

LEGISLATURE OF NEBRASKA
ONE HUNDRED FIFTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL

EXHIBIT

19

Introduced by

Read first time

Committee:

- 1 A BILL FOR AN ACT relating to the Nebraska Real Estate License Act; to
2 amend sections 81-885.17, 81-885.19, and 81-885.21, Reissue Revised
3 Statutes of Nebraska, and section 81-885.24, Revised Statutes
4 Cumulative Supplement, 2016; to change provisions relating to
5 applications for nonresident licenses and display and verification
6 of licenses; to provide for rules and regulations relating to broker
7 trust accounts; to provide an unfair trade practice; to harmonize
8 provisions; and to repeal the original sections.
9 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 81-885.17, Reissue Revised Statutes of Nebraska,
2 is amended to read:

3 81-885.17 (1)(a) A nonresident of this state who is actively engaged
4 in the real estate business, who maintains a place of business in his or
5 her resident regulatory jurisdiction, and who has been duly licensed in
6 that regulatory jurisdiction to conduct such business in that regulatory
7 jurisdiction may, in the discretion of the commission, be issued a
8 nonresident broker's license.

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

12 (c) A nonresident who becomes a resident of the State of Nebraska
13 and who holds a broker's or salesperson's license in his or her prior
14 resident regulatory jurisdiction shall be issued a resident broker's or
15 salesperson's license upon filing an application, paying the applicable
16 license fee, complying with the criminal history record information check
17 under subsection (4) of this section, filing the affidavit required by
18 subsection (7) of this section, and providing to the commission adequate
19 proof of completion of a three-hour class approved by the commission
20 specific to the Nebraska Real Estate License Act and sections 76-2401 to
21 76-2430.

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

26 (3) Prior to the issuance of any license to a any nonresident
27 applicant, he or she shall: (a) File ~~file~~ with the commission a duly
28 certified copy of the license issued to the applicant by his or her ~~the~~
29 resident regulatory jurisdiction or provide verification of such
30 licensure to the commission; (b) 7 pay to the commission the nonresident
31 license fee as provided in section 81-885.14 for the obtaining of a

1 broker's or salesperson's license; 7 and (c) provide to the commission
2 adequate proof of completion of a three-hour class approved by the
3 commission specific to the Nebraska Real Estate License Act and sections
4 76-2401 to 76-2430.

5 (4) An applicant for an original nonresident broker's or
6 salesperson's license shall be subject to fingerprinting and a check of
7 his or her criminal history record information maintained by the Federal
8 Bureau of Investigation through the Nebraska State Patrol. After filing
9 application for a license, each applicant shall furnish to the Nebraska
10 State Patrol a full set of fingerprints to enable a criminal background
11 investigation to be conducted. The applicant shall request that the
12 Nebraska State Patrol submit the fingerprints to the Federal Bureau of
13 Investigation for a national criminal history record check. The applicant
14 shall pay the actual cost, if any, of the fingerprinting and check of his
15 or her criminal history record information. The applicant shall authorize
16 release of the national criminal history record check to the commission.

17 (5) Nothing in this section shall preclude the commission from
18 entering into reciprocal agreements with other regulatory jurisdictions
19 when such agreements are necessary to provide Nebraska residents
20 authority to secure licenses in other regulatory jurisdictions.

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

26 (7) Prior to the issuance of any license to a nonresident applicant,
27 he or she shall file an affidavit ~~shall be filed by the applicant~~ with
28 the commission certifying that the applicant has reviewed and is familiar
29 with the Nebraska Real Estate License Act and the rules and regulations
30 of the commission and agrees to be bound by the act, rules, and
31 regulations.

1 Sec. 2. Section 81-885.19, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 81-885.19 (1) The commission shall prescribe the forms ~~form~~ of
4 brokers' and salespersons' licenses ~~license~~. Each ~~license~~ shall have
5 ~~placed thereon the seal of the commission. The license of each~~
6 ~~salesperson and associate broker shall be delivered or mailed to the~~
7 ~~broker by whom the salesperson or associate broker is employed and shall~~
8 ~~be kept in the custody and control of such broker. It is the duty of each~~
9 ~~broker to display his or her own license and those of his or her~~
10 ~~associate brokers and salespersons conspicuously in his or her place of~~
11 ~~business.~~

12 (2) If a broker maintains more than one place of business within the
13 state, he or she shall obtain a branch office license ~~shall be issued to~~
14 ~~such broker for each branch office so maintained by him or her. The~~
15 commission shall issue a branch office license upon the payment of an
16 annual fee to be established by the commission of not more than fifty
17 dollars per license ~~and the branch office license shall be displayed~~
18 ~~conspicuously in each branch office. The broker or an associate broker~~
19 shall be the manager of a branch office.

20 (3) The commission shall provide for verification of the current
21 status of licenses electronically or by other means readily available to
22 the public.

23 Sec. 3. Section 81-885.21, Reissue Revised Statutes of Nebraska, is
24 amended to read:

25 81-885.21 (1) Except as provided for in subsection (7) of this
26 section, each ~~Each~~ broker other than an inactive broker shall maintain in
27 a bank, savings bank, building and loan association, or savings and loan
28 association a separate, insured checking account in this state in his or
29 her name or the name under which he or she does business which shall be
30 designated a trust account in which all downpayments, earnest money
31 deposits, or other trust funds received by him or her, his or her

1 associate brokers, or his or her salespersons on behalf of his or her
2 principal or any other person shall be deposited and remain until the
3 transaction is closed or otherwise terminated unless all parties having
4 an interest in the funds have agreed otherwise in writing. Until July 1,
5 2017, such trust account may be either an interest-bearing or a non-
6 interest-bearing account. Any broker using an interest-bearing account
7 shall comply with subsection (6) ~~(7)~~ of this section. On and after July
8 1, 2017, such trust account shall be a non-interest-bearing account.

9 (2) Each broker shall notify the commission of the name of the bank,
10 savings bank, building and loan association, or savings and loan
11 association in which the trust account is maintained and also the name of
12 the account on forms provided therefor.

13 (3) Each broker shall authorize the commission to examine such trust
14 account by a duly authorized representative of the commission. Such
15 examination shall be made annually or at such time as the commission may
16 direct.

17 (4) A broker may maintain more than one trust account in his or her
18 name or the name under which he or she does business if the commission is
19 advised of such account as required in subsection (2) of this section.

20 (5) In the event a branch office maintains a separate trust account,
21 a separate bookkeeping system shall be maintained in the branch office.

22 ~~(6) A broker shall not be entitled to any part of the earnest money~~
23 ~~or other money paid to him or her or the entity under which he or she~~
24 ~~does business in connection with any real estate transaction as part of~~
25 ~~all of his or her compensation or consideration until the transaction has~~
26 ~~been consummated or terminated.~~

27 (6) ~~(7)~~ If the trust account is an interest-bearing account, as
28 authorized under subsection (1) of this section, the interest from the
29 interest-bearing account may be distributed or otherwise accrue only to
30 nonprofit organizations that promote housing in Nebraska and that are
31 exempt from the payment of federal income taxes. A broker may use an

1 interest-bearing account for a transaction only if the use of such
2 account for purposes of promoting housing in Nebraska has been approved
3 by all parties whose money will be deposited into such account. The
4 commission may further define policies and procedures for the processing
5 of and distributions from interest-bearing trust accounts by rule and
6 regulation.

7 (7) The commission may adopt and promulgate rules and regulations to
8 exempt active brokers who have no trust account activity and no
9 anticipated trust account activity from the trust account requirements of
10 this section.

11 Sec. 4. Section 81-885.24, Revised Statutes Cumulative Supplement,
12 2016, is amended to read:

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

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

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

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

31 (4) Commingling the money or other property of his or her principals

1 with his or her own;

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

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

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

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

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

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

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

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

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

28 (14) Negotiating a sale, exchange, listing, or lease of real estate
29 directly with an owner or lessor if he or she knows that such owner has a
30 written outstanding listing contract in connection with such property
31 granting an exclusive agency or an exclusive right to sell to another

1 broker or negotiating directly with an owner to withdraw from or break
2 such a listing contract for the purpose of substituting, in lieu thereof,
3 a new listing contract;

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

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

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

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

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

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

28 (21) Failing by a broker to deliver to the seller in every real
29 estate transaction, at the time the transaction is consummated, a
30 complete, detailed closing statement showing all of the receipts and
31 disbursements handled by such broker for the seller, failing to deliver

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

4 (22) Making any substantial misrepresentations;

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

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

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

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

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

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

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

27 (30) Inducing or attempting to induce a person to transfer an
28 interest in real property, whether or not for monetary gain, or
29 discouraging another person from purchasing real property, by
30 representing that (a) a change has occurred or will or may occur in the
31 composition with respect to religion, race, color, national origin,

1 ethnic group, sex, familial status, or disability of the owners or
2 occupants in the block, neighborhood, or area or (b) such change will or
3 may result in the lowering of property values, an increase in criminal or
4 antisocial behavior, or a decline in the quality of schools in the block,
5 neighborhood, or area;

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

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

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

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

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

25 Sec. 5. Original sections 81-885.17, 81-885.19, and 81-885.21,
26 Reissue Revised Statutes of Nebraska, and section 81-885.24, Revised
27 Statutes Cumulative Supplement, 2016, are repealed.