

LEGISLATIVE BILL 182

Approved by the Governor February 17, 1983

Introduced by Barrett, 39

AN ACT to amend sections 81-885.01 to 81-885.07, 81-885.09 to 81-885.15, 81-885.17 to 81-885.20, 81-885.22, 81-885.25, 81-885.28, 81-885.29, 81-885.33 to 81-885.35, 81-885.38, 81-885.43, 81-885.44, 81-885.46, and 81-885.47, Reissue Revised Statutes of Nebraska, 1943, and section 81-885.24, Revised Statutes Supplement, 1982, relating to real estate licenses; to harmonize provisions; to change the powers of the State Real Estate Commission; to change fees; to change provisions relating to nonresident licenses, unfair trade practices, and hearings; to rename an act; and to repeal the original sections.

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

Section 1. That section 81-885.01, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-885.01. As used in sections 81-885.01 to ~~81-885.47~~ 81-885.48, unless the context otherwise requires:

(1) Real estate shall mean and include condominiums and leaseholds, as well as any other interest or estate in land, whether corporeal, incorporeal, freehold, or nonfreehold, and whether the real estate is situated in this state or elsewhere;

(2) Broker shall mean any person who for a fee, commission, or any other valuable consideration, or with the intent or expectation of receiving the same from another, negotiates or attempts to negotiate the listing, sale, purchase, exchange, rent, or lease or option for any real estate or improvements thereon, or assists in procuring prospects or holds himself or herself out as a referral agent for the purpose of securing prospects for the listing, sale, purchase, exchange, renting, leasing, or optioning of any real estate or collects rents or attempts to collect rents, or holds himself or herself out as engaged in any of the foregoing. Broker shall also include any person: (a) Employed by or on behalf of the owner or owners of lots or other parcels of ~~or~~ real estate

at a salary, fee, commission, or any other valuable consideration to sell such real estate or any part thereof in lots or parcels or make other disposition thereof; (b) who engages in the business of charging an advance fee in connection with any contract whereby he or she undertakes primarily to promote the sale of real estate either through its listing in a publication issued primarily for such purpose, or for referral of information concerning such real estate to brokers, or both; (c) who auctions, offers, attempts, or agrees to auction real estate; or (d) who buys or offers to buy or sell or otherwise deals in options to buy real estate;

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

(4) Salesperson shall mean any person, other than an associate broker, who is employed by a broker to participate in any activity described in subdivision (2) of this section;

(5) Person shall mean and include individuals, corporations, and partnerships, except that when referring to a person licensed under this act, it shall mean an individual;

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

(7) Subdivider shall mean any person who causes land to be subdivided into a subdivision for himself, herself, or others, or who undertakes to develop a subdivision, but shall not include a public agency or officer authorized by law to create subdivisions;

(8) Purchaser shall mean a person who acquires or attempts to acquire or succeeds to an interest in land; and

(9) Commission shall mean the State Real Estate Commission.

Sec. 2. That section 81-885.02, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-885.02. After September 2, 1973, it shall be unlawful for any person, directly or indirectly, to engage in or conduct, or to advertise or hold himself or herself out as engaging in or conducting the business, or acting in the capacity, of a real estate broker, associate broker, or real estate salesperson salesman within this state without first obtaining a license as such broker, associate broker, or salesman salesperson, as provided in sections 81-885.01 to ~~81-885.47~~ 81-885.48, unless he or she is exempted from obtaining a license under section 81-885.04.

Sec. 3. That section 81-885.03, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-885.03. Any person who, directly or indirectly for another, with the intention or upon the promise of receiving any valuable consideration, offers, attempts or agrees to perform, or performs any single act described in subdivision (2) of section 81-885.01, whether as a part of a transaction, or as an entire transaction, shall be deemed a broker, associate broker, or ~~salesman~~ salesperson within the meaning of sections 81-885.01 to ~~81-885-47~~ 81-885.48. The commission of a single such act by a person required to be licensed under sections 81-885.01 to ~~81-885-47~~ 81-885.48 and not so licensed shall constitute a violation of sections 81-885.01 to ~~81-885-47~~ 81-885.48.

Sec. 4. That section 81-885.04, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-885.04. Except as to the requirements with respect to the subdivision of land, the provisions of sections 81-885.01 to ~~81-885-47~~ 81-885.48 shall not apply to:

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

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

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

(4) Any person acting as the resident manager of an apartment building, duplex, apartment complex, or court, when such resident manager resides on the premises and is engaged in the leasing of property in connection with his or her employment;

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

(6) Any officer or employee of the state government or any political subdivision thereof

performing his or her official duties for real estate tax purposes, or performing his or her official duties related to the acquisition of any interest in real property when the interest is being acquired for a public purpose; or

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

Sec. 5. That section 81-885.05, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-885.05. Sections 81-885.01 to ~~81-885.47~~ 81-885.48 shall not apply to railroads and other public utilities regulated by the State of Nebraska, or their subsidiaries or affiliated corporations, or to the officers or regular employees thereof, unless performance of any of the acts described in subdivision (2) of section 81-885.01 is in connection with the sale, purchase, lease, or other disposition of real estate or investment therein unrelated to the principal business activity of such railroad or other public utility or affiliated or subsidiary corporation thereof.

Sec. 6. That section 81-885.06, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-885.06. No action or suit shall be instituted, nor recovery be had, in any court of this state by any person for compensation for any act done or service rendered, the doing or rendering of which is prohibited under the provisions of sections 81-885.01 to ~~81-885.47~~ 81-885.48, to other than licensed brokers, licensed associate brokers, or licensed salespersons. A licensed broker may bring an action in the name of a partnership or corporation if the broker operates under either of such business organizations.

Sec. 7. That section 81-885.07, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-885.07. (1) There is hereby created the State Real Estate Commission which shall consist of the Secretary of State, who shall be ~~chairman~~ chairperson of the commission, and six members appointed by the Governor. Four of the members of such commission, appointed by the Governor, shall be active and licensed real estate brokers who have engaged in the real estate business as brokers or associate brokers for not less than five years, which members shall be appointed by the Governor, one from each of the four congressional districts as the districts were constituted on January 1, 1961. The remaining members shall be appointed at large, one of whom shall be representative of the public and one of whom shall be a licensed real estate salesperson who has engaged in the real estate business as a salesperson for not less than three years.

(2) The present members of the commission shall continue to serve for the terms for which they were

respectively appointed. Within thirty days after September 2, 1973, the Governor shall appoint the at-large member for a term of six years from September 2, 1973. Within thirty days after July 22, 1978, the Governor shall appoint the salesperson member for a term of six years from July 22, 1978. At the expiration of the term of any member of the commission, the Governor shall appoint a successor for a term of six years. Any appointed member shall be limited to one six-year term, in addition to any partial term served. In the event of a vacancy on the commission, the Governor shall fill such vacancy by appointing a member to serve during the unexpired term of the member whose office has become vacant. In the absence of the ~~chairman~~ chairperson, the senior member of the commission in point of service present shall serve as presiding officer. Not less than four members of the commission must be present at any official meeting of the commission. The action of the majority of the members of the commission shall be deemed the action of the commission. No appointed person may act as a member of the commission while holding any other elective or appointive state or federal office.

(3) Each member of the commission shall receive as compensation for each day actually spent on his official duties at scheduled meetings the sum of fifty dollars and his actual and necessary expenses incurred in the performance of his or her official duties.

(4) The commission shall employ a director who shall keep a record of all the proceedings, transactions, communications, and official acts of the commission, be custodian of all the records of the commission, and perform such other duties as the commission may require. The director shall call a meeting of the commission at his or her discretion or upon the direction of the ~~chairman~~ chairperson or upon a written request of two or more members of the commission. The commission may employ such other employees as may be necessary to properly carry out the provisions of sections 81-885.01 to ~~81-885-47~~ 81-885.48, fix the salaries of such employees, and make such other expenditures as are necessary to properly carry out the provisions of sections 81-885.01 to ~~81-885-47~~ 81-885.48. The office of the commission shall be maintained in Lincoln and all files, records, and property of the commission shall remain therein. Neither the director nor any employee of the commission may be an officer or paid employee of any real estate association or group of real estate dealers or brokers.

(5) The commission may adopt rules and regulations relating to the administration of but not inconsistent with the provisions of sections 81-885.01 to ~~81-885-47~~ 81-885.48.

(6) The commission may conduct or assist in conducting real estate institutes and seminars, and incur and pay the necessary expenses in connection therewith,

which institutes or seminars shall be open to all licensees.

Sec. 8. That section 81-885.09, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-885.09. The Attorney General shall render to the State Real Estate Commission opinions on all questions of law relating to the interpretation of sections 81-885.01 to ~~81-885-47~~ 81-885.48 or arising in the administration thereof, and shall act as attorney for the commission in all actions and proceedings brought by or against it under or pursuant to any of the provisions of sections 81-885.01 to ~~81-885-47~~ 81-885.48. All fees and expenses of the Attorney General arising out of such duties shall be paid out of the State Real Estate Commission's Fund.

Sec. 9. That section 81-885.10, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-885.10. The commission shall have the full power to regulate the issuance of licenses and to revoke or suspend licenses issued under the provisions of sections 81-885.01 to ~~81-885-47~~ 81-885.48, and to censure licensees, and to enter into consent decrees.

Sec. 10. That section 81-885.11, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-885.11. Any person, desiring to act as a real estate broker or real estate salesperson, must file an application for a license with the commission. The application shall be in such form and detail as the commission shall prescribe, setting forth the following:

(1) The name and address of the applicant or the name under which he or she intends to conduct business and, if the applicant conducts business as a partnership, the name and residence address of each member thereof and the name under which the partnership business is to be conducted, and, if the applicant conducts business as a corporation, the name and address of each of its principal officers;

(2) The place or places, including the city or village with the street and street number, if any, where the business is to be conducted; and

(3) Such other information as the commission shall require.

Sec. 11. That section 81-885.12, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-885.12. (1) Licenses shall be granted only to persons who bear a good reputation for honesty, trustworthiness, integrity, and competence to transact the business of broker or salesperson in such manner as to safeguard the interest of the public, and only after satisfactory proof of such qualifications has been presented to the commission. No license shall be granted to an applicant who conducts business as a corporation or partnership unless any stockholder or partner having a

controlling interest therein, if any, bears a good reputation for honesty, trustworthiness, and integrity.

(2) When an applicant has been convicted of forgery, embezzlement, obtaining money under false pretenses, larceny, extortion, conspiracy to defraud, or any other similar offense or offenses, or has been convicted of a felony or a crime involving moral turpitude in any court of competent jurisdiction of this or any other state, district, or territory of the United States, or of a foreign country, such untrustworthiness of the applicant, and the conviction, may in itself be sufficient ground for refusal of a license, and the commission may in its discretion deny a license to any person who has engaged in the real estate business without a license.

(3) When an applicant has made a false statement of material fact on his or her application, such false statement may in itself be sufficient ground for refusal of a license.

(4) Grounds for suspension or revocation of a license, as provided for by sections 81-885.01 to ~~81-885.47~~ 81-885.48, or the previous revocation of a real estate license shall also be grounds for refusal to grant a license.

Sec. 12. That section 81-885.13, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-885.13. (1) No broker's or salesperson's license shall be issued to any person who has not attained the age of nineteen years. No broker's or salesperson's license shall be issued to any person who is not a high school graduate or the holder of a certificate of high school equivalency.

(2) Each applicant for a salesperson's license shall furnish evidence that he or she has completed two courses in real estate subjects, approved by the commission, composed of not less than sixty class hours of study or in lieu thereof, correspondence courses approved by the commission.

(3) Each applicant for a broker's license shall either (a) have first served actively for two years as a licensed salesperson and shall furnish evidence of completion of sixty class hours in addition to the hours required by subsection (2) of this section in a course of study approved by the commission or in lieu thereof a correspondence course approved by the commission, ~~7~~ ~~Provided, that until January 1, 1981, subdivision (a) of this subsection shall not apply to any person holding a salesperson's license on July 22, 1978, but who in place thereof shall have served actively for one year as a licensed real estate salesperson, or~~ (b) furnish a certificate that he or she has passed a course of at least eighteen credit hours in subjects related to real estate at an accredited university or college, or completed six courses in real estate subjects composed of not less than

one hundred eighty class hours in a course of study approved by the commission or in lieu thereof, correspondence courses approved by the commission. The applicant for a license must pass a written examination covering generally the matters confronting real estate brokers and salespersons. Such examination may be taken before the commission or any person designated by the commission. Failure to pass the examination shall be grounds for denial of a license without further hearing. The commission may prepare and distribute to licensees under sections 81-885.01 to ~~81-885.47~~ 81-885.48 informational material deemed of assistance in the conduct of their business.

(4) Courses of study, referred to in subsections (2) and (3) of this section and subsection (1) of section 81-885.14, shall include courses offered by private proprietary real estate schools when such courses are prescribed by the commission and are taught by instructors approved by the commission. The commission shall monitor schools offering approved real estate courses and for good cause shall have authority to suspend or withdraw approval of such courses or instructors.

~~(5) Subsections (2), (3), and (4) of this section shall not apply to a nonresident of this state who, in lieu thereof, has met the license requirements of his or her state of residence.~~

Sec. 13. That section 81-885.14, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-885.14. (1) To pay the expense of the maintenance and operation of the office of the commission and the enforcement of sections 81-885.01 to ~~81-885.47~~ 81-885.48, it shall at the time an application is submitted collect from an applicant for each broker's or salesperson's examination a fee of twenty-five dollars and an ~~application investigation~~ application investigation fee of ~~twenty-five~~ thirty-five fifty dollars. If the applicant fails to pass the original examination, the applicant may take the examination one more time within a year for a fee of five dollars. If the applicant fails the second examination, then the third and all subsequent examinations may be taken upon the payment of twenty-five dollars for each examination. A nonresident applicant duly licensed in the state of residence and who is granted a nonresident license under the provisions of a reciprocal agreement, without being required to take an examination, shall not be required to pay the examination and ~~investigation~~ application fees. Prior to the issuance of an original license, each applicant who has passed the examination, as required by section 81-885.13, shall pay a license fee in advance as follows: For a broker's license, ~~thirty~~ thirty fifty dollars for a resident and ~~sixty one hundred~~ sixty one hundred dollars for a nonresident, and for a salesperson's license, ~~thirty fifteen~~ thirty fifteen dollars for a resident and ~~thirty~~ thirty eighty dollars

for a nonresident. After the original issuance of a license, a renewal application and an annual fee of fifty thirty dollars for each resident broker and one hundred sixty dollars for each nonresident broker and fifteen thirty dollars for each resident salesperson and eighty thirty dollars for each nonresident salesperson shall be due and payable on or before the last day of November of each year. Failure to remit annual fees when due shall automatically cancel such license on December 31 of that year, but otherwise the license shall remain in full force and effect continuously from the date of issuance, unless suspended or revoked by the commission for just cause. Any licensee who fails to file an application for the renewal of any license and pay the renewal fee as provided in this section may file a late renewal application and shall pay, in addition to the renewal fee, the sum of ten dollars for each month or fraction thereof beginning with the first day of December; PROVIDED, that such late application is filed before July 1 of the ensuing year. Any check presented to the commission as a fee for either an original or renewal license or for examination for license which is returned to the State Treasurer unpaid, shall be cause for revocation or denial of license. A salesperson who received an original license after September 27, 1973, and prior to July 22, 1978, shall not receive a renewed license on January 1 following the second anniversary of its original issuance date unless the salesperson shall furnish evidence of completion of thirty class hours in a course of study approved by the commission or in lieu thereof a correspondence course approved by the commission.

(2) Any real estate salesperson who is temporarily unemployed or without an employing broker may renew his or her license by submitting an making application ~~therefor~~ before December 1 prior to the ensuing year. Such salesperson shall submit by submitting the renewal fee together with the completed renewal application on which he or she has noted his or her present inactive status. Any salesperson whose license has been renewed on such inactive status shall not be permitted to engage in the real estate business until such time as he or she shall secure a new employing broker. On or after January 1, 1977, any license which has been inactive for a continuous period of more than three years shall be reinstated only if the licensee has met the examination requirement of an original applicant.

Sec. 14. That section 81-885.15, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-885.15. All fees collected under sections 81-885.01 to ~~81-885.47~~ 81-885.48 shall be deposited in the state treasury in a fund to be known as the State Real Estate Commission's Fund. The commission may use such part of the money in this fund as is necessary to be used by

it in the administration and enforcement of sections 81-885.01 to ~~81-885.47~~ 81-885.48. The fund shall be paid out only upon proper vouchers and upon warrants issued by the Director of Administrative Services and countersigned by the State Treasurer, as provided by law. The expenses of conducting the office must always be kept within the income collected and deposited with the State Treasurer by such commission and such office, and the expense thereof shall not be supported or paid from any other state fund.

Sec. 15. That section 81-885.17, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-885.17. (1) (a) A nonresident of this state, who is actively engaged in the real estate business, who maintains a place of business in his or her resident state, and who has been duly licensed in the state of residence to conduct such business in that state, may in the discretion of the commission be issued a nonresident broker's license if such state has entered into a reciprocal agreement with the commission in regard to the issuance of reciprocal licenses.

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

(c) A nonresident licensee who becomes a resident of the State of Nebraska shall be issued a resident license or who desires to maintain a place of business in this state, or is employed by a broker maintaining a place of business in this state shall secure a regular resident license in compliance with the statutes and rules governing original resident applicants. If another state requires a resident of this state to maintain a place of business in such other state in order to transact business in such state, a resident of such other state shall maintain a place of business in this state and need not secure a regular resident license to maintain such place of business in this state in order to transact business in this state. A nonresident of this state shall meet the same rules and requirements of his or her resident state in order to obtain a reciprocal license in this state.

(2) Prior to the issuance of a license to a nonresident broker there shall be filed with the commission a designation in writing that appoints the director of the commission to act as licensee agent, upon whom all judicial and other process or legal notices directed to such licensee may be served. Service upon the agent so designated shall be equivalent to personal service upon the licensee. Copies of such appointment, certified by the director of the commission, shall be deemed sufficient evidence thereof and shall be admitted in evidence with the same force and effect as the original thereof might be admitted. In such written designation, the licensee shall agree that any lawful process against

the licensee which is served upon such agent shall be of the same legal force and validity as if served upon the licensee, and that the authority shall continue in force so long as any liability remains outstanding in this state. Upon the receipt of any such process or notice the director shall forthwith mail a copy of the same by certified mail to the last-known business address of the licensee.

(3) Prior to the issuance of any license to any nonresident, ~~there must be filed he or she shall file~~ with the commission a duly certified copy of the license issued to ~~him or her for the conducting of such business in any other state, the applicant by the state of residence and pay to the commission the nonresident same license fee as provided in section 81-885.14 for the obtaining of a broker's or salesperson's license. in this state must be paid to the commission-~~

(4) ~~Nothing in this section shall preclude the commission from entering into reciprocal agreements with other states when such agreements are necessary to provide Nebraska residents authority to secure licenses in such other states-~~

(5) Nonresident licenses granted under reciprocal agreements as provided in this section shall remain in force, unless suspended or revoked by the commission for just cause or for failure to pay the annual renewal fee, only as long as a reciprocal agreement is in effect between this state and the resident state of the nonresident licensee.

(6) ~~Prior to the issuance of any license to a nonresident applicant, there shall be filed an affidavit with the commission certifying that the applicant has reviewed and is familiar with the Nebraska Real Estate License Act of 1973, as amended, and the rules and regulations of the State Real Estate Commission and agreeing to be bound thereby-~~

Sec. 16. That section 81-885.18, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-885.18. (1) If the commission, after an application in proper form has been filed with it, accompanied by the proper fee, shall refuse to accept the application, the commission shall give notice of the fact to the applicant within fifteen days after its ruling, order, or decision.

(2) Upon written request from the applicant, filed within thirty days after receipt of such notice by the applicant, the commission shall set the matter down for a hearing to be conducted within sixty days after receipt of the applicant's request.

(3) The hearing shall be at such time and place as the commission shall prescribe. At least fifteen days prior to the date set for the hearing, the commission shall

notify the applicant and other persons protesting, and shall set forth in the notice the reasons why the commission refused to accept the application. Such written notice of hearing may be served by delivery personally to the applicant and protesters, or by mailing the same by registered or certified mail to the last-known business address of the applicant and protesters.

(4) At the hearing, the applicant shall be entitled to examine, either in person or by counsel, any and all persons protesting against him or her, as well as all other witnesses whose testimony is relied upon to substantiate any protest or denial of the application. The applicant He shall be entitled to present such evidence, written and oral, as he or she may see fit and as may be pertinent to the inquiry.

(5) At the hearing, all witnesses shall be duly sworn by the ~~chairman~~ chairperson of the commission, or any member thereof, and stenographic notes of the proceedings shall be taken. Any party to the proceedings desiring it shall be furnished with a copy of such stenographic notes upon the payment to the commission of such fee as the commission shall prescribe, if the request for such copy is made within ten days from the date of any order issued by the commission.

(6) The commission shall render a decision on any application within sixty days from the final hearing on such application, and shall immediately notify the parties to the proceedings, in writing, of its ruling, order, or decision.

Sec. 17. That section 81-885.19, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-885.19. The commission shall prescribe the form of license. Each license shall have placed thereon the seal of the commission. The license of each salesperson ~~salesman~~ and associate broker shall be delivered or mailed to the broker by whom the salesperson ~~salesman~~ or associate broker is employed, and shall be kept in the custody and control of such broker. It shall be the duty of each broker to display his or her own license and those of his or her associate brokers and ~~salesmen~~ salespersons conspicuously in his or her place of business. The commission shall annually prepare and deliver a pocket card certifying that the person, whose name appears thereon, is a licensed real estate broker or a licensed real estate associate broker or ~~salesman~~ salesperson, as the case may be, stating the period of time for which fees have been paid and including, on salesperson's ~~salesman's~~ and associate broker's cards only, the name and address of the broker employing such ~~salesman~~ salesperson or associate broker. If a broker maintains more than one place of business within the state, a branch office license shall be issued to such broker for each branch office so maintained by him or her

upon the payment of an annual fee of thirty dollars and the branch office license shall be displayed conspicuously in each branch office. The manager of a branch office must be an officer of the corporation, a partner, or an associate broker.

Sec. 18. That section 81-885.20, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-885.20. (1) Should the broker change his or her place of business, he or she shall forthwith notify the commission in writing of such change and thereupon a new pocket card shall be granted to the broker and to his or her associate brokers and ~~salesmen~~ salespersons.

(2) When a salesperson ~~salesman~~ or associate broker leaves the employ of a broker, the employing broker shall immediately forward the license of such employee to the commission and shall furnish such information regarding the termination of employment as the commission may require and the employee shall immediately forward his or her pocket card to the commission.

(3) When a salesperson ~~salesman~~ or associate broker transfers from one employing broker to another, or when an associate broker changes his or her status from associate broker to that of broker, or when a broker changes his or her status to that of associate broker, a transfer fee of five dollars shall be paid to the commission.

Sec. 19. That section 81-885.22, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-885.22. Whenever it shall appear to the commission from any examination or report provided by the laws of this state that a broker has failed to comply with the provisions of section 81-885.21, or if any broker shall refuse to submit his or her books, papers, and affairs to the inspection of any examiner, the commission shall have reason to conclude that the trust account of such broker is in an unsafe or unsound condition and the commission shall forthwith submit a complete report to the Attorney General of all information available to it. An action may be brought by the State of Nebraska to enjoin such broker from engaging in or continuing such violation or doing any act or acts in furtherance thereof. In any such action an order or judgment may be entered awarding such preliminary or final injunction as may be deemed proper. In addition to all other means provided by law for the enforcement of a restraining order or injunction, the court in which such action is brought shall have power and jurisdiction to impound and appoint a receiver for the property and business of the defendant, including books, papers, documents, and records pertaining thereto or as much thereof as the court may deem reasonably necessary to prevent violations of the law or injury to the public through or by means of the use of such property and business. Such receiver, when so appointed and qualified,

shall have such powers and duties as to custody, collection, administration, winding up, and liquidation of such property and business as shall, from time to time, be conferred upon him or her by the court.

Sec. 20. That section 81-885.24, Revised Statutes Supplement, 1982, be amended to read as follows:

81-885.24. The commission may, upon its own motion, and shall, upon the sworn complaint in writing of any person, investigate the actions of any broker, associate broker, salesperson, or subdivider and shall have power to censure the licensee or certificate holder or to revoke or suspend any license or certificate, issued under sections 81-885.01 to ~~81-885.47~~ 81-885.48, or enter into consent decrees, whenever the license or certificate has been obtained by false or fraudulent representation or the licensee or certificate holder has been found guilty of any of the following unfair trade practices:

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

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

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

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

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

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

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

(8) Accepting a commission or other valuable consideration by an associate broker or salesperson from anyone other than his or her employing broker without the consent of his or her employing broker;

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

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

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

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

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

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

(15) Accepting employment or compensation for appraising real estate contingent upon the reporting of a predetermined value or issuing an appraisal report on real estate in which he or she has an undisclosed interest;

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

(17) Paying a commission or compensation to any person for performing the services of a broker, associate broker, or salesperson who has not first secured his or her license under sections 81-885.01 to 81-885.47 81-885.48 unless such person is a nonresident who is licensed in his or her state of residence;

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

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

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

(21) Making any substantial misrepresentations;

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

(23) Failing by an associate broker or

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

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

(25) Violating any rule or regulation promulgated by the commission in the interest of the public and consistent with the provisions of sections 81-885.01 to ~~81-885-47~~ 81-885.48;

(26) Failing by a subdivider, after the original certificate has been issued, to comply with all of the requirements of sections 81-885.01 to ~~81-885-47~~ 81-885.48;

(27) The broker or salesperson has been convicted of a felony or entered a plea of guilty or nolo contendere to a felony charge;

(28) Demonstrating negligence, incompetency, or unworthiness or ineptency to act as a broker, associate broker, or salesperson, whether of the same or of a different character as hereinbefore specified; or

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

Sec. 21. That section 81-885.25, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-885.25. (1) Before the commission shall censure a licensee or before revoking or suspending a license, it shall, unless the licensee waives his or her right to a hearing and has entered into a consent decree, give the holder of the license a hearing on the matter and shall, at least twenty days prior to the date set for the hearing, notify the license holder in writing. Such notice shall contain an exact statement of the charges against him or her and the date and place of hearing.

(2) The license holder shall have full authority to be heard in person or by counsel before the commission in reference to such charges. Such notice may be served by delivering it personally to the license holder or by sending it by either registered or certified mail to the

last-known business address of such license holder. If the license holder is an associate broker or a ~~salesman~~ salesperson, the commission shall also notify the broker employing him the license holder by mailing a copy of such notice to the broker's last-known business address.

Sec. 22. That section 81-885.28, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-885.28. (1) If any witness so subpoenaed shall refuse to attend the taking of a deposition or the hearing, or if attending shall refuse to testify, the commission may apply to the district court of the county in which the deposition is to be taken or in which the hearing is to be held for an order compelling the attendance of the witness, the giving of testimony, and the production of books, papers, and documents.

(2) The application shall be by petition, setting forth:

(a) That due notice has been given of the time and place of attendance of the witness or the production of the books, papers, and documents;

(b) That the witness has been subpoenaed in the manner prescribed by section 81-885.27; and

(c) That the witness has failed and refused to attend or produce the papers required by subpoena before the commission, or officer taking the deposition in the cause or proceeding named in the subpoena, or has refused to answer questions propounded to him or her in the course of the hearing or deposition.

(3) The court, upon petition of the commission, shall enter an order directing the witness to appear before the court at a time and place to be fixed by the court in such order, the time to be not more than ten days from the date of the order, and then and there show cause why he or she has not attended, testified, or produced the books, papers, or documents before the commission. A certified copy of the order shall be served upon the witness.

(4) If at the show-cause hearing, it shall appear to the court that the subpoena was regularly issued by the director of the commission, the court shall thereupon enter an order that the witness appear before the commission or the officer taking the deposition at the time and place fixed in the order and testify or produce the required books, papers, or documents, and upon failure to obey such order the witness shall be dealt with as for contempt of court.

Sec. 23. That section 81-885.29, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-885.29. After such hearing, the commission shall state in writing, officially signed by the ~~chairman~~ chairperson and attested to by the director, its findings and determination and its order in the matter. If the commission shall determine that the license holder has

been guilty of any violation of the provisions of sections 81-885.01 to ~~81-885.47~~ 81-885.48, his or her license shall be revoked or suspended forthwith, or the commission may enter an order censoring the license holder. The execution of a penalty of suspension may be stayed by the commission, and the licensee may be placed on probation for the suspension period, after satisfactory completion of which his or her license shall be fully reinstated. Any violation of sections 81-885.01 to ~~81-885.47~~ 81-885.48 by the licensee during the period of probation shall cause the immediate execution of the suspension penalty.

Sec. 24. That section 81-885.33, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-885.33. It shall be unlawful for any person, partnership, or corporation to sell or offer for sale any real estate in a subdivision except by a broker and his or her employees duly licensed and residing in this state.

Sec. 25. That section 81-885.34, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-885.34. Prior to the time when such subdivision real estate is offered for sale, such person, partnership, or corporation shall make application for a subdivision certificate to the commission in writing on a form to be prescribed by the commission and approved by the Attorney General. Such application shall be accompanied by a filing fee of one hundred dollars plus twenty-five dollars for each one hundred lots or fraction thereof to be offered for sale. Such application shall contain the following information and supporting documents:

- (1) The name and address of the applicant and whether the applicant is a person, partnership, or corporation;
- (2) If the applicant is a partnership, the names and addresses of the individual members thereof;
- (3) If the applicant is a corporation, the place of incorporation and the names and addresses of its officers and members of its board of directors;
- (4) The legal description and area of the real estate to be offered for sale, including maps and recorded plats thereof showing the area involved;
- (5) The name and address of the legal owner of the real estate to be offered for sale;
- (6) A certified, audited financial statement fully and fairly disclosing the current financial condition of the developer;
- (7) A statement of the condition of the title of the subdivided lands including encumbrances as of a specified date within thirty days of the application;
- (8) Copies of the instruments by which the interest in the subdivided lands was acquired and a statement of any lien or encumbrances upon the title and copies of the instruments creating the lien or encumbrances, if any, with dates as to recording, along

with the documentary evidence that any mortgagee or trustee of a deed of trust has subordinated his or her interest in the real estate to the interest of a purchaser of the real estate;

(9) A true statement of the terms and conditions on which it is intended to dispose of the real estate, together with copies of any contracts intended to be used, which contracts shall contain the following provisions: (a) A provision entitling the purchaser, if he or she has not seen the land, to an unconditional right of refund of all payments made under the contract after inspecting the land if inspection is made within a time provided in the contract which shall not be less than four months from the date of the contract and a provision granting to the purchaser an unconditional right to rescind the contract for a period of fourteen days if he or she has not inspected the land; and (b) if the land is located outside of this state, a provision to limit the right of recovery by the subdivider or his or her assignee to the remedy of foreclosure without a deficiency judgment against the purchaser;

(10) A statement of the zoning and other governmental regulations affecting the use of the land to be sold or offered for sale disclosing whether or not such regulations have been satisfied; and

(11) A copy of an offering statement which sets forth the material facts with respect to the land to be offered or sold.

After receiving the application, the commission may require such additional information concerning the real estate as it deems necessary.

Sec. 26. That section 81-885.35, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-885.35. (1) The commission shall thoroughly investigate all matters relating to the application and may require a personal inspection of the real estate by a person or persons designated by it. All expenses incurred by the commission in investigating such real estate and the proposed sale thereof in this state shall be borne by the applicant and the commission shall require a deposit sufficient to cover such expenses prior to incurring the same.

(2) No application shall be approved by the commission unless the subdivider offers satisfactory proof of his or her ability to provide promised public improvements such as but not limited to water, sewer, gas, and streets. Satisfactory proof shall be in the form of performance bonds or other security.

(3) If the subdivision is located out of this state, then prior to the approval of any such application the applicant therefor shall file with the commission a designation in writing that appoints the director of the commission to act as the applicant's agent upon whom all

judicial and other process or legal notices directed to such applicant may be served. Service upon the agent so designated shall be equivalent to personal service upon the applicant. Copies of such appointment, certified by the director of the commission, shall be deemed sufficient evidence thereof and shall be admitted in evidence with the same force and effect as the original thereof might be admitted. In such written designation, the applicant shall agree that any lawful process against the applicant which is served upon such agent shall be of the same legal force and validity as if served upon the applicant and that the authority shall continue in force so long as any liability remains outstanding in this state.

Sec. 27. That section 81-885.38, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-885.38. No broker or ~~salesman~~ salesperson shall in any manner refer to the commission or any member or employee thereof in selling, offering for sale, or advertising or otherwise promoting the sale, mortgage, or lease of any such real estate, nor make any representation whatsoever that such real estate has been inspected or approved or otherwise passed upon by the commission or any state official, department, or employee.

Sec. 28. That section 81-885.43, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-885.43. Whenever, in the judgment of the commission, any person has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of sections 81-885.01 to ~~81-885-47~~ 81-885.48, the Attorney General may maintain an action in the name of the State of Nebraska, in the district court of the county wherein such violation or threatened violation occurred, to abate and temporarily and permanently enjoin such acts and practices and to enforce compliance with sections 81-885.01 to ~~81-885-47~~ 81-885.48. The plaintiff shall not be required to give any bond nor shall any court costs be adjudged against the plaintiff.

Sec. 29. That section 81-885.44, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-885.44. The commission by and through its director may prefer a complaint for violation of sections 81-885.01 to ~~81-885-47~~ 81-885.48.

Sec. 30. That section 81-885.46, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-885.46. Any real estate license or subdivision certificate issued prior to September 2, 1973 shall, for purposes of renewal, be considered to have been originally issued under the provisions of sections 81-885.01 to ~~81-885-47~~ 81-885.48.

Sec. 31. That section 81-885.47, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-885.47. Sections 81-885.01 to ~~81-885-47~~ 81-885.48 shall be known and may be cited as the Nebraska

Real Estate License Act, of 1973-

Sec. 32. That original sections 81-885.01 to 81-885.07, 81-885.09 to 81-885.15, 81-885.17 to 81-885.20, 81-885.22, 81-885.25, 81-885.28, 81-885.29, 81-885.33 to 81-885.35, 81-885.38, 81-885.43, 81-885.44, 81-885.46, and 81-885.47, Reissue Revised Statutes of Nebraska, 1943, and section 81-885.24, Revised Statutes Supplement, 1982, are repealed.