purpose of (a) listing, purchase, or
4 sale, (b) originating, extending, renewing, or modifying a loan in a
5 transaction other than a federally related transaction, or (c) real
6 property tax appeals;

7 (16 ~~14~~) Comparative market analysis means an analysis, opinion, or
8 conclusion prepared by a person licensed under the act in the ordinary
9 course of his or her business relating to the price of specified
10 interests in or aspects of identified real estate or identified real
11 property by comparison to other real property currently or recently in
12 the marketplace for the purpose of (a) listing, purchase, or sale, (b)
13 originating, extending, renewing, or modifying a loan in a transaction
14 other than a federally related transaction, or (c) real property tax
15 appeals;

16 (17 ~~15~~) Distance education means courses in which instruction does
17 not take place in a traditional classroom setting, but rather through
18 other media by which instructor and student are separated by distance and
19 sometimes by time;

20 (18 ~~16~~) Regulatory jurisdiction means a state, district, or
21 territory of the United States, a province of Canada or a foreign
22 country, or a political subdivision of a foreign country, which has
23 implemented and administers laws regulating the activities of a broker;

24 (19 ~~17~~) Federal financial institution regulatory agency means (a)
25 the Board of Governors of the Federal Reserve System, (b) the Federal
26 Deposit Insurance Corporation, (c) the Office of the Comptroller of the
27 Currency, (d) the Office of Thrift Supervision, (e) the National Credit
28 Union Administration, or (f) the successors of any of those agencies; and

29 (20 ~~18~~) Federally related transaction means a real-estate-related
30 transaction that (a) requires the services of an appraiser and (b) is
31 engaged in, contracted for, or regulated by a federal financial

1 institution regulatory agency.

2 Sec. 3. A team leader shall be responsible for supervising the real
3 estate activities of his or her team performed under the Nebraska Real
4 Estate License Act subject to the overall supervision by the designated
5 broker of the team leader and team members.

6 Sec. 4. Section 81-885.24, Reissue Revised Statutes of Nebraska, is
7 amended to read:

8 81-885.24 The commission may, upon its own motion, and shall, upon
9 the sworn complaint in writing of any person, investigate the actions of
10 any broker, associate broker, salesperson, or subdivider, may censure the
11 licensee or certificate holder, revoke or suspend any license or
12 certificate issued under the Nebraska Real Estate License Act, or enter
13 into consent orders, and, alone or in combination with such disciplinary
14 actions, may impose a civil fine on a licensee pursuant to section
15 81-885.10, whenever the license or certificate has been obtained by false
16 or fraudulent representation or the licensee or certificate holder has
17 been found guilty of any of the following unfair trade practices:

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

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

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

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

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

1 agreed otherwise in writing;

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

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

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

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

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

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

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

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

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

30 (15) Discussing or soliciting a discussion of, with an owner of a
31 property which is exclusively listed with another broker, the terms upon

1 which the broker would accept a future listing upon the expiration of the
2 present listing unless the owner initiates the discussion;

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

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

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

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

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

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

30 (22) Making any substantial misrepresentations;

31 (23) Acting for more than one party in a transaction without the

1 knowledge of all parties for whom he or she acts;

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

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

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

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

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

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

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

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

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

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

8 (34) Utilizing team advertising or a team name suggesting the team
9 is an independent real estate brokerage.

10 Sec. 5. This act becomes operative on October 1, 2016.

11 Sec. 6. Original sections 81-885 and 81-885.24, Reissue Revised
12 Statutes of Nebraska, and section 81-885.01, Revised Statutes Supplement,
13 2015, are repealed.