

LEGISLATURE OF NEBRASKA
NINETY-SIXTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 1062

Introduced by Bourne, 8

Read first time January 6, 2000

Committee: Banking, Commerce and Insurance

A BILL

1 FOR AN ACT relating to the Nebraska Real Estate License Act; to
2 amend sections 81-885.04 and 81-885.24, Reissue Revised
3 Statutes of Nebraska; to provide an exemption from the
4 act; to harmonize provisions; and to repeal the original
5 sections.
6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 81-885.04, Reissue Revised Statutes
2 of Nebraska, is amended to read:

3 81-885.04. Except as to the requirements with respect to
4 the subdivision of land, the Nebraska Real Estate License Act shall
5 not apply to:

6 (1) Any person, partnership, limited liability company,
7 or corporation who as owner or lessor shall perform any of the acts
8 described in subdivision (2) of section 81-885.01 with reference to
9 property owned or leased by him, her, or it or to the regular
10 employees thereof, with respect to the property so owned or leased,
11 when such acts are performed in the regular course of or as an
12 incident to the management, sale, or other disposition of such
13 property and the investment therein, except that such regular
14 employees shall not perform any of the acts described in such
15 subdivision in connection with a vocation of selling or leasing any
16 real estate or the improvements thereon;

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

21 (3) Any person acting as receiver, trustee in bankruptcy,
22 personal representative, conservator, or guardian or while acting
23 under a court order or under the authority of a will or of a trust
24 instrument or as a witness in any judicial proceeding or other
25 proceeding conducted by the state or any governmental subdivision
26 or agency;

27 (4) Any employee of a real estate broker, associate
28 broker, or real estate salesperson who in the regular course of his

1 or her duties assists in procuring prospects as described in
2 subdivision (2) of section 81-885.01. It is unlawful for an
3 employee as described in this subdivision to hold himself or
4 herself out as a licensed broker, associate broker, or salesperson.
5 An employee as described in this subdivision shall only assist in
6 procuring prospects by making the initial contact with any real
7 estate owner. Subsequent contact may be made only by a broker,
8 associate broker, or salesperson licensed under the act;

9 (5) Any person acting as the resident manager of an
10 apartment building, duplex, apartment complex, or court, when such
11 resident manager resides on the premises and is engaged in the
12 leasing of property in connection with his or her employment, or
13 any employee, parent, child, brother, or sister of the owner or any
14 employee of a licensed broker who manages rental property for the
15 owner of such property;

16 ~~(5)~~ (6) Any officer or employee of a federal agency in
17 the conduct of his or her official duties;

18 ~~(6)~~ (7) Any officer or employee of the state government
19 or any political subdivision thereof performing his or her official
20 duties for real estate tax purposes or performing his or her
21 official duties related to the acquisition of any interest in real
22 property when the interest is being acquired for a public purpose;

23 ~~(7)~~ (8) Any person or any employee thereof who renders an
24 estimate or opinion of value of real estate or any interest therein
25 when such estimate or opinion of value is for the purpose of real
26 estate taxation; or

27 ~~(8)~~ (9) Any person who, for himself or herself or for
28 others, purchases or sells oil, gas, or mineral leases or performs

1 any activities related to the purchase or sale of such leases.

2 Sec. 2. Section 81-885.24, Reissue Revised Statutes of
3 Nebraska, is amended to read:

4 81-885.24. The commission may, upon its own motion, and
5 shall, upon the sworn complaint in writing of any person,
6 investigate the actions of any broker, associate broker,
7 salesperson, or subdivider and may censure the licensee or
8 certificate holder, revoke or suspend any license or certificate
9 issued under the Nebraska Real Estate License Act, or enter into
10 consent decrees, whenever the license or certificate has been
11 obtained by false or fraudulent representation or the licensee or
12 certificate holder has been found guilty of any of the following
13 unfair trade practices:

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

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

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

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

25 (5) Failing to maintain and deposit in a separate
26 non-interest-bearing checking account all money received by a
27 broker acting in such capacity, or as escrow agent or the temporary
28 custodian of the funds of others, in a real estate transaction

1 unless all parties having an interest in the funds have agreed
2 otherwise in writing;

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

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

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

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

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

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

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

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

27 (14) Negotiating a sale, exchange, listing, or lease of
28 real estate directly with an owner or lessor if he or she knows

1 that such owner has a written outstanding listing contract in
2 connection with such property granting an exclusive agency or an
3 exclusive right to sell to another broker or negotiating directly
4 with an owner to withdraw from or break such a listing contract for
5 the purpose of substituting, in lieu thereof, a new listing
6 contract;

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

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

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

20 (18) Paying a commission or compensation to any person
21 for performing the services of a broker, associate broker, or
22 salesperson who has not first secured his or her license under the
23 Nebraska Real Estate License Act unless such person is a
24 nonresident who is licensed in his or her state of residence, or is
25 an employee, broker, associate broker, or salesperson exempt from
26 the act under subdivision (4) of section 81-885.04;

27 (19) Failing to include a fixed date of expiration in any
28 written listing agreement and failing to leave a copy of the

1 agreement with the principal;

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

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

13 (22) Making any substantial misrepresentations;

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

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

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

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

28 (27) Failing by a subdivider, after the original

1 certificate has been issued, to comply with all of the requirements
2 of the Nebraska Real Estate License Act;

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

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

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

20 Sec. 3. Original sections 81-885.04 and 81-885.24,
21 Reissue Revised Statutes of Nebraska, are repealed.