

LEGISLATIVE BILL 892

Approved by the Governor March 3, 2022

Introduced by Walz, 15.

A BILL FOR AN ACT relating to the Nebraska Real Estate License Act; to amend section 81-885.02, Reissue Revised Statutes of Nebraska, and sections 81-885.04 and 81-885.13, Revised Statutes Cumulative Supplement, 2020; to change provisions relating to restrictions on unlicensed persons, applicability of the act, and broker's license applications; to harmonize provisions; and to repeal the original sections.
Be it enacted by the people of the State of Nebraska,

Section 1. Section 81-885.02, Reissue Revised Statutes of Nebraska, is amended to read:

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 within this state without first obtaining a license as such broker, associate broker, or salesperson, as provided in the Nebraska Real Estate License Act, unless he or she is exempted from obtaining a license under section 81-885.04.

For purposes of this section, acting as a real estate broker, associate broker, or real estate salesperson includes publicly marketing for sale an equitable interest in a contract for the purchase of real property between a property owner and a prospective purchaser.

Sec. 2. Section 81-885.04, Revised Statutes Cumulative Supplement, 2020, is amended to read:

81-885.04 Except as to the requirements with respect to the subdivision of land, the Nebraska Real Estate License Act shall not apply to:

(1) Any person, partnership, limited liability company, 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 him, her, or it 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, except that such regular employees shall not perform any of the acts described in such subdivision in connection with a vocation of selling or leasing any real estate or the improvements thereon. An equitable interest in real property shall not be considered an ownership interest for purposes of this subdivision;

(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, personal representative, conservator, 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, or any employee, parent, child, brother, or sister of the owner or any employee of a licensed broker who manages rental property for the owner of such property;

(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;

(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;

(8) Any person who, for himself or herself or for others, purchases or sells oil, gas, or mineral leases or performs any activities related to the purchase or sale of such leases; or

(9) Any person not required to be licensed under the act who provides a list or lists of potential purchasers to a broker or salesperson or who makes calls or facilitates the initial contact between a potential client or customer as defined in sections 76-2407 and 76-2409, respectively, and a broker or salesperson. The unlicensed person may only provide information regarding the broker or salesperson and the broker's or salesperson's services in written information created by the broker or salesperson that identifies the broker or salesperson and the broker's or salesperson's place of business and which is sent by email, United States mail, or by link to a website created by the

broker or salesperson. The unlicensed person is not permitted to discuss with such potential client or customer the services offered or to be offered by the broker or salesperson. The unlicensed person acting under this exemption may not discuss with such potential client or customer the client's or customer's motivation, motivating factors, or price such potential client or customer is willing to offer or accept. The unlicensed person does not have the authority and shall not purport to have the authority to obligate any such potential client or customer to work with a particular broker or salesperson or particular broker's or salesperson's place of business. The unlicensed person shall, at the beginning of any contact with such potential client or customer, identify who the unlicensed person is, the name of the entity that employs the unlicensed person, the name of the broker or salesperson, and the name of the broker's or salesperson's real estate business on whose behalf the contact is being made. The unlicensed person shall not perform any other activity of a broker or salesperson described in section 81-885.01, except those acts specifically provided for in this subdivision.

Sec. 3. Section 81-885.13, Revised Statutes Cumulative Supplement, 2020, is amended to read:

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

(b) No broker's or salesperson's license shall be issued to any person who is not a graduate of a public or private high school or the holder of a certificate of high school equivalency. This subdivision does not apply to: (i) A person who is a graduate of a school exempt from the State Department of Education requirements under section 79-1601 or an equivalent exempt school or home school program from another jurisdiction; or (ii) a person who has completed a program of education acceptable to the commission.

(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, courses delivered in a distance education format 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 or broker 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, courses delivered in a distance education format approved by the commission; or

(b) Upon special application and hearing before the commission, provide satisfactory evidence of ~~(i) equivalent or sufficiently relevant experience in a real estate related industry or~~ (ii) hardship due to an existing brokerage being unable to retain the services of a licensee to act as its designated broker who has the two years' experience required in this subsection. Any applicant so approved must 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, courses delivered in a distance education format approved by the commission.

(4) No person issued a broker's license may act as a designated broker for any other licensee until such person has taken additional courses of postlicensure education in the subjects of real estate trust accounting, brokerage finance, business ethics, and risk management, except that the commission may extend, for up to six months, the postlicensure course work requirement under the hardship provision of subdivision (3)(b) ~~(3)(b)(ii)~~ of this section.

(5) Each applicant for a broker's or salesperson's license shall furnish evidence of completion of six class hours of study in a course approved by the commission related to professional practice and standards.

(6) Each applicant for a broker's license must pass a written examination covering generally the matters confronting real estate brokers, and each applicant for a salesperson's license must pass a written examination covering generally the matters confronting real estate 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. Within thirty days after passing the examination the applicant must complete all requirements necessary for the issuance of a license. The commission may prepare and distribute to licensees under the Nebraska Real Estate License Act informational material deemed of assistance in the conduct of their business.

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

(8) Courses of study, referred to in subsections (2), (3), (4), (5), and (9) of this section, 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.

(9) All licensees shall, within one hundred eighty days after license issuance, furnish satisfactory evidence of completion of twelve hours of class study in a commission-approved class related to required knowledge and skills for real estate practice, including, but not limited to, completing contracts and listing agreements and handling of client funds. If a licensee fails to do so, the commission shall place his or her license on inactive status until the commission receives such satisfactory evidence. Transfer to active status pursuant to this subsection shall be subject to the fee provided for in section 81-885.20.

Sec. 4. Original section 81-885.02, Reissue Revised Statutes of Nebraska, and sections 81-885.04 and 81-885.13, Revised Statutes Cumulative Supplement, 2020, are repealed.