

AMENDMENTS TO LB808

(Amendments to Standing Committee amendments, AM2559)

Introduced by Lindstrom, 18.

1 1. Strike section 82 and insert the following new sections:

2 Sec. 82. Section 81-885.04, Reissue Revised Statutes of Nebraska, is
3 amended to read:

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

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

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

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

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

7 (5) Any officer or employee of a federal agency in the conduct of
8 his or her official duties;

9 (6) Any officer or employee of the state government or any political
10 subdivision thereof performing his or her official duties for real estate
11 tax purposes or performing his or her official duties related to the
12 acquisition of any interest in real property when the interest is being
13 acquired for a public purpose;

14 (7) Any person or any employee thereof who renders an estimate or
15 opinion of value of real estate or any interest therein when such
16 estimate or opinion of value is for the purpose of real estate taxation;
17 or

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

21 (9) Any person not required to be licensed under the act who
22 provides a list or lists of potential purchasers to a broker or
23 salesperson or who makes calls or facilitates the initial contact between
24 a potential client or customer as defined in sections 76-2407 and
25 76-2409, respectively, and a broker or salesperson. The unlicensed person
26 may only provide information regarding the broker or salesperson and the
27 broker's or salesperson's services in written information created by the
28 broker or salesperson that identifies the broker or salesperson and the
29 broker's or salesperson's place of business and which is sent by email,
30 United States mail, or by link to a web site created by the broker or
31 salesperson. The unlicensed person is not permitted to discuss with such

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

17 Sec. 83. Section 81-885.24, Revised Statutes Cumulative Supplement,
18 2018, is amended to read:

19 81-885.24 The commission may, upon its own motion, and shall, upon
20 the sworn complaint in writing of any person, investigate the actions of
21 any broker, associate broker, salesperson, or subdivider, may censure the
22 licensee or certificate holder, revoke or suspend any license or
23 certificate issued under the Nebraska Real Estate License Act, or enter
24 into consent orders, and, alone or in combination with such disciplinary
25 actions, may impose a civil fine on a licensee pursuant to section
26 81-885.10, whenever the license or certificate has been obtained by false
27 or fraudulent representation or the licensee or certificate holder has
28 been found guilty of any of the following unfair trade practices:

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

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

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

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

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

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

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

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

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

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

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

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

31 (13) Inducing any party to a contract of sale or lease to break such

1 contract for the purpose of substituting, in lieu thereof, a new contract
2 with another principal;

3 (14) Negotiating a sale, exchange, listing, or lease of real estate
4 directly with an owner or lessor if he or she knows that such owner has a
5 written outstanding listing contract in connection with such property
6 granting an exclusive agency or an exclusive right to sell to another
7 broker or negotiating directly with an owner to withdraw from or break
8 such a listing contract for the purpose of substituting, in lieu thereof,
9 a new listing contract;

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

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

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

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

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

31 (20) Failing to deliver within a reasonable time a completed and

1 dated copy of any purchase agreement or offer to buy or sell real estate
2 to the purchaser and to the seller;

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

10 (22) Making any substantial misrepresentations;

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

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

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

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

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

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

30 (29) Demonstrating negligence, incompetency, or unworthiness to act
31 as a broker, associate broker, or salesperson, whether of the same or of

1 a different character as otherwise specified in this section;

2 (30) Inducing or attempting to induce a person to transfer an
3 interest in real property, whether or not for monetary gain, or
4 discouraging another person from purchasing real property, by
5 representing that (a) a change has occurred or will or may occur in the
6 composition with respect to religion, race, color, national origin,
7 ethnic group, sex, familial status, or disability of the owners or
8 occupants in the block, neighborhood, or area or (b) such change will or
9 may result in the lowering of property values, an increase in criminal or
10 antisocial behavior, or a decline in the quality of schools in the block,
11 neighborhood, or area;

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

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

16 (33) Utilizing advertising which does not prominently display the
17 name under which the designated broker does business as filed with the
18 commission;

19 (34) Utilizing team advertising or a team name suggesting the team
20 is an independent real estate brokerage; ~~or~~

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

31 (36) Failing to provide a copy of section 81-885.04 or written

1 instructions explaining the provisions of the exemption from licensure as
2 set forth in subdivision (9) of section 81-885.04 to any unlicensed
3 person who assists in procuring a potential client or customer as defined
4 in sections 76-2407 and 76-2409, respectively, for the purpose of the
5 listing, sale, purchase, exchange, renting, leasing, or optioning of any
6 real estate.

7 2. On page 93, line 5, strike "and 85" and insert "83, and 86"; and
8 in line 12 strike "and" and insert a comma, and after the last comma
9 insert "and 81-885.24,".

10 3. Renumber the remaining sections accordingly.