

LEGISLATURE OF NEBRASKA

ONE HUNDRED SECOND LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 347

Introduced by McCoy, 39.

Read first time January 12, 2011

Committee: Banking, Commerce and Insurance

A BILL

1 FOR AN ACT relating to the Nebraska Real Estate License Act; to amend
2 section 81-885.21, Reissue Revised Statutes of Nebraska,
3 and section 81-885.24, Revised Statutes Cumulative
4 Supplement, 2010; to authorize interest-bearing trust
5 accounts as prescribed; to harmonize provisions; and to
6 repeal the original sections.

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

1 Section 1. Section 81-885.21, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 81-885.21 (1) Each broker other than an inactive broker
4 shall maintain in a bank, savings bank, building and loan
5 association, or savings and loan association a separate, insured non-
6 interest-bearing or interest-bearing checking account in this state
7 in his or her name or the name under which he or she does business
8 which shall be designated a trust account in which all downpayments,
9 earnest money deposits, or other trust funds received by him or her,
10 his or her associate brokers, or his or her salespersons on behalf of
11 his or her principal or any other person shall be deposited and
12 remain until the transaction is closed or otherwise terminated unless
13 all parties having an interest in the funds have agreed otherwise in
14 writing.

15 (2) Each broker shall notify the commission of the name
16 of the bank, savings bank, building and loan association, or savings
17 and loan association in which the trust account is maintained and
18 also the name of the account on forms provided therefor.

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

23 (4) A broker may maintain more than one trust account in
24 his or her name or the name under which he or she does business if
25 the commission is advised of such account as required in subsection

1 (2) of this section.

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

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

11 (7) If the trust account is an interest-bearing account,
12 the interest may only be distributed or otherwise accrue to nonprofit
13 organizations that are exempt from the payment of federal income
14 taxes. The commission may further define policies and procedures for
15 the processing of and distributions from interest-bearing trust
16 accounts by rule and regulation.

17 Sec. 2. Section 81-885.24, Revised Statutes Cumulative
18 Supplement, 2010, is amended to read:

19 81-885.24 The commission may, upon its own motion, and
20 shall, upon the sworn complaint in writing of any person, investigate
21 the actions of any broker, associate broker, salesperson, or
22 subdivider, may censure the licensee or certificate holder, revoke or
23 suspend any license or certificate issued under the Nebraska Real
24 Estate License Act, or enter into consent orders, and, alone or in
25 combination with such disciplinary actions, may impose a civil fine

1 on a licensee pursuant to section 81-885.10, whenever the license or
2 certificate has been obtained by false or fraudulent representation
3 or the licensee or certificate holder has been found guilty of any of
4 the following unfair trade practices:

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

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

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

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

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

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

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

4 (8) Accepting any form of compensation or consideration
5 by an associate broker or salesperson from anyone other than his or
6 her employing broker without the consent of his or her employing
7 broker;

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

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

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

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

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

22 (14) Negotiating a sale, exchange, listing, or lease of
23 real estate directly with an owner or lessor if he or she knows that
24 such owner has a written outstanding listing contract in connection
25 with such property granting an exclusive agency or an exclusive right

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

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

9 (16) Violating any provision of sections 76-2401 to
10 76-2430;

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

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

25 (19) Failing to include a fixed date of expiration in any

1 written listing agreement and failing to leave a copy of the
2 agreement with the principal;

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

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

14 (22) Making any substantial misrepresentations;

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

17 (24) Failing by an associate broker or salesperson to
18 place, as soon after receipt as practicable, in the custody of his or
19 her employing broker any deposit money or other money or funds
20 entrusted to him or her by any person dealing with him or her as the
21 representative of his or her licensed broker;

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

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

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

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

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

13 (30) Inducing or attempting to induce a person to
14 transfer an interest in real property, whether or not for monetary
15 gain, or discouraging another person from purchasing real property,
16 by representing that (a) a change has occurred or will or may occur
17 in the composition with respect to religion, race, color, national
18 origin, ethnic group, sex, familial status, or disability of the
19 owners or occupants in the block, neighborhood, or area or (b) such
20 change will or may result in the lowering of property values, an
21 increase in criminal or antisocial behavior, or a decline in the
22 quality of schools in the block, neighborhood, or area.

23 Sec. 3. Original section 81-885.21, Reissue Revised
24 Statutes of Nebraska, and section 81-885.24, Revised Statutes
25 Cumulative Supplement, 2010, are repealed.