

LEGISLATURE OF NEBRASKA
ONE HUNDRED SIXTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 808

FINAL READING

Introduced by La Grone, 49; Kolterman, 24.

Read first time January 08, 2020

Committee: Banking, Commerce and Insurance

1 A BILL FOR AN ACT relating to commerce; to amend sections 25-223, 76-842,
2 76-844, 76-854, 76-857, 76-859, 76-860, 76-867, 76-869, 76-870,
3 76-884, 76-890, 76-2202, 76-2204, 76-2205.02, 76-2207.01,
4 76-2207.17, 76-2207.22, 76-2207.26, 76-2212.03, 76-2215, 76-2216,
5 76-2216.02, 76-2218.02, 76-2219.01, 76-2219.02, 76-2220, 76-2221,
6 76-2223, 76-2227, 76-2233, 76-2233.01, 76-2233.02, 76-2233.03,
7 76-2239, 76-2243, 76-2245, 76-2246, 76-2247.01, 76-3207, 76-3210,
8 and 81-885.04, Reissue Revised Statutes of Nebraska, sections 1-116,
9 21-201, and 81-885.24, Revised Statutes Cumulative Supplement, 2018,
10 and sections 76-861, 76-2207.27, 76-2207.30, 76-2228.01, 76-2228.02,
11 76-2230, 76-2231.01, 76-2232, 76-2236, 76-2238, 76-3202, 76-3203.01,
12 and 77-2387, Revised Statutes Supplement, 2019; to eliminate
13 obsolete provisions relating to accountants; to change provisions
14 relating to the certified public accountant examination; to define
15 terms and provide for the ratification of defective corporate
16 actions under the Nebraska Model Business Corporation Act; to adopt
17 the Uniform Trust Decanting Act; to change provisions relating to
18 actions on breach of warranty on improvements to real property; to
19 change provisions under the Nebraska Condominium Act; to change
20 provisions relating to the Real Property Appraiser Act; to define
21 and eliminate certain terms under the Nebraska Appraisal Management
22 Company Registration Act; to redefine the term security to include

1 certain student loans under the Public Funds Deposit Security Act;
2 to change provisions under the Nebraska Real Estate License Act; to
3 harmonize provisions; to provide operative dates; to provide
4 severability; to repeal the original sections; to outright repeal
5 sections 76-2205.01 and 76-2216.03, Reissue Revised Statutes of
6 Nebraska; and to declare an emergency.
7 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 1-116, Revised Statutes Cumulative Supplement,
2 2018, is amended to read:

3 1-116 ~~Prior to January 1, 1998, a person shall be eligible to take~~
4 ~~the examination described in section 1-114 if he or she meets the~~
5 ~~requirements of subdivision (1)(a) of section 1-114.~~

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

30 Sec. 2. Section 21-201, Revised Statutes Cumulative Supplement,
31 2018, is amended to read:

1 21-201 (MBCA 1.01) Sections 21-201 to 21-2,232 and sections 3 to 10
2 of this act shall be known and may be cited as the Nebraska Model
3 Business Corporation Act.

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

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

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

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

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

23 (5) Overissue means the purported issuance of:

24 (i) Shares of a class or series in excess of the number of shares of
25 a class or series the corporation has the power to issue under section
26 21-237 at the time of such issuance; or

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

29 (6) Putative shares means the shares of any class or series,
30 including shares issued upon exercise of rights, options, warrants, or
31 other securities convertible into shares of the corporation, or interests

1 with respect to such shares, that were created or issued as a result of a
2 defective corporate action, that (i) but for any failure of authorization
3 would constitute valid shares, or (ii) cannot be determined by the board
4 of directors to be valid shares.

5 (7) Valid shares means the shares of any class or series that have
6 been duly authorized and validly issued in accordance with the act,
7 including as a result of ratification or validation under sections 3 to
8 10 of this act.

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

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

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

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

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

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

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

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

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

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

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

18 (2) The date of the defective corporate action;

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

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

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

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

31 (2) The earlier of the date on which such persons first took such

1 action or were purported to have been elected as the initial board of
2 directors; and

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

5 (c) If any provision of the Nebraska Model Business Corporation Act,
6 the articles of incorporation or bylaws, any corporate resolution, or any
7 plan or agreement to which the corporation is a party in effect at the
8 time action under subsection (a) of this section is taken requires
9 shareholder approval or would have required shareholder approval at the
10 date of the occurrence of the defective corporate action, the
11 ratification of the defective corporate action approved in the action
12 taken by the directors under subsection (a) of this section shall be
13 submitted to the shareholders for approval in accordance with section 6
14 of this act.

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

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

26 (b) If the ratification of the defective corporate action requires
27 approval by the shareholders under subsection (c) of section 5 of this
28 act, and if the approval is to be given at a meeting, the corporation
29 shall notify each holder of valid and putative shares, regardless of
30 whether entitled to vote, as of the record date for notice of the meeting
31 and as of the date of the occurrence of defective corporate action,

1 provided that notice shall not be required to be given to holders of
2 valid or putative shares whose identities or addresses for notice cannot
3 be determined from the records of the corporation. The notice must state
4 that the purpose, or one of the purposes, of the meeting, is to consider
5 ratification of a defective corporate action and must be accompanied by
6 (i) either a copy of the action taken by the board of directors in
7 accordance with subsection (c) of section 5 of this act or the
8 information required by subdivisions (a)(1) through (4) of section 5 of
9 this act, and (ii) a statement that any claim that the ratification of
10 such defective corporate action and any putative shares issued as a
11 result of such defective corporate action should not be effective, or
12 should be effective only on certain conditions, must be brought within
13 one hundred twenty days from the applicable validation effective time.

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

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

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

31 (f) If the approval under this section of putative shares would

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

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

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

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

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

1 notice with the United States Securities and Exchange Commission.

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

5 (a) Each defective corporate action ratified in accordance with
6 section 5 of this act shall not be void or voidable as a result of the
7 failure of authorization identified in the action taken under subsection
8 (a) or (b) of section 5 of this act and shall be deemed a valid corporate
9 action effective as of the date of the defective corporate action;

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

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

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

31 (b) The articles of validation must set forth:

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

6 (2) The date of the defective corporate action;

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

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

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

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

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

26 (2) If a filing was previously made in respect of the defective
27 corporate action and such filing requires any change to give effect to
28 the ratification of such defective corporate action in accordance with
29 section 5 of this act, the articles of validation must set forth (i) the
30 name, title, and filing date of the filing previously made and any
31 articles of correction to that filing and (ii) a statement that a filing

1 containing all of the information required to be included under the
2 applicable section or sections of the act to give effect to such
3 defective corporate action is attached as an exhibit to the articles of
4 validation, and (iii) the date and time that such filing is deemed to
5 have become effective; or

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

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

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

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

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

28 (4) Modify or waive any of the procedures specified in section 5 or
29 6 of this act to ratify a defective corporate action.

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

1 considerations, regarding such matters as it deems proper under the
2 circumstances.

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

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

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

19 Sec. 12. In the Uniform Trust Decanting Act:

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

22 (2) Ascertainable standard has the same meaning as in section
23 30-3803.

24 (3) Authorized fiduciary means:

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

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

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

30 (4) Beneficiary means a person that:

31 (A) has a present or future, vested or contingent, beneficial

1 interest in a trust;

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

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

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

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

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

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

14 (6) Charitable organization means:

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

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

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

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

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

30 (10) Decanting power or the decanting power means the power of an
31 authorized fiduciary under the act to distribute property of a first

1 trust to one or more second trusts or to modify the terms of the first
2 trust.

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

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

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

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

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

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

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

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

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

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

29 (i) the occurrence of the specified event;

30 (ii) the satisfaction of the ascertainable standard; or

31 (iii) the passage of the specified time; and

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

3 (20) Qualified beneficiary has the same meaning as in section
4 30-3803.

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

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

13 (23) Second trust means:

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

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

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

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

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

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

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

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

28 (28) Terms of the trust means:

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

1 (i) expressed in the trust instrument; or
2 (ii) established by other evidence that would be admissible in a
3 judicial proceeding; or

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

6 (i) a trustee or other person in accordance with applicable law;
7 (ii) a court order; or
8 (iii) a nonjudicial settlement agreement under section 30-3811.

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

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

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

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

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

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

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

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

4 (c) Except as otherwise provided in a first-trust instrument, for
5 purposes of the act and section 30-3866 and subsection (a) of section
6 38-3867, the terms of the first trust are deemed to include the decanting
7 power.

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

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

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

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

18 (B) construction of terms of the trust; or

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

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

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

29 (b) Except as otherwise provided in the Uniform Trust Decanting Act,
30 an authorized fiduciary may exercise the decanting power without the
31 consent of any person and without court approval.

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

5 (1) each settlor of the first trust, if living or then in existence;

6 (2) each qualified beneficiary of the first trust;

7 (3) each holder of a presently exercisable power of appointment over
8 any part or all of the first trust;

9 (4) each person that currently has the right to remove or replace
10 the authorized fiduciary;

11 (5) each other fiduciary of the first trust;

12 (6) each fiduciary of the second trust;

13 (7) each person acting as an advisor or protector of the first
14 trust;

15 (8) each person holding an adverse interest who has the power to
16 consent to the revocation of the first trust; and

17 (9) the Attorney General, if subsection (b) of section 24 of this
18 act applies.

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

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

24 (1) specify the manner in which the authorized fiduciary intends to
25 exercise the decanting power;

26 (2) specify the proposed effective date for exercise of the power;

27 (3) include a copy of the first-trust instrument; and

28 (4) include a copy of all second-trust instruments.

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

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

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

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

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

13 Sec. 18. (a) Notice to a person with authority to represent and
14 bind another person under a first-trust instrument or sections 30-3822 to
15 30-3826 has the same effect as notice given directly to the person
16 represented.

17 (b) Consent of or waiver by a person with authority to represent and
18 bind another person under a first-trust instrument or sections 30-3822 to
19 30-3826 is binding on the person represented unless the person
20 represented objects to the representation before the consent or waiver
21 otherwise would become effective.

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

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

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

1 interest, the court may:

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

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

9 (3) approve an exercise of the decanting power;

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

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

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

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

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

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

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

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

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

27 Sec. 20. An exercise of the decanting power must be made in a
28 record signed by an authorized fiduciary. The signed record must,
29 directly or by reference to the notice required by section 17 of this
30 act, identify the first trust and the second trust or trusts and state
31 the property of the first trust being distributed to each second trust

1 and the property, if any, that remains in the first trust.

2 Sec. 21. (a) In this section:

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

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

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

14 (4) Vested interest means:

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

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

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

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

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

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

1 of the first trust.

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

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

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

11 (3) reduce or eliminate a vested interest.

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

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

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

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

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

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

1 trust.

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

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

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

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

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

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

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

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

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

6 Sec. 23. (a) In this section:

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

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

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

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

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

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

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

30 (b) A special-needs fiduciary may exercise the decanting power under
31 section 21 of this act over the principal of a first trust as if the

1 fiduciary had authority to distribute principal to a beneficiary with a
2 disability subject to expanded distributive discretion if:

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

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

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

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

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

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

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

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

25 Sec. 24. (a) In this section:

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

31 (2) Unconditional means not subject to the occurrence of a specified

1 event that is not certain to occur, other than a requirement in a trust
2 instrument that a charitable organization be in existence or qualify
3 under a particular provision of the Internal Revenue Code of 1986, as
4 amended, on the date of the distribution, if the charitable organization
5 meets the requirement on the date of determination.

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

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

11 (1) diminish the charitable interest;

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

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

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

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

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

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

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

1 or

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

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

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

9 (1) the decanting power; or

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

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

15 (1) the decanting power; or

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

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

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

31 (d) Subject to subsections (a) and (b) of this section, an

1 authorized fiduciary may exercise the decanting power under the Uniform
2 Trust Decanting Act even if the first-trust instrument permits the
3 authorized fiduciary or another person to modify the first-trust
4 instrument or to distribute part or all of the principal of the first
5 trust to another trust.

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

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

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

16 (2) the increase is approved by the court.

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

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

23 (2) the increase is approved by the court.

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

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

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

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

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

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

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

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

23 (3) the court approves the modification and the modification grants
24 a substantially similar power to another person.

25 Sec. 29. (a) In this section:

26 (1) Grantor trust means a trust as to which a settlor of a first
27 trust is considered the owner under 26 U.S.C. 671 to 677 or 26 U.S.C.
28 679, as such sections existed on the operative date of this section.

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

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

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

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

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

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

29 (3) If the first trust contains property that qualified, or would
30 have qualified but for provisions of the Uniform Trust Decanting Act
31 other than this section, for the exclusion from the gift tax described in

1 26 U.S.C. 2503(b), as such section existed on the operative date of this
2 section, the second-trust instrument must not include or omit a term
3 that, if included in or omitted from the trust instrument for the trust
4 to which the property was transferred, would have prevented the transfer
5 from qualifying under 26 U.S.C. 2503(b), as such section existed on the
6 operative date of this section. If the first trust contains property that
7 qualified, or would have qualified but for provisions of the Uniform
8 Trust Decanting Act other than this section, for the exclusion from the
9 gift tax described in 26 U.S.C. 2503(b), as such section existed on the
10 operative date of this section, by application of 26 U.S.C. 2503(c), as
11 such section existed on the operative date of this section, the second-
12 trust instrument must not include or omit a term that, if included or
13 omitted from the trust instrument for the trust to which the property was
14 transferred, would have prevented the transfer from qualifying under 26
15 U.S.C. 2503(c), as such section existed on the operative date of this
16 section.

17 (4) If the property of the first trust includes shares of stock in
18 an S corporation, as defined in 26 U.S.C. 1361, as such section existed
19 on the operative date of this section, and the first trust is, or but for
20 provisions of the Uniform Trust Decanting Act other than this section
21 would be, a permitted shareholder under any provision of 26 U.S.C. 1361,
22 as such section existed on the operative date of this section, an
23 authorized fiduciary may exercise the power with respect to part or all
24 of the S-corporation stock only if any second trust receiving the stock
25 is a permitted shareholder under 26 U.S.C. 1361(c)(2), as such section
26 existed on the operative date of this section. If the property of the
27 first trust includes shares of stock in an S corporation and the first
28 trust is, or but for provisions of the Uniform Trust Decanting Act other
29 than this section would be, a qualified subchapter-S trust within the
30 meaning of 26 U.S.C. 1361(d), as such section existed on the operative
31 date of this section, the second-trust instrument must not include or

1 omit a term that prevents the second trust from qualifying as a qualified
2 subchapter-S trust.

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

13 (6) If the first trust is directly or indirectly the beneficiary of
14 qualified benefits property, the second-trust instrument may not include
15 or omit any term that, if included in or omitted from the first-trust
16 instrument, would have increased the minimum distributions required with
17 respect to the qualified benefits property under 26 U.S.C. 401(a)(9), as
18 such section existed on the operative date of this section, and any
19 applicable regulations, or any similar requirements that refer to 26
20 U.S.C. 401(a)(9), as such section existed on the operative date of this
21 section, or the regulations. If an attempted exercise of the decanting
22 power violates the preceding sentence, the trustee is deemed to have held
23 the qualified benefits property and any reinvested distributions of the
24 property as a separate share from the date of the exercise of the power
25 and section 32 of this act applies to the separate share.

26 (7) If the first trust qualifies as a grantor trust because of the
27 application of 26 U.S.C. 672(f)(2)(A), as such section existed on the
28 operative date of this section, the second trust may not include or omit
29 a term that, if included in or omitted from the first-trust instrument,
30 would have prevented the first trust from qualifying under 26 U.S.C.
31 672(f)(2)(A), as such section existed on the operative date of this

1 section.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

31 (b) If a trustee or other fiduciary of a second trust determines

1 that subsection (a) of this section applies to a prior exercise of the
2 decanting power, the fiduciary shall take corrective action consistent
3 with the fiduciary's duties.

4 Sec. 33. (a) In this section:

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

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

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

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

17 (d) Notwithstanding any other provision of the act, if a first trust
18 is an animal trust, in an exercise of the decanting power, the second
19 trust must provide that trust property may be applied only to its
20 intended purpose for the period the first trust benefited the animal.

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

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

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

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

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

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

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

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

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

31 Sec. 40. Section 25-223, Reissue Revised Statutes of Nebraska, is

1 amended to read:

2 25-223 (1) Any action to recover damages based on any alleged
3 breach of warranty on improvements to real property or based on any
4 alleged deficiency in the design, planning, supervision, or observation
5 of construction, or construction of an improvement to real property,
6 except improvements to real property subject to the Nebraska Condominium
7 Act, shall be commenced within four years after any alleged act or
8 omission constituting such breach of warranty or deficiency. If such
9 cause of action is not discovered and could not be reasonably discovered
10 within such four-year period, or within one year preceding the expiration
11 of such four-year period, then the cause of action may be commenced
12 within two years from the date of such discovery or from the date of
13 discovery of facts which would reasonably lead to such discovery,
14 whichever is earlier. In no event may any action be commenced to recover
15 damages for an alleged breach of warranty on improvements to real
16 property or deficiency in the design, planning, supervision, or
17 observation of construction, or construction of an improvement to real
18 property more than ten years beyond the time of the act giving rise to
19 the cause of action.

20 (2)(a) Any action to recover damages based on any alleged breach of
21 warranty on improvements to real property or based on any alleged
22 deficiency in the design, planning, supervision, or observation of
23 construction, or construction of an improvement to real property that is
24 a condominium or part of a condominium project subject to the Nebraska
25 Condominium Act shall be commenced within two years after any alleged act
26 or omission constituting such breach of warranty or deficiency. If such
27 cause of action is not discovered and could not be reasonably discovered
28 within such two-year period, or within one year preceding the expiration
29 of such two-year period, then the cause of action may be commenced within
30 one year from the date of such discovery or from the date of discovery of
31 facts which would reasonably lead to such discovery, whichever is

1 earlier. In no event may any action be commenced to recover damages for
2 an alleged breach of warranty on improvements to real property or
3 deficiency in the design, planning, supervision, or observation of
4 construction, or construction of an improvement to real property more
5 than five years beyond the time of the act giving rise to the cause of
6 action.

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

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

11 76-842 (a) The declaration for a condominium must contain:

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

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

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

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

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

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

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

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

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

1 and

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

8 (11) (10) all matters required by sections 76-843 to 76-846, 76-852,
9 and 76-853, and subsection (d) of section 76-861.

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

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

14 76-844 (a) The declaration shall allocate a fraction or percentage
15 of undivided interests in the common elements and in the common expenses
16 of the association, and a portion of the votes in the association, to
17 each unit and state the formulas used to establish those allocations.
18 ~~Those allocations may not discriminate in favor of units owned by the~~
19 ~~declarant.~~

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

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

1 class because they are owned by a declarant.

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

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

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

14 76-854 (a) Except in cases of amendments that may be executed by (1)
15 a declarant under subsection (f) of section 76-846 or under section
16 76-847, (2) the association under section 76-831 or 76-850, subsection
17 (d) of section 76-843, subsection (c) of section 76-845, or subsection
18 (a) of section 76-849, or (3) certain unit owners under subsection (b) of
19 section 76-845, subsection (a) of section 76-849, subsection (b) of
20 section 76-850, or subsection (b) of section 76-855, and except as
21 limited by subsection (d) of this section, the declaration, including the
22 plats and plans, may be amended only by vote or agreement of unit owners
23 of units to which at least sixty-seven percent of the votes in the
24 association are allocated or any larger majority the declaration
25 specifies up to eighty percent of the votes in the association exclusive
26 of the declarant. The declaration may specify a smaller number only if
27 all of the units are restricted exclusively to nonresidential use.

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

31 (c) Every amendment to the declaration must be recorded in every

1 county in which any portion of the condominium is located and is
2 effective only upon recordation.

3 (d) Except to the extent expressly permitted or required by other
4 provisions of the Nebraska Condominium Act, no amendment may create or
5 increase special declarant rights, increase the number of units, or
6 change the boundaries of any unit, the allocated interests of a unit, or
7 the uses to which any unit is restricted in the absence of the unanimous
8 consent of the unit owners. In addition, no amendment may change the
9 boundaries of any unit, increase the allocated interests of any unit, or
10 change the uses to which any unit is restricted, without the consent of
11 the owner of the unit.

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

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

19 76-857 (a) If the declaration for a condominium provides that any of
20 the powers described in section 76-860 are to be exercised by or may be
21 delegated to a profit or nonprofit corporation, or unincorporated
22 association, which exercises those or other powers on behalf of one or
23 more condominiums or for the benefit of the unit owners of one or more
24 condominiums, all provisions of the Nebraska Condominium Act sections
25 76-825 to 76-894 applicable to unit owners associations apply to any such
26 corporation or unincorporated association, except as modified by this
27 section. However, in no case shall the declaration provide that the power
28 to institute or intervene as a plaintiff in litigation or administrative
29 proceedings, other than litigation or administrative proceedings to
30 enforce covenants, bylaws, or rules against unit owners or the unit
31 owners association, be delegated to or exercised by any party other than

1 the unit owners or the declarant.

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

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

13 (d) The rights and responsibilities of unit owners with respect to
14 the unit owners association set forth in sections 76-861, 76-866 to
15 76-868, and 76-870 apply in the conduct of the affairs of a master
16 association only to those persons who elect the board of a master
17 association, whether or not those persons are otherwise unit owners
18 within the meaning of the act ~~sections 76-825 to 76-894.~~

19 (e) Notwithstanding the provisions of subsection (f) of section
20 76-861 with respect to the election of the executive board of an
21 association, by all unit owners after the period of declarant control
22 ends, and even if a master association is also an association described
23 in section 76-859, the articles of incorporation or other instrument
24 creating the master association and the declaration of each condominium
25 the powers of which are assigned by the declaration or delegated to the
26 master association may provide that the executive board of the master
27 association must be elected after the period of declarant control in any
28 of the following ways:

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

31 (2) All members of the executive boards of all condominiums subject

1 to the master association may elect all members of that executive board.

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

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

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

9 76-859 A unit owners association must be organized no later than the
10 date the units first-unit in the condominium equal to one-half of the
11 total number of units plus one are is conveyed. The membership of the
12 association at all times shall consist exclusively of all the unit owners
13 or, following termination of the condominium, of all former unit owners
14 entitled to distributions of proceeds under section 76-855 or their
15 heirs, successors, or assigns. The association shall be organized as a
16 profit or nonprofit corporation or as an unincorporated association.

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

19 76-860 (a) Except as provided in subsection (b) of this section and
20 subject to the provisions of the declaration, the association, even if
21 unincorporated, may:

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

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

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

27 (4) Institute, ~~defend,~~ or intervene as a plaintiff in litigation or
28 administrative proceedings, other than litigation or administrative
29 proceedings to enforce covenants, bylaws, or rules against unit owners or
30 the unit owners association, in its own name on behalf of itself or two
31 or more unit owners on matters affecting the condominium upon the

1 affirmative vote of at least eighty percent of the votes in the
2 association exclusive of the declarant;

3 (5) Make contracts and incur liabilities;

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

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

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

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

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

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

22 (12) Impose reasonable charges for the preparation and recordation
23 of amendments to the declaration, resale statements required by section
24 76-884, or statements of unpaid assessments;

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

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

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

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

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

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

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

11 76-861 (a) Except as provided in the declaration, the bylaws,
12 subsection (b) of this section, or other provisions of the Nebraska
13 Condominium Act, the executive board may act in all instances on behalf
14 of the association. In the performance of their duties, the officers and
15 members of the executive board are required to exercise ordinary and
16 reasonable care.

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

25 (c) Within thirty days after adoption of any proposed budget for the
26 condominium, the executive board shall provide a summary of the budget to
27 all the unit owners, and shall set a date for a meeting of the unit
28 owners to consider ratification of the budget not less than fourteen nor
29 more than thirty days after mailing of the summary. Unless at that
30 meeting a majority of all votes in the association or any larger vote
31 specified in the declaration reject the budget, the budget is ratified,

1 whether or not a quorum is present. In the event the proposed budget is
2 rejected, the periodic budget last ratified by the unit owners shall be
3 continued until such time as the unit owners ratify a subsequent budget
4 proposed by the executive board.

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

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

1 (f) Not later than the termination of any period of declarant
2 control, the unit owners shall elect an executive board of at least three
3 members, at least a majority of whom must be unit owners. The executive
4 board shall elect the officers. The executive board members and officers
5 shall take office upon election.

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

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

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

24 76-867 (a) Unless the bylaws provide otherwise, a quorum is present
25 throughout any meeting of the association if persons entitled to cast
26 thirty-five ~~twenty~~ percent of the votes which may be cast for election of
27 the executive board are present in person or by proxy at the beginning of
28 the meeting.

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

1 the beginning of the meeting.

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

4 76-869 (a) Neither the association nor any unit owner except the
5 declarant is liable for that declarant's torts in connection with any
6 part of the condominium which that declarant has the responsibility to
7 maintain. Otherwise, an action alleging a wrong done by the association
8 must be brought against the association and not against any unit owner.
9 If the wrong occurred during any period of declarant control and the
10 association gives the declarant reasonable notice of and an opportunity
11 to defend against the action, the declarant who then controlled the
12 association is liable to the association or to any unit owner only ~~:(i)~~
13 ~~For all tort losses not covered by insurance suffered by the association~~
14 ~~or that unit owner, and (ii) for all costs which the association would~~
15 not have incurred but for a breach of contract or other negligent
16 wrongful act or omission by the declarant. ~~Whenever the declarant is~~
17 ~~liable to the association under this section, the declarant is also~~
18 ~~liable for all litigation expenses, including reasonable attorney's fees,~~
19 ~~incurred by the association. Any statute of limitation affecting the~~
20 ~~association's right of action under this section is tolled until the~~
21 ~~period of declarant control terminates.~~ A unit owner is not precluded
22 from bringing an action contemplated by this section because he or she is
23 a unit owner or a member or officer of the association. Liens resulting
24 from judgments against the association are governed by section 76-875.

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

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

30 76-870 (a) Portions of the common elements may be encumbered or
31 conveyed or otherwise subjected to a security interest by the association

1 if persons entitled to cast at least sixty-seven ~~eighty~~ percent of the
2 votes in the association, including sixty-seven ~~eighty~~ percent of the
3 votes allocated to units not owned by a declarant, or any larger
4 percentage the declaration specifies, agree to that action; but all the
5 owners of units to which any limited common element is allocated must
6 agree ~~in order~~ to encumber or convey that limited common element or
7 subject it to a security interest. The declaration may specify a smaller
8 percentage only if all of the units are restricted exclusively to
9 nonresidential uses. Proceeds of the sale are an asset of the
10 association.

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

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

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

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

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

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

6 76-884 (a) Except in the case of a sale where delivery of a public-
7 offering statement is required or unless exempt under subsection (b) of
8 section 76-878, the unit owner and any other person in the business of
9 selling real estate who offers a unit to a purchaser shall furnish to a
10 purchaser before conveyance a copy of the declaration other than the
11 plats and plans, the bylaws, the rules or regulations of the association,
12 and the following information:

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

16 (2) any other fees payable by unit owners;

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

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

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

22 ~~and~~

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

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

28 (b) The association, within ten days after a request by a unit
29 owner, shall furnish in writing the information necessary to enable the
30 unit owner to comply with this section. A unit owner providing
31 information pursuant to subsection (a) of this section is not liable to

1 the purchaser for any erroneous information provided by the association
2 and included in the certificate.

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

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

11 76-890 (a) A judicial proceeding for breach of any obligation
12 arising under section 76-887 or 76-888 must be commenced within two ~~four~~
13 years after the cause of action accrues, but the parties may agree to
14 reduce the period of limitation to not less than one year ~~two years~~. With
15 respect to a unit that may be occupied for residential use, an agreement
16 to reduce the period of limitation must be evidenced by an instrument
17 executed by the purchaser. Prior to commencing any judicial proceeding
18 under this section, the person seeking to commence the judicial
19 proceeding must (1) provide written notice of the proposed proceeding and
20 the specific alleged defect or defects to the prospective defendant or
21 defendants and (2) give the prospective defendant or defendants at least
22 three months to cure the alleged defect or defects. If the defect or
23 defects are such that they cannot reasonably be cured within three
24 months, the cure period shall extend as long as the prospective defendant
25 has commenced and is diligently proceeding with repairs. Providing the
26 notice in this section in a manner reasonably understood to inform the
27 prospective defendant of the specific alleged defect or defects shall
28 toll any applicable statute of limitations until the alleged defect or
29 defects are cured. Any proceeding commenced without strict compliance
30 with this section is subject to dismissal for such noncompliance.

31 (b) Subject to subsection (c) of this section, a cause of action for

1 breach of warranty, regardless of the purchaser's lack of knowledge of
2 the breach, accrues:

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

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

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

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

19 76-2202 The Legislature finds that as a result of the enactment of
20 the Dodd-Frank Wall Street Reform and Consumer Protection Act and the
21 Financial Institutions Reform, Recovery, and Enforcement Act of 1989,
22 Nebraska's laws providing for regulation of real property appraisers
23 require restructuring and updating in order to comply with such acts.
24 Compliance with the acts is necessary to ensure an adequate number of
25 real property appraisers in Nebraska to conduct appraisals of real estate
26 involved in federally related transactions as defined in such acts.

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

29 76-2204 Appraisal means (1) as a noun, an opinion of value or the
30 act or process of developing an opinion of value or (2) as an adjective,
31 pertaining to appraising and related functions such as real property

1 appraisal practice ~~or real property appraisal activity~~. An appraisal is
2 ~~must be~~ numerically expressed as a specific amount, as a range of
3 numbers, or as a relationship to a previous value opinion or numerical
4 benchmark.

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

7 76-2205.02 Appraisal review means (1) as a noun, the act or process
8 of developing an opinion about the quality of a real property appraiser's
9 work that was performed as part of real property appraisal practice a
10 ~~valuation assignment, evaluation assignment, or appraisal review~~
11 ~~assignment~~ or (2) as an adjective, of or pertaining to an opinion about
12 the quality of another real property appraiser's work that was performed
13 as part of real property appraisal practice a ~~valuation assignment,~~
14 ~~evaluation assignment, or appraisal review assignment.~~

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

17 76-2207.01 Assignment means a valuation service that is performed by
18 a real property ~~an~~ appraiser as a consequence of an agreement with a
19 client.

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

22 76-2207.17 Assignment results means the opinions or conclusions, not
23 limited to value, developed by a real property appraiser when performing
24 valuation services specific to real property appraisal practice ~~an~~
25 ~~assignment not limited to value for an appraisal assignment, and not~~
26 ~~limited to an opinion about the quality of another appraiser's work for~~
27 ~~an appraisal review assignment.~~

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

30 76-2207.22 Client means the person or persons who engage a real
31 property appraiser ~~, by employment or contract, a real property appraiser~~

1 in a specific assignment whether ~~. The client may engage and communicate~~
2 ~~with the appraiser~~ directly or through an agent.

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

5 76-2207.26 Credential holder means (1) any person who holds a valid
6 credential as a trainee real property appraiser, licensed real property
7 appraiser, certified residential real property appraiser, or certified
8 general real property appraiser and (2) any person who holds a temporary
9 credential permit to engage in real property appraisal practice activity
10 within this state.

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

13 76-2207.27 Education provider means: Any real property appraisal or
14 real-estate-related organization; proprietary school; accredited degree-
15 awarding community college, college, or university; state or federal
16 agency; or such other provider that may be approved by the board that
17 provides real property appraiser training or education.

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

20 76-2207.30 Financial Institutions Reform, Recovery, and Enforcement
21 Act of 1989 means the act as it existed on January 1, 2020 ~~2019~~.

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

24 76-2212.03 Jurisdiction of practice means any jurisdiction in which
25 an appraiser devotes his or her time engaged in real property appraisal
26 practice activity.

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

29 76-2215 Real property appraisal practice activity means any act or
30 process performed by a real property appraiser involved in developing and
31 reporting an analysis, opinion, or conclusion relating to the specified

1 interests in or aspects of identified real estate or ~~identified real~~
2 property or an appraisal review. Real property appraisal practice
3 ~~activity~~ includes, but is not limited to, evaluation assignments,
4 valuation assignments, and appraisal review assignments.

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

7 76-2216 Real property appraiser means a person who is a credential
8 holder. ÷

9 ~~(1) Engages in real property appraisal activity;~~

10 ~~(2) Advertises or holds himself or herself out to the general public~~
11 ~~as a real property appraiser; or~~

12 ~~(3) Offers, attempts, or agrees to perform or performs real property~~
13 ~~appraisal activity.~~

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

16 76-2216.02 Report means any communication, written, oral, or by
17 electronic means, of assignment results ~~an appraisal or appraisal review~~
18 ~~that is~~ transmitted to the client or a party authorized by the client
19 upon completion of an assignment. Testimony related to assignment results
20 ~~an appraisal or appraisal review~~ is deemed to be an oral report.

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

23 76-2218.02 Uniform Standards of Professional Appraisal Practice
24 means the standards adopted and promulgated by The Appraisal Foundation
25 as the standards existed on January 1, 2020 ~~2018~~.

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

28 76-2219.01 Valuation services means ~~all~~ services pertaining to an
29 aspect ~~aspects~~ of property value, including a service ~~services~~ performed
30 by real property appraisers.

31 Sec. 68. Section 76-2219.02, Reissue Revised Statutes of Nebraska,

1 is amended to read:

2 76-2219.02 Workfile means data, information, and documentation
3 necessary to support a real property appraiser's opinions analyses,
4 ~~opinion,~~ and conclusions, and to show compliance with the Uniform
5 Standards of Professional Appraisal Practice as it applies to an
6 assignment.

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

9 76-2220 (1) Except as provided in section 76-2221, it shall be
10 unlawful for anyone to act as a real property appraiser in this state
11 without first obtaining proper credentialing as required under the Real
12 Property Appraiser Act.

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

26 (3) The board may issue a cease and desist order against any person
27 who violates this section ~~by performing any action described in section~~
28 ~~76-2216 without the appropriate credential.~~ Such order shall be final ten
29 days after issuance unless such person requests a hearing pursuant to
30 section 76-2240. The board may, through the Attorney General, obtain an
31 order from the district court for the enforcement of the cease and desist

1 order.

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

4 76-2221 The Real Property Appraiser Act shall not apply to:

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

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

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

31 (4) Any owner of real estate, employee of the owner, or attorney

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

9 (5) Any owner of real estate, employee of the owner, or attorney
10 licensed to practice law in this state representing the owner who renders
11 an estimate or opinion of value of real estate or any interest in real
12 estate or damages thereto when such estimate or opinion is offered as
13 testimony in any condemnation proceeding, or any other person who renders
14 such an estimate or opinion when that estimate or opinion requires a
15 specialized knowledge that a real property appraiser would not have,
16 except that a real property appraiser or a person licensed under the
17 Nebraska Real Estate License Act is not exempt under this subdivision;

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

23 (7) Any person appointed by a county board of equalization to act as
24 a referee pursuant to section 77-1502.01, except that any person who also
25 practices as an independent real property appraiser for others shall be
26 subject to the Real Property Appraiser Act and shall be credentialed
27 prior to engaging in such other real property appraisal practice
28 ~~appraising~~. Any real property appraiser appointed to act as a referee
29 pursuant to section 77-1502.01 and who prepares a report for the county
30 board of equalization shall not sign such report as a credentialed real
31 property appraiser and shall include the following disclosure prominently

1 with such report: This opinion of value may not meet the minimum
2 standards contained in the Uniform Standards of Professional Appraisal
3 Practice and is not governed by the Real Property Appraiser Act;

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

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

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

17 76-2223 (1) The Real Property Appraiser Board shall administer and
18 enforce the Real Property Appraiser Act and may:

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

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

30 (c) Develop the specifications for credentialing examinations,
31 including timing, location, and security necessary to maintain the

1 integrity of the examinations;

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

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

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

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

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

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

31 (j) Enter into consent decrees and issue cease and desist orders

1 upon a determination that a violation of the act has occurred;

2 (k) Promote research and conduct studies relating to the profession
3 of real property appraisal, sponsor real property appraisal educational
4 activities, and incur, collect fees for, and pay the necessary expenses
5 in connection with activities which shall be open to all credential
6 holders;

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

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

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

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

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

20 76-2227 (1) Applications for initial credentials, upgrade of
21 credentials, credentials through reciprocity, temporary credentials, and
22 renewal of credentials, including authorization to take the appropriate
23 examination, shall be made in writing to the board on forms approved by
24 the board. The payment of the appropriate fee in an amount established by
25 the board pursuant to section 76-2241 shall accompany all applications.

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

29 (3) At the time of filing an application for a credential, the
30 applicant shall sign a pledge that he or she has read and will comply
31 with the Uniform Standards of Professional Appraisal Practice. Each

1 applicant shall also certify that he or she understands the types of
2 misconduct for which disciplinary proceedings may be initiated.

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

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

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

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

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

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

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

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

30 (e) Certify that no civil judicial actions, including dismissal with
31 settlement, in connection with real estate, financial services, or in the

1 making of an appraisal have been brought against him or her within the
2 five-year period immediately preceding the date of application;

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

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

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

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

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

17 76-2228.01 (1) To qualify for a credential as a trainee real
18 property appraiser, an applicant shall:

19 (a) Be at least nineteen years of age;

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

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

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

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

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

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

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

1 time after approval as a trainee real property appraiser.

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

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

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

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

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

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

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

31 (a) Meet the postsecondary educational requirements pursuant to

1 subdivisions (1)(b) and (c) of section 76-2231.01;

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

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

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

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

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

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

24 (7) The scope of practice for the trainee real property appraiser
25 shall be limited to real property appraisal practice assignments ~~the~~
26 ~~appraisal of the types of real property or real estate that the~~
27 supervisory certified real property appraiser is permitted to engage in
28 ~~appraise~~ by his or her current credential and that the supervisory real
29 property appraiser is competent to engage in ~~appraise~~.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3 76-2230 (1) To qualify for a credential as a licensed residential
4 real property appraiser, an applicant shall:

5 (a) Be at least nineteen years of age;

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

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

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

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

1 months;

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

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

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

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

29 (b) Within the twelve months following approval of the applicant's
30 education and experience by the Real Property Appraiser Board for an
31 upgraded credential, pass an appropriate examination approved by the

1 Appraiser Qualifications Board for that upgraded credential, prescribed
2 by rules and regulations of the Real Property Appraiser Board, and
3 administered by a contracted testing service.

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

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

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

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

16 (b) Successfully complete and pass proctored, closed-book
17 examinations for no fewer than fifty additional class hours in board-
18 approved qualifying education courses conducted by education providers as
19 prescribed by rules and regulations of the board, or hold a bachelor's
20 degree in real estate from an accredited degree-awarding college or
21 university or equivalent pursuant to subdivision (1)(d)(ii) of section
22 76-2231.01; and

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

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

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

29 (b) Successfully complete and pass proctored, closed-book
30 examinations for no fewer than one hundred fifty additional class hours
31 in board-approved qualifying education courses conducted by education

1 providers as prescribed by rules and regulations of the board, or hold a
2 bachelor's degree in real estate from an accredited degree-awarding
3 college or university or equivalent pursuant to subdivision (1)(d)(ii) of
4 section 76-2232; and

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

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

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

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

22 76-2231.01 (1) To qualify for a credential as a certified
23 residential real property appraiser, an applicant shall:

24 (a) Be at least nineteen years of age;

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

27 (ii) Hold an associate's degree from an accredited degree-awarding
28 community college, college, or university in the study of business
29 administration, accounting, finance, economics, or real estate;

30 (iii) Successfully complete thirty semester hours of college-level
31 education from an accredited degree-awarding community college, college,

1 or university that includes:

2 (A) Three semester hours in each of the following: English
3 composition; microeconomics; macroeconomics; finance; algebra, geometry,
4 or higher mathematics; statistics; computer science; and business law or
5 real estate law; and

6 (B) Three semester hours each in two elective courses in any of the
7 topics listed in subdivision (b)(iii)(A) of this subsection, or in
8 accounting, geography, agricultural economics, business management, or
9 real estate;

10 (iv) Successfully complete thirty semester hours of the College-
11 Level Examination Program from an accredited degree-awarding community
12 college, college, or university that includes three semester hours in
13 each of the following subject matter areas: College algebra; college
14 composition; college composition modular; college mathematics; principles
15 of macroeconomics; principles of microeconomics; introductory business
16 law; and information systems; or

17 (v) Successfully complete any combination of subdivisions (b)(iii)
18 and (iv) of this subsection that ensures coverage of all topics and hours
19 identified in subdivision (b)(iii) of this subsection;

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

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

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

25 or

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

29 (d)(i) Have successfully completed and passed examination for no
30 fewer than two hundred class hours in Real Property Appraiser Board-
31 approved qualifying education courses conducted by education providers as

1 prescribed by rules and regulations of the Real Property Appraiser Board
2 and completed the fifteen-hour National Uniform Standards of Professional
3 Appraisal Practice Course. Each course shall include a proctored, closed-
4 book examination pertinent to the material presented; or

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

14 (e) Have no fewer than one thousand five hundred hours of experience
15 as prescribed by rules and regulations of the Real Property Appraiser
16 Board. The required experience shall be acceptable to the Real Property
17 Appraiser Board and subject to review and determination as to conformity
18 with the Uniform Standards of Professional Appraisal Practice. The
19 experience shall have occurred during a period of no fewer than twelve
20 months;

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

29 (g) Within the twelve months following approval of the applicant's
30 education and experience by the Real Property Appraiser Board, pass a
31 certified residential real property appraiser examination or certified

1 general real property appraiser examination, approved by the Appraiser
2 Qualifications Board, prescribed by rules and regulations of the Real
3 Property Appraiser Board, and administered by a contracted testing
4 service.

5 (2) To qualify for an upgraded credential, a certified residential
6 real property appraiser shall satisfy the following requirements:

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

15 (b) Within the twelve months following approval of the applicant's
16 education and experience by the Real Property Appraiser Board for an
17 upgrade to a certified general real property appraiser credential, pass a
18 certified general real property appraiser examination approved by the
19 Appraiser Qualifications Board, prescribed by rules and regulations of
20 the Real Property Appraiser Board, and administered by a contracted
21 testing service.

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

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

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

1 section 76-2232; and

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

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

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

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

21 76-2232 (1) To qualify for a credential as a certified general real
22 property appraiser, an applicant shall:

23 (a) Be at least nineteen years of age;

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

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

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

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

31 or

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

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

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

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

28 (f) Submit two copies of legible ink-rolled fingerprint cards or
29 equivalent electronic fingerprint submissions to the Real Property
30 Appraiser Board for delivery to the Nebraska State Patrol in a form
31 approved by both the Nebraska State Patrol and the Federal Bureau of

1 Investigation. A fingerprint-based national criminal history record check
2 shall be conducted through the Nebraska State Patrol and the Federal
3 Bureau of Investigation with such record check to be carried out by the
4 Real Property Appraiser Board; and

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

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

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

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

25 76-2233 (1) A person currently credentialed to engage in real
26 property appraisal practice concerning ~~appraise~~ real estate and real
27 property under the laws of another jurisdiction may qualify for a
28 credential through reciprocity as a licensed residential real property
29 appraiser, a certified residential real property appraiser, or a
30 certified general real property appraiser by complying with all of the
31 provisions of the Real Property Appraiser Act relating to the appropriate

1 classification of credentialing.

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

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

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

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

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

29 (a) Submit two copies of legible ink-rolled fingerprint cards or
30 equivalent electronic fingerprint submissions to the board for delivery
31 to the Nebraska State Patrol in a form approved by both the Nebraska

1 State Patrol and the Federal Bureau of Investigation. A fingerprint-based
2 national criminal history record check shall be conducted through the
3 Nebraska State Patrol and the Federal Bureau of Investigation with such
4 record check to be carried out by the board;

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

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

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

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

20 76-2233.01 (1) A nonresident currently credentialed to engage in
21 real property appraisal practice concerning ~~appraise~~ real estate and real
22 property under the laws of another jurisdiction may obtain a temporary
23 credential as a licensed residential real property appraiser, a certified
24 residential real property appraiser, or a certified general real property
25 appraiser to engage in real property appraisal practice ~~activity~~ in this
26 state.

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

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

30 (b) Submit a letter of engagement or a contract indicating the
31 location of the real property appraisal practice assignment and

1 completion date;

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

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

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

15 (4) Application for a temporary credential is valid for one year
16 from the date application is made to the board or upon the expiration of
17 the assignment specified in the letter of engagement, whichever occurs
18 first.

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

26 (6) Any person issued a temporary credential to engage in real
27 property appraisal practice activity in this state shall comply with all
28 of the provisions of the Real Property Appraiser Act relating to the
29 appropriate classification of credentialing. The board may, upon its own
30 motion, and shall, upon the written complaint of any aggrieved person,
31 cause an investigation to be made with respect to an alleged violation of

1 the act by a person who is engaged in, or who has engaged in, real
2 property appraisal practice activity as a temporary credential holder,
3 and that person shall be deemed a real property appraiser within the
4 meaning of the act.

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

7 76-2233.02 (1) A credential issued under the Real Property Appraiser
8 Act other than a temporary credential shall remain in effect until
9 December 31 of the designated year unless surrendered, revoked,
10 suspended, or canceled prior to such date. To renew a valid credential,
11 the credential holder shall file an application on a form approved by the
12 board and pay the appropriate renewal fee in an amount established by the
13 board pursuant to section 76-2241. The credential holder shall also pay
14 the criminal history record check fee in an amount established by the
15 board pursuant to section 76-2241 for maintenance of the random
16 fingerprint audit program to the board not later than November 30 of the
17 designated year. A credential may be renewed for one year or two years.
18 In every second year of the two-year continuing education period, as
19 specified in section 76-2236, evidence of completion of continuing
20 education requirements shall accompany renewal application or be on file
21 with the board prior to renewal.

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

31 (3) If a credential holder fails to apply and meet the requirements

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

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

27 76-2233.03 (1) A credential holder may request that his or her
28 credential be placed on inactive status for a period not to exceed two
29 years. Such requests shall be submitted to the board on an application
30 form prescribed by the board. The payment of the appropriate fee in an
31 amount established by the board pursuant to section 76-2241 shall

1 accompany all applications for requests of inactive status.

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

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

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

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

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

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

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

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

3 76-2236 (1) Every credential holder shall furnish evidence to the
4 board that he or she has satisfactorily completed no fewer than twenty-
5 eight hours of approved continuing education activities in each two-year
6 continuing education period. The continuing education period begins on
7 January 1 of the next year for any credential holder who first obtained
8 his or her credential at the current level on or after July 1. Hours of
9 satisfactorily completed approved continuing education activities cannot
10 be carried over from one two-year continuing education period to another.
11 Evidence of successful completion of such continuing education activities
12 for the two-year continuing education period, including passing
13 examination if applicable, shall be submitted to the board in the manner
14 prescribed by the board. No continuing education activity shall be less
15 than two hours in duration. A person who holds a temporary credential
16 does not have to meet any continuing education requirements in the Real
17 Property Appraiser Act.

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

28 (3) A continuing education activity conducted in another
29 jurisdiction in which the activity is approved to meet the continuing
30 education requirements for renewal of a credential in such other
31 jurisdiction shall be accepted by the board if that jurisdiction has

1 adopted and enforces standards for such continuing education activity
2 that meet or exceed the standards established by the Real Property
3 Appraiser Act and the rules and regulations of the board.

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

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

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

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

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

30 (9) The Real Property Appraiser Board shall approve continuing
31 education activities and instructors which it determines would protect

1 the public by improving the competency of credential holders.

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

4 76-2238 The following acts and omissions shall be considered grounds
5 for disciplinary action or denial of an application by the board:

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

8 (2) Procuring or attempting to procure a credential under the act by
9 knowingly making a false statement, submitting false information, or
10 making a material misrepresentation in an application filed with the
11 board or procuring or attempting to procure a credential through fraud or
12 misrepresentation;

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

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

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

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

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

30 (8) Conviction, including a conviction based upon a plea of guilty
31 or nolo contendere, of a crime which is related to the qualifications,

1 functions, or duties of a real property appraiser;

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

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

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

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

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

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

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

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

30 (13) ~~(17)~~ Failure to maintain, or to make available for inspection
31 and copying, records required by the board;

1 (14) ~~(18)~~ Demonstrating negligence, incompetence, or unworthiness to
2 act as a real property appraiser, whether of the same or of a different
3 character as otherwise specified in this section;

4 (15) ~~(19)~~ Suspension or revocation of an appraisal credential or a
5 license in another regulated occupation, trade, or profession in this or
6 any other jurisdiction or disciplinary action taken by another
7 jurisdiction that limits the real property appraiser's ability to engage
8 in real property appraisal practice ~~activity~~;

9 (16) ~~(20)~~ Failure to renew or surrendering an appraisal credential
10 or any other registration, license, or certification issued by any other
11 regulatory agency or held in any other jurisdiction in lieu of
12 disciplinary action pending or threatened;

13 (17) ~~(21)~~ Failure to report disciplinary action taken against an
14 appraisal credential or any other registration, license, or certification
15 issued by any other regulatory agency or held in any other jurisdiction
16 within sixty days of receiving notice of such disciplinary action;

17 (18) ~~(22)~~ Failure to comply with terms of a consent agreement or
18 settlement agreement;

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

22 (20) ~~(24)~~ Failure of an education provider to produce records,
23 documents, reports, or other materials, including, but not limited to,
24 required student attendance reports, to the board;

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

1 Appraiser Qualifications Board as qualifying education;

2 ~~(22) (26)~~ Presentation to the Real Property Appraiser Board of any
3 check which is returned to the State Treasurer unpaid, whether payment of
4 fee is for an initial or renewal credential or for examination; and

5 ~~(23) (27)~~ Failure to pass the examination.

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

8 76-2239 (1) The board may, upon its own motion, and shall, upon the
9 written complaint of any aggrieved person, cause an investigation to be
10 made with respect to an alleged violation of the Real Property Appraiser
11 Act. The board may revoke or suspend the credential or otherwise
12 discipline a credential holder, revoke or suspend a qualifying or
13 continuing education course or activity, deny any application, or issue a
14 cease and desist order for any violation of the Real Property Appraiser
15 Act. Any disciplinary action taken against a credentialed real property
16 appraiser, including any action that limits a credentialed real property
17 appraiser's ability to engage in real property appraisal practice, shall
18 be reported to federal authorities as required by Title XI of the
19 Financial Institutions Reform, Recovery, and Enforcement Act of 1989.
20 Upon receipt of information indicating that a person may have violated
21 any provision of the Real Property Appraiser Act, the board shall make an
22 investigation of the facts to determine whether or not there is evidence
23 of a violation. If technical assistance is required, the board may
24 contract with or use qualified persons.

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

30 (b) If an investigation indicates that a person not holding a
31 credential under the act has violated a provision of the act, the board

1 may issue a cease and desist order or refer the investigation to the
2 appropriate county attorney for the consideration of formal charges.

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

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

18 76-2243 Nothing contained in the Real Property Appraiser Act shall
19 be deemed to prohibit any credential holder under the act from engaging
20 in real property appraisal practice as a professional corporation in
21 accordance with the Nebraska Professional Corporation Act.

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

24 76-2245 No person engaged in real property appraisal practice
25 ~~activities~~ in this state or acting in the capacity of a real property
26 appraiser in this state may bring or maintain any action in any court of
27 this state to collect compensation for the performance of valuation
28 services for which credentialing is required by the Real Property
29 Appraiser Act without alleging and proving that he or she was duly
30 credentialed under the act in this state at all times during the
31 performance of such services.

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

3 76-2246 Any person required to be credentialed by the Real Property
4 Appraiser Act who, directly or indirectly for another, offers, attempts,
5 agrees to engage in, or engages in real property appraisal practice
6 ~~activity~~ or who advertises or holds himself or herself out to the general
7 public as a real property appraiser in this state without obtaining
8 proper credentialing under the act shall be guilty of a Class III
9 misdemeanor and shall be ineligible to apply for credentialing under the
10 act for a period of one year from the date of his or her conviction of
11 such offense. The board may, in its discretion, credential such person
12 within such one-year period upon application and after an administrative
13 hearing.

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

16 76-2247.01 (1) A person may retain or employ a real property
17 appraiser credentialed under the Real Property Appraiser Act to perform
18 valuation services. In each case, the valuation services specific to real
19 property appraisal practice, including any appraisal, appraisal review,
20 ~~and~~ report, shall comply with the Real Property Appraiser Act and the
21 Uniform Standards of Professional Appraisal Practice.

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

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

29 76-3202 For purposes of the Nebraska Appraisal Management Company
30 Registration Act:

31 (1) Affiliate means any person that controls, is controlled by, or

1 is under common control with, another person;

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

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

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

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

17 (6) Appraisal management company means a person that:

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

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

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

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

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

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

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

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

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

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

8 ~~(8) Appraisal practice has the same meaning as in section~~
9 ~~76-2205.01;~~

10 ~~(8) (9)~~ Appraisal Subcommittee means the Appraisal Subcommittee of
11 the Federal Financial Institutions Examination Council;

12 ~~(9) (10)~~ Appraiser panel means a network, list, or roster of AMC
13 appraisers approved by an appraisal management company to perform
14 appraisals as independent contractors for the appraisal management
15 company;

16 ~~(10) (11)~~ Assignment has the same meaning as in section 76-2207.01;

17 ~~(11) (12)~~ Board has the same meaning as in section 76-2207.18;

18 ~~(12) (13)~~ Consumer credit means credit offered or extended to a
19 consumer primarily for personal, family, or household purposes;

20 ~~(13) (14)~~ Contact person means a person designated by the appraisal
21 management company as the main contact for all communication between the
22 appraisal management company and the board;

23 ~~(14) (15)~~ Covered transaction means any consumer credit transaction
24 secured by the consumer's principal dwelling;

25 ~~(15) (16)~~ Credential has the same meaning as in section 76-2207.25;

26 ~~(16) (17)~~ Creditor means a person who regularly extends consumer
27 credit that is subject to a finance charge or is payable by written
28 agreement in more than four installments, not including a downpayment,
29 and to whom the obligation is initially payable, either on the face of
30 the note or contract or by agreement when there is no note or contract. A
31 person regularly extends consumer credit if:

1 (a) The person extended credit, other than credit subject to the
2 requirements of 12 C.F.R. 1026.32, as such regulation existed on January
3 1, 2019, more than five times for transactions secured by a dwelling in
4 the preceding calendar year, or in the current calendar year if a person
5 did not meet these standards in the preceding calendar year; and

6 (b) In any twelve-month period, the person originates more than one
7 credit extension that is subject to the requirements of 12 C.F.R.
8 1026.32, as such regulation existed on January 1, 2019, or one or more
9 such credit extensions through a mortgage broker;

10 (17) ~~(18)~~ Dwelling means a residential structure that contains one
11 to four units, whether or not that structure is attached to real
12 property, including an individual condominium unit, cooperative unit,
13 mobile home, or trailer if used as a residence. With respect to a
14 dwelling:

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

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

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

23 (18) ~~(19)~~ Federally regulated appraisal management company means an
24 appraisal management company that is:

25 (a) Owned and controlled by an insured depository institution as
26 defined in 12 U.S.C. 1813, as such section existed on January 1, 2019;
27 and

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

31 (19) ~~(20)~~ Federal agencies means the Board of Governors of the

1 Federal Reserve System, the Federal Deposit Insurance Corporation, the
2 Office of the Comptroller of the Currency, the National Credit Union
3 Administration, the Consumer Financial Protection Bureau, the Federal
4 Housing Finance Agency, or the successor of any of such agencies;

5 ~~(20)~~ ~~(21)~~ Financial Institutions Reform, Recovery, and Enforcement
6 Act of 1989 has the same meaning as in section 76-2207.30;

7 ~~(21)~~ ~~(22)~~ Independent contractor means a person established as an
8 independent contractor by the appraisal management company for the
9 purpose of federal income taxation;

10 ~~(22)~~ ~~(23)~~ Jurisdiction has the same meaning as in section
11 76-2207.32;

12 ~~(23)~~ ~~(24)~~ Person has the same meaning as in section 76-2213.02;

13 ~~(24)~~ ~~(25)~~ Real estate has the same meaning as in section 76-2214;

14 ~~(25)~~ ~~(26)~~ Real property has the same meaning as in section
15 76-2214.01;

16 ~~(26)~~ ~~(27)~~ Real property appraisal practice activity has the same
17 meaning as in section 76-2215;

18 ~~(27)~~ ~~(28)~~ Registration means a registration as an appraisal
19 management company in this state issued by the board if all requirements
20 for approval as an appraisal management company required in the Nebraska
21 Appraisal Management Company Registration Act have been met by a person
22 making application to the board, including the submission of all required
23 fees, and the board has granted all rights to the person to operate as an
24 appraisal management company in this state as allowed under the act;

25 ~~(28)~~ ~~(29)~~ Report has the same meaning as in section 76-2216.02;

26 ~~(29)~~ ~~(30)~~ Secondary mortgage market participant means a guarantor or
27 insurer of mortgage-backed securities, or an underwriter or issuer of
28 mortgage-backed securities, and only includes an individual investor in a
29 mortgage-backed security if that investor also serves in the capacity of
30 a guarantor, insurer, underwriter, or issuer for the mortgage-backed
31 security;

1 ~~(30)~~ ~~(31)~~ Uniform Standards of Professional Appraisal Practice has
2 the same meaning as in section 76-2218.02; and

3 ~~(31)~~ ~~(32)~~ Valuation services has the same meaning as in section
4 76-2219.01.

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

7 76-3203.01 (1) Only AMC appraisers considered to be in good standing
8 in all jurisdictions in which an active credential is held shall be
9 included on an appraisal management company's appraiser panel.

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

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

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

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

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

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

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

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

1 company:

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

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

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

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

18 (6) If an AMC appraiser is removed from an appraisal management
19 company's appraiser panel pursuant to subsection (4) of this section,
20 nothing shall prevent the appraisal management company at any time during
21 the twelve months after removal from the appraiser panel from considering
22 such person for future assignments in covered transactions or for
23 secondary mortgage market participants in connection with covered
24 transactions, or for engagement to perform one or more appraisals on
25 behalf of a creditor for a covered transaction or for a secondary
26 mortgage market participant in connection with covered transactions. If
27 such consideration or engagement takes place, the removal shall be deemed
28 not to have occurred and such person shall be deemed to have been
29 included on the appraiser panel without interruption.

30 (7) Any AMC appraiser included on an appraisal management company's
31 appraiser panel engaged in ~~appraisal practice~~ or real property appraisal

1 ~~practice activity~~ as a result of an assignment provided by an appraisal
2 management company shall be free from inappropriate influence and
3 coercion as required by the appraisal independence standards established
4 under section 129E of the federal Truth in Lending Act, as such section
5 existed on January 1, 2018, including the requirements for payment of a
6 reasonable and customary fee to AMC appraisers when the appraisal
7 management company is engaged in providing appraisal management services.

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

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

15 76-3207 (1) A person applying for issuance of a registration or
16 renewal of a registration shall not:

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

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

30 (2) For purposes of subdivision (1)(b) of this section, each
31 individual owner of more than ten percent of an appraisal management

1 company shall, at the time an application for issuance of a registration
2 is made, submit two copies of legible ink-rolled fingerprint cards or
3 equivalent electronic fingerprint submissions to the board for delivery
4 to the Nebraska State Patrol in a form approved by both the Nebraska
5 State Patrol and the Federal Bureau of Investigation. The board shall pay
6 the Nebraska State Patrol the costs associated with conducting a
7 fingerprint-based national criminal history record check through the
8 Nebraska State Patrol and the Federal Bureau of Investigation with such
9 record check to be carried out by the board.

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

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

18 76-3210 Any employee of or independent contractor to an appraisal
19 management company that holds a registration, including any AMC appraiser
20 included on an appraisal management company's appraiser panel engaged in
21 ~~appraisal practice or real property appraisal practice activity~~, shall
22 comply with the Real Property Appraiser Act, including the Uniform
23 Standards of Professional Appraisal Practice.

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

26 77-2387 For purposes of the Public Funds Deposit Security Act,
27 unless the context otherwise requires:

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

30 (2) Bank means any state-chartered or federally chartered bank which
31 has a main chartered office in this state, any branch thereof in this

1 state, or any branch in this state of a state-chartered or federally
2 chartered bank which maintained a main chartered office in this state
3 prior to becoming a branch of such state-chartered or federally chartered
4 bank;

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

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

18 (5) Custodial official means an officer or an employee of the State
19 of Nebraska or any political subdivision who, by law, is made custodian
20 of or has control over public money or public funds subject to the act or
21 the security for the deposit of public money or public funds subject to
22 the act;

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

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

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

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

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

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

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

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

30 (14) Securities means:

31 (a) Bonds or obligations fully and unconditionally guaranteed both

1 as to principal and interest by the United States Government;

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

4 (c) United States Government bonds;

5 (d) United States Government guaranteed bonds or notes;

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

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

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

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

17 (i) ~~(h)~~ Repurchase agreements the subject securities of which are
18 any of the securities described in subdivisions (a) through (g) of this
19 subdivision;

20 (j) ~~(i)~~ Securities issued under the authority of the Federal Farm
21 Loan Act;

22 (k) ~~(j)~~ Loan participations which carry the guarantee of the
23 Commodity Credit Corporation, an instrumentality of the United States
24 Department of Agriculture;

25 (l) ~~(k)~~ Guaranty agreements of the Small Business Administration of
26 the United States Government;

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

31 (n) ~~(m)~~ Bonds of the State of Nebraska or of any other state which

1 are purchased by the Board of Educational Lands and Funds of this state
2 for investment in the permanent school fund or which are purchased by the
3 state investment officer of this state for investment in the permanent
4 school fund;

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

8 (p) ~~(o)~~ Warrants of the State of Nebraska;

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

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

13 (s) ~~(r)~~ Certificates of deposit fully insured or guaranteed by the
14 Federal Deposit Insurance Corporation that are issued to a bank, capital
15 stock financial institution, or qualifying mutual financial institution
16 furnishing securities pursuant to the Public Funds Deposit Security Act.

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

19 81-885.04 Except as to the requirements with respect to the
20 subdivision of land, the Nebraska Real Estate License Act shall not apply
21 to:

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

1 thereon;

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

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

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

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

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

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

27 ~~or~~

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

31 (9) Any person not required to be licensed under the act who

1 provides a list or lists of potential purchasers to a broker or
2 salesperson or who makes calls or facilitates the initial contact between
3 a potential client or customer as defined in sections 76-2407 and
4 76-2409, respectively, and a broker or salesperson. The unlicensed person
5 may only provide information regarding the broker or salesperson and the
6 broker's or salesperson's services in written information created by the
7 broker or salesperson that identifies the broker or salesperson and the
8 broker's or salesperson's place of business and which is sent by email,
9 United States mail, or by link to a web site created by the broker or
10 salesperson. The unlicensed person is not permitted to discuss with such
11 potential client or customer the services offered or to be offered by the
12 broker or salesperson. The unlicensed person acting under this exemption
13 may not discuss with such potential client or customer the client's or
14 customer's motivation, motivating factors, or price such potential client
15 or customer is willing to offer or accept. The unlicensed person does not
16 have the authority and shall not purport to have the authority to
17 obligate any such potential client or customer to work with a particular
18 broker or salesperson or particular broker's or salesperson's place of
19 business. The unlicensed person shall, at the beginning of any contact
20 with such potential client or customer, identify who the unlicensed
21 person is, the name of the entity that employs the unlicensed person, the
22 name of the broker or salesperson, and the name of the broker's or
23 salesperson's real estate business on whose behalf the contact is being
24 made. The unlicensed person shall not perform any other activity of a
25 broker or salesperson described in section 81-885.01, except those acts
26 specifically provided for in this subdivision.

27 Sec. 95. Section 81-885.24, Revised Statutes Cumulative Supplement,
28 2018, is amended to read:

29 81-885.24 The commission may, upon its own motion, and shall, upon
30 the sworn complaint in writing of any person, investigate the actions of
31 any broker, associate broker, salesperson, or subdivider, may censure the

1 licensee or certificate holder, revoke or suspend any license or
2 certificate issued under the Nebraska Real Estate License Act, or enter
3 into consent orders, and, alone or in combination with such disciplinary
4 actions, may impose a civil fine on a licensee pursuant to section
5 81-885.10, whenever the license or certificate has been obtained by false
6 or fraudulent representation or the licensee or certificate holder has
7 been found guilty of any of the following unfair trade practices:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

28 (18) Providing any form of compensation or consideration to any
29 person for performing the services of a broker, associate broker, or
30 salesperson who has not first secured his or her license under the
31 Nebraska Real Estate License Act unless such person is (a) a nonresident

1 who is licensed in his or her resident regulatory jurisdiction or (b) a
2 citizen and resident of a foreign country which does not license persons
3 conducting the activities of a broker and such person provides reasonable
4 written evidence to the Nebraska broker that he or she is a resident
5 citizen of that foreign country, is not a resident of this country, and
6 conducts the activities of a broker in that foreign country;

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

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

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

20 (22) Making any substantial misrepresentations;

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

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

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

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

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

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

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

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

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

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

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

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

31 (35) Charging or collecting, as part or all of his or her

1 compensation or consideration, any part of the earnest money or other
2 money paid to him or her or the entity under which he or she does
3 business in connection with any real estate transaction until the
4 transaction has been consummated or terminated. However, a payment for
5 goods or services rendered by a third party on behalf of the client shall
6 not be considered compensation or consideration if such payment does not
7 include any profit, compensation, or payment for services rendered by the
8 broker and the broker retains a record of the payment to the third party
9 for such goods or services; or -

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

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

24 Sec. 97. If any section in this act or any part of any section is
25 declared invalid or unconstitutional, the declaration shall not affect
26 the validity or constitutionality of the remaining portions.

27 Sec. 98. Original sections 25-223, 76-842, 76-844, 76-854, 76-857,
28 76-859, 76-860, 76-867, 76-869, 76-870, 76-884, 76-890, and 81-885.04,
29 Reissue Revised Statutes of Nebraska, sections 1-116 and 81-885.24,
30 Revised Statutes Cumulative Supplement, 2018, and section 76-861, Revised
31 Statutes Supplement, 2019, are repealed.

1 Sec. 99. Original section 21-201, Revised Statutes Cumulative
2 Supplement, 2018, is repealed.

3 Sec. 100. Original sections 76-2202, 76-2204, 76-2205.02,
4 76-2207.01, 76-2207.17, 76-2207.22, 76-2207.26, 76-2212.03, 76-2215,
5 76-2216, 76-2216.02, 76-2218.02, 76-2219.01, 76-2219.02, 76-2220,
6 76-2221, 76-2223, 76-2227, 76-2233, 76-2233.01, 76-2233.02, 76-2233.03,
7 76-2239, 76-2243, 76-2245, 76-2246, 76-2247.01, 76-3207, and 76-3210,
8 Reissue Revised Statutes of Nebraska, and sections 76-2207.27,
9 76-2207.30, 76-2228.01, 76-2228.02, 76-2230, 76-2231.01, 76-2232,
10 76-2236, 76-2238, 76-3202, 76-3203.01, and 77-2387, Revised Statutes
11 Supplement, 2019, are repealed.

12 Sec. 101. The following sections are outright repealed: Sections
13 76-2205.01 and 76-2216.03, Reissue Revised Statutes of Nebraska.

14 Sec. 102. Since an emergency exists, this act takes effect when
15 passed and approved according to law.