

LEGISLATURE OF NEBRASKA
ONE HUNDRED FIFTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 16

Introduced by Craighead, 6.

Read first time January 05, 2017

Committee:

1 A BILL FOR AN ACT relating to the Nebraska Real Estate License Act; to
2 amend sections 81-885.13, 81-885.17, 81-885.19, and 81-885.21,
3 Reissue Revised Statutes of Nebraska, and section 81-885.24, Revised
4 Statutes Cumulative Supplement, 2016; to change provisions relating
5 to applications for licenses and display and verification of
6 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 81-885.13, Reissue Revised Statutes of Nebraska,
2 is amended to read:

3 81-885.13 (1) No broker's or salesperson's license shall be issued
4 to any person who has not attained the age of nineteen years. No broker's
5 or salesperson's license shall be issued to any person who is not a high
6 school graduate or the holder of a certificate of high school
7 equivalency.

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

13 (3) Each applicant for a broker's license shall either (a) have
14 first served actively for two years as a licensed salesperson or broker
15 and shall furnish evidence of completion of sixty class hours in addition
16 to the hours required by subsection (2) of this section in a course of
17 study approved by the commission or, in lieu thereof, courses delivered
18 in a distance education format approved by the commission, or (b) furnish
19 a certificate that he or she has passed a course of at least eighteen
20 credit hours in subjects related to real estate at an accredited
21 university or college, or completed six courses in real estate subjects
22 composed of not less than one hundred eighty class hours in a course of
23 study approved by the commission or, in lieu thereof, courses delivered
24 in a distance education format approved by the commission.

25 (4) Each applicant for a broker's license must pass a written
26 examination covering generally the matters confronting real estate
27 brokers, and each applicant for a salesperson's license must pass a
28 written examination covering generally the matters confronting real
29 estate salespersons. Such examination may be taken before the commission
30 or any person designated by the commission. Failure to pass the
31 examination shall be grounds for denial of a license without further

1 hearing. Within thirty days after passing the examination the applicant
2 must complete all requirements necessary for the issuance of a license.
3 The commission may prepare and distribute to licensees under the Nebraska
4 Real Estate License Act informational material deemed of assistance in
5 the conduct of their business.

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

20 (6) Courses of study, referred to in subsections (2) and (3) of this
21 section, shall include courses offered by private proprietary real estate
22 schools when such courses are prescribed by the commission and are taught
23 by instructors approved by the commission. The commission shall monitor
24 schools offering approved real estate courses and for good cause shall
25 have authority to suspend or withdraw approval of such courses or
26 instructors.

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

29 81-885.17 (1)(a) A nonresident of this state who is actively engaged
30 in the real estate business, who maintains a place of business in his or
31 her resident regulatory jurisdiction, and who has been duly licensed in

1 that regulatory jurisdiction to conduct such business in that regulatory
2 jurisdiction may, in the discretion of the commission, be issued a
3 nonresident broker's license.

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

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

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

21 (3) Prior to the issuance of any license to a any nonresident
22 applicant, he or she shall: (a) File file with the commission a duly
23 certified copy of the license issued to the applicant by his or her the
24 resident regulatory jurisdiction or provide verification of such
25 licensure to the commission; (b) τ pay to the commission the nonresident
26 license fee as provided in section 81-885.14 for the obtaining of a
27 broker's or salesperson's license; τ and (c) provide to the commission
28 adequate proof of completion of a three-hour class approved by the
29 commission specific to the Nebraska Real Estate License Act and sections
30 76-2401 to 76-2430.

31 (4) An applicant for an original nonresident broker's or

1 salesperson's license shall be subject to fingerprinting and a check of
2 his or her criminal history record information maintained by the Federal
3 Bureau of Investigation through the Nebraska State Patrol. After filing
4 application for a license, each applicant shall furnish directly to the
5 Nebraska State Patrol, or to a fingerprint processing service that may be
6 selected by the commission for this purpose, a full set of fingerprints
7 to enable a criminal background investigation to be conducted. The
8 applicant shall request that the Nebraska State Patrol submit the
9 fingerprints to the Federal Bureau of Investigation for a national
10 criminal history record check. The applicant shall pay the actual cost,
11 if any, of the fingerprinting and check of his or her criminal history
12 record information. The applicant shall authorize release of the national
13 criminal history record check to the commission.

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

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

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

29 Sec. 3. Section 81-885.19, Reissue Revised Statutes of Nebraska, is
30 amended to read:

31 81-885.19 (1) The commission shall prescribe the forms ~~form~~ of

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

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

17 (3) ~~The commission shall provide for verification of the current~~
18 ~~status of licenses electronically or by other means readily available to~~
19 ~~the public.~~

20 Sec. 4. Section 81-885.21, Reissue Revised Statutes of Nebraska, is
21 amended to read:

22 81-885.21 (1) ~~Except as provided for in subsection (7) of this~~
23 ~~section, each~~ Each broker other than an inactive broker shall maintain in
24 a bank, savings bank, building and loan association, or savings and loan
25 association a separate, insured checking account in this state in his or
26 her name or the name under which he or she does business which shall be
27 designated a trust account in which all downpayments, earnest money
28 deposits, or other trust funds received by him or her, his or her
29 associate brokers, or his or her salespersons on behalf of his or her
30 principal or any other person shall be deposited and remain until the
31 transaction is closed or otherwise terminated unless all parties having

1 an interest in the funds have agreed otherwise in writing. Until July 1,
2 2017, such trust account may be either an interest-bearing or a non-
3 interest-bearing account. Any broker using an interest-bearing account
4 shall comply with subsection ~~(6)~~ (7) of this section. On and after July
5 1, 2017, such trust account shall be a non-interest-bearing account.

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

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

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

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

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

24 ~~(6)~~ (7) If the trust account is an interest-bearing account, as
25 authorized under subsection (1) of this section, the interest from the
26 interest-bearing account may be distributed or otherwise accrue only to
27 nonprofit organizations that promote housing in Nebraska and that are
28 exempt from the payment of federal income taxes. A broker may use an
29 interest-bearing account for a transaction only if the use of such
30 account for purposes of promoting housing in Nebraska has been approved
31 by all parties whose money will be deposited into such account. The

1 commission may further define policies and procedures for the processing
2 of and distributions from interest-bearing trust accounts by rule and
3 regulation.

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

8 Sec. 5. Section 81-885.24, Revised Statutes Cumulative Supplement,
9 2016, is amended to read:

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

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

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

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

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

30 (5) Failing to maintain and deposit in a separate trust account all
31 money received by a broker acting in such capacity, or as escrow agent or

1 the temporary custodian of the funds of others, in a real estate
2 transaction unless all parties having an interest in the funds have
3 agreed otherwise in writing;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 (22) Making any substantial misrepresentations;

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

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

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

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

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

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

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

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

1 antisocial behavior, or a decline in the quality of schools in the block,
2 neighborhood, or area;

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

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

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

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

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

22 Sec. 6. Original sections 81-885.13, 81-885.17, 81-885.19, and
23 81-885.21, Reissue Revised Statutes of Nebraska, and section 81-885.24,
24 Revised Statutes Cumulative Supplement, 2016, are repealed.