STATE OF NEBRASKA

NEBRASKA REAL ESTATE LICENSE ACT AND RULES AND REGULATIONS

AND OTHER STATUTORY REFERENCES PERTAINING TO REAL ESTATE TRANSACTIONS

September 2017

Nebraska Real Estate Commission
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Applications in Process ..... Marilyn Masters

Commission Meeting Information ..... Alane Roubal

Complaint Procedures ..... Duran Cell

Continuing Education History or Inquiries ..... Tawny Snider

Errors and Omissions Insurance Inquiries ..... Monica Rut

Licensing Requirements ..... Monica Rut

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New Licenses in Process ..... Marilyn Masters

Requests for License Applications ..... Any Staff Member

Specialized Registrations ..... Monica Rut

Transfer of License ..... Pat Menousek

Trust Account Matters ..... Duran Cell

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Nebraska Real Estate License Act

As Amended

81-885. Act, how cited.

Sections 81-885 to 81-885.56 shall be known and may be cited as the Nebraska Real Estate License Act.

81-885.01. Terms, defined.

For purposes of the Nebraska Real Estate License Act, unless the context otherwise requires:

(1) Real estate means and includes condominiums and leaseholds, as well as any other interest or estate in land, whether corporeal, incorporeal, freehold, or nonfreehold, and whether the real estate is situated in this state or elsewhere;

(2) Broker means any person who, for any form of compensation or consideration or with the intent or expectation of receiving the same from another, negotiates or attempts to negotiate the listing, sale, purchase, exchange, rent, lease, or option for any real estate or improvements thereon, or assists in procuring prospects or holds himself or herself out as a referral agent for the purpose of securing prospects for the listing, sale, purchase, exchange, renting, leasing, or optioning of any real estate or collects rents or attempts to collect rents, gives a broker's price opinion or comparative market analysis, or holds himself or herself out as engaged in any of the foregoing. Broker also includes any person: (a) Employed, by or on behalf of the owner or owners of lots or other parcels of real estate, for any form of compensation or consideration to sell such real estate or any part thereof in lots or parcels or make other disposition thereof; (b) who auctions, offers, attempts, or agrees to auction real estate; or (c) who buys or offers to buy or sell or otherwise deals in options to buy real estate;

(3) Associate broker means a person who has a broker's license and who is employed by another broker to participate in any activity described in subdivision (2) of this section;

(4) Designated broker means an individual holding a broker's license who has full authority to conduct the real estate activities of a real estate business. In a sole proprietorship, the owner, or broker identified by the owner, shall be the designated broker. In the event the owner identifies the designated broker, the owner shall file a statement with the commission subordinating to the designated broker full authority to conduct the real estate activities of the sole proprietorship. In a partnership, limited liability company, or corporation, the partners, limited liability company members, or board of directors shall identify the designated broker for its real estate business by filing a statement with the commission subordinating to the designated broker full authority to conduct the real estate activities of the partnership, limited liability company, or corporation. The designated broker shall also be responsible for supervising the real estate activities of any associate brokers or salespersons;

(5) Inactive broker means an associate broker whose license has been returned to the commission by the licensee's broker, a broker who has requested the commission to place the license on inactive status, a new licensee who has failed to designate an employing broker or have the license issued as an individual broker, or a broker whose license has been placed on inactive status under statute, rule, or regulation;

(6) Salesperson means any person, other than an associate broker, who is employed by a broker to participate in any activity described in subdivision (2) of this section;

(7) Inactive salesperson means a salesperson whose license has been returned to the commission by the licensee's broker, a salesperson who has requested the commission to place the license on inactive status, a new licensee who has failed to designate an employing broker, or a salesperson whose license has been placed on inactive status under statute, rule, or regulation;

(8) Person means and includes individuals, corporations, partnerships, and limited liability companies, except that when referring to a person licensed under the act, it means an individual;

(9) Team means two or more persons licensed by the commission who (a) work under the supervision of the same broker, (b) work together on real estate transactions to provide real estate brokerage services, (c) represent themselves to the public as being part of a team, and (d) are designated by a team name;

(10) Team leader means any person licensed by the commission and appointed or recognized by his or her broker as the leader for his or her team;

(11) Subdivision or subdivided land means any real estate offered for sale and which has been registered under the Interstate Land Sales Full Disclosure Act, 15 U.S.C. 1701 et seq., as such act existed on January 1, 1973, or real estate located out of this state which is divided or proposed to be divided into twenty-five or more lots, parcels, or units;

(12) Subdivider means any person who causes land to be subdivided into a subdivision for himself, herself, or others or who undertakes to develop a subdivision but does not include a public agency or officer authorized by law to create subdivisions;

(13) Purchaser means a person who acquires or attempts to acquire or succeeds to an interest in land;

(14) Commission means the State Real Estate Commission;

(15) Broker's price opinion means an analysis, opinion, or conclusion prepared by a person licensed under the Nebraska Real Estate License Act in the ordinary course of his or her business relating to the price of specified interests in or aspects of identified real estate or identified real property for the purpose of (a) listing, purchase, or sale, (b) originating, extending, renewing, or modifying a loan in a transaction other than a federally related transaction, or (c) real property tax appeals;

(16) Comparative market analysis means an analysis, opinion, or conclusion prepared by a person licensed under the act in the ordinary course of his or her business relating to the price of specified interests in or aspects of identified real estate or identified real property by comparison to other real property currently or recently in the marketplace for the purpose of (a) listing, purchase, or sale, (b) originating, extending, renewing, or modifying a loan in a transaction other than a federally related transaction, or (c) real property tax appeals;

(17) Distance education means courses in which instruction does not take place in a traditional classroom setting, but rather through other media by which instructor and student are separated by distance and sometimes by time;

(18) Regulatory jurisdiction means a state, district, or territory of the United States, a province of Canada or a foreign country, or a political subdivision of a foreign country, which has implemented and administers laws regulating the activities of a broker;

(19) Federal financial institution regulatory agency means (a) the Board of Governors of the Federal Reserve System, (b) the Federal Deposit Insurance Corporation, (c) the Office of the Comptroller of the Currency, (d) the Office of Thrift Supervision, (e) the National Credit Union Administration, or (f) the successors of any of those agencies; and

(20) Federally related transaction means a real-estate-related transaction that (a) requires the services of an appraiser and (b) is engaged in, contracted for, or regulated by a federal financial institution regulatory agency.

81-885.02. **Broker, associate broker, real estate salesperson; license required; exemption.**

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.

81-885.03. **Broker, associate broker, salesperson, defined; license required; cease and desist order; violation; fine; procedure.**

(1) Any person who, directly or indirectly for another, with the intention or upon the promise of receiving any form of compensation or consideration, offers, attempts, or agrees to perform or performs any single act described in subdivision (2) of section 81-885.01, whether as a part of a transaction, or as an entire transaction, shall be deemed a broker, associate broker, or salesperson within the meaning of the Nebraska Real Estate License Act, and such action shall constitute sufficient contact with the state for the exercise of personal jurisdiction over such person in any action arising out of such action. Committing a single act described in such subdivision by a person required to be licensed under the Nebraska Real Estate License Act and not so licensed shall constitute a violation of the act for which the commission may impose sanctions pursuant to this section for the protection of the public health, safety, or welfare.

(2) Notwithstanding any other provision of the law to the contrary, the director may issue a cease and desist order against any person who violates this section by performing any action described in subsection (1) of this section without the appropriate license. Such order shall be final ten days after issuance unless the violator requests a hearing pursuant to section 81-885.25.

(3) If such person violates a cease and desist order issued pursuant to this section, he or she shall be subject to further proceedings before the commission. If, during such proceedings, the commission makes a finding of guilt, the commission may impose a fine not to exceed (a) one thousand dollars for each day that any action is performed without the appropriate license following the issuance of the order or (b) the amount of all money earned as commission by the violator, whichever is greater. Judgments for the collection of any fine imposed under this section may be filed in the district court of any county in this state.

(4) Notice and hearing requirements under this section shall be in accordance with the Administrative Procedure Act.

81-885.04. Act; exceptions.

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;

(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; or

(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.

81-885.05. Railroads; public utilities; applicability of act.

The Nebraska Real Estate License Act shall not apply to railroads and other public utilities regulated by the State of Nebraska, or their subsidiaries or affiliated corporations, or to the officers or regular employees thereof, unless performance of any of the acts described in subdivision (2) of section 81-885.01 is in connection with the sale, purchase, lease, or other disposition of real estate or investment therein unrelated to the principal business activity of such railroad or other public utility or affiliated or subsidiary corporation thereof.

81-885.06. Action for recovery of compensation; prohibited, except to licensed brokers, associate brokers, or salespersons.

No action or suit shall be instituted, nor recovery be had, in any court of this state by any person for compensation for any act done or service rendered, the doing or rendering of which is prohibited under the Nebraska Real Estate License Act to other than licensed brokers, licensed associate brokers, or licensed salespersons. A licensed broker may bring an action in the name of a partnership, limited liability company, or corporation if the broker operates under any of such business organizations.

81-885.07. State Real Estate Commission; created; members; appointment; qualifications; compensation; director; rules and regulations; conduct real estate institutes and seminars; fees.

(1) There is hereby created the State Real Estate Commission which shall consist of the Secretary of State, who shall be chairperson of the commission, and six members appointed by the Governor. Three of the members of the commission appointed by the Governor shall be active and licensed real estate brokers who have engaged in the real estate business as brokers or associate brokers for not less than five years, which members shall be appointed by the Governor, one from each of the three congressional districts as the districts were constituted on January 1, 2006. The remaining members shall be appointed at large, one of whom shall be representative of the public, one of whom shall be a licensed real estate salesperson who has engaged in the real estate business as a salesperson for not less than three years, and one of whom shall be an active and licensed real estate broker who has engaged in the real estate business as a broker or associate broker for not less than five years. The member representing the former congressional district 1 on July 14, 2006, shall represent congressional district 1 for the balance of his or her term. The member representing the former congressional district 2 on July 14, 2006, shall represent congressional district 2 for the balance of his or her term. The member representing the former congressional district 3 on July 14, 2006, shall become an at-large member for the balance of his or her term. The member representing the former congressional district 4 on July 14, 2006, shall represent congressional district 3 for the balance of his or her term.

(2) At the expiration of the term of any member of the commission, the Governor shall appoint a successor for a term of six years. Any appointed member shall be limited to one six-year term, in addition to any partial term served. In the event of a vacancy on the commission, the Governor shall fill such vacancy by appointing a member to serve during the unexpired term of the member whose office has become vacant. In the absence of the chairperson, the senior member of the commission in point of service present shall serve as presiding officer. Not less than four members of the commission must be present at any official meeting of the commission. The action of the majority of the members of the commission shall be deemed the action of the commission. No appointed person may act as a member of the commission while holding any other elective or appointive state or federal office.

(3) Each member of the commission shall receive as compensation for each day actually spent on official duties at scheduled meetings the sum of one hundred dollars and actual and necessary expenses incurred in the performance of his or her official duties.

(4) The commission shall employ a director who shall keep a record of all the proceedings, transactions, communications, and official acts of the commission, be custodian of all the records of the commission, and perform such other duties as the commission may require. The director shall call a meeting of the commission at his or her discretion or upon the direction of the chairperson or upon a written request of two or more members of the commission. The commission may employ such other employees as may be necessary to properly carry out the Nebraska Real Estate License Act, fix the salaries of such employees, and make such other expenditures as are necessary to properly carry out the act. The office of the commission shall be maintained in Lincoln and all files, records, and property of the commission shall remain in such office. Neither the director nor any employee of the commission may be an officer or paid employee of any real estate association or group of real estate dealers or brokers.

(5) The commission may adopt and promulgate rules and regulations relating to the administration of but not inconsistent with the act.

(6) The commission may conduct or assist in conducting real estate institutes and seminars and incur and pay the necessary expenses in connection therewith, which institutes or seminars shall be open to all licensees.

(7) The commission may charge reasonable fees for services it renders, not to exceed the actual costs thereof, except as otherwise provided in the act. The fees established by the commission pursuant to the act shall be established at the level necessary to meet expenditures of the commission as approved by the Legislature and to provide a sufficient cash fund balance.

81-885.08. Seal; adopt; use.

The commission shall adopt a seal, which may be either an engraved or ink stamp seal, with the words State Real Estate Commission, State of Nebraska and such other device as the commission may desire included thereon, by which the acts of the commission shall be authenticated. Copies of all records and papers in the office of the commission, certified by the signature of the director and the seal of the commission, shall be received in evidence in all cases equally and with like effect as the originals.

81-885.09. Attorney General; opinions on questions of law; act as attorney; fees and expenses; paid from State Real Estate Commission's Fund.

The Attorney General shall render to the State Real Estate Commission opinions on all questions of law relating to the interpretation of the Nebraska Real Estate License Act or arising in the administration thereof and shall act as attorney for the commission in all actions and proceedings brought by or against it under or pursuant to the act. All fees and expenses of the Attorney General arising out of such duties shall be paid out of the State Real Estate Commission's Fund.

81-885.10. Commission; powers; licensing; sanctions; consent decrees; civil fine.

The commission shall have the full power to regulate the issuance of licenses and the activities of licensees and may impose sanctions pursuant to this section for the protection of the public health, safety, or welfare. The commission may revoke or suspend licenses issued under the Nebraska Real Estate License Act, censure licensees, enter into consent decrees, and issue cease and desist orders to violators of section 81-885.03. The commission may, alone or in combination with such disciplinary actions, impose a civil fine on a licensee for each violation alleged in a complaint for which the commission has made a finding of guilt, except that the total fine for such violations shall not exceed two thousand

five hundred dollars per complaint. The commission may also impose a civil fine on violators of section 81-885.03 subject to the limits in such section.

The commission shall retain its powers under this section with respect to the actions of a licensee, whether or not he or she continues to be licensed under the act.

81-885.11. Broker or salesperson; application for license; contents; expiration.

(1) Any person desiring to act as a real estate broker or real estate salesperson shall file an application for a license with the commission. The application shall be in such form and detail as the commission prescribes, setting forth the following:

(a) The name and address of the applicant and, when applicable, the name under which he or she intends to conduct business; if the applicant will be conducting business through a partnership, the name and residence address of each member thereof, the name of the partnership's designated broker, and the name under which the partnership business is to be conducted; if the applicant will be conducting business through a limited liability company, the name and address of each of its members, the name of the company's designated broker, and the name under which the business will be conducted; if the applicant will be conducting business through a corporation, the name and address of each of its principal officers, the name of the corporation's designated broker, and the name under which the business will be conducted; and if the applicant is an individual, the applicant's social security number;

(b) The place or places, including the city or village with the street and street number, if any, where the business is to be conducted; and

(c) Such other information as the commission requires.

(2) An application for a broker's or salesperson's license shall expire one year after date of receipt in the commission office.

81-885.12. License; when granted.

(1) Licenses shall be granted only to persons who bear a good reputation for honesty, trustworthiness, integrity, and competence to transact the business of broker or salesperson in such manner as to safeguard the interest of the public and only after satisfactory proof of such qualifications has been presented to the commission. No license shall be granted to an applicant who will be conducting business through a corporation, partnership, or limited liability company unless any stockholder, partner, or member having a controlling interest therein, if any, bears a good reputation for honesty, trustworthiness, and integrity.

(2) When an applicant has been convicted of forgery, embezzlement, obtaining money under false pretenses, larceny, extortion, conspiracy to defraud, or any other similar offense or offenses or has been convicted of a felony or a crime involving moral turpitude in any court of competent jurisdiction of this or any other state, district, or territory of the United States or of a foreign country, such untrustworthiness of the applicant and the conviction may in itself be sufficient ground for refusal of a license.

(3) The commission may in its discretion deny a license to any person who has engaged in the real estate business without a license.

(4) When an applicant has made a false statement of material fact on an application, such false statement may in itself be sufficient ground for refusal of a license.

(5) Grounds for suspension or revocation of a license, as provided for by the Nebraska Real Estate License Act, or the previous revocation of a real estate license shall also be grounds for refusal to grant a license.

81-885.13. License; conditions for issuance; enumerated; examination; fingerprinting; criminal history record information check; courses of study.

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

(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) 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) 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.

(5) 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.

(6) Courses of study, referred to in subsections (2) and (3) 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.

81-885.14. Fees; license; renewal; procedure.

(1) To pay the expense of the maintenance and operation of the office of the commission and the enforcement of the Nebraska Real Estate License Act, the commission shall, at the time an application is submitted, collect from an applicant for each broker's or salesperson's examination a fee to be established by the commission of not more than two hundred fifty dollars and an application fee of not more than two hundred fifty dollars. The commission shall also collect a reexamination fee to be established by the commission of not more than two hundred fifty dollars for each reexamination. The commission may direct an applicant to pay the examination or reexamination fee to a third party who has contracted with the commission to administer the examination. Prior to the issuance of an original license, each applicant who has passed the examination required by section 81-885.13 or who has received a license under section 81-885.17 shall pay a license fee to be established by the commission. The license fee established by the commission shall not exceed the following amounts: For a broker's license, not more than two hundred fifty dollars; and for a salesperson's license, not more than two hundred dollars.

(2) After the original issuance of a license, a renewal application and a renewal fee to be established by the commission of not more than five hundred dollars for each broker, and not more than four hundred dollars for each salesperson, shall be due and payable on or before November 30 of each renewal year. A broker or salesperson who: (a) Is required to submit evidence of completion of continuing education pursuant to section 81-885.51 on or before November 30, 2011, shall renew his or her license on or before such date for two years; (b) is not required to submit evidence of completion of continuing education until November 30, 2012, shall renew his or her license on or before November 30, 2011, for one year and shall renew his or her license on or before November 30, 2012, for two years; or (c) receives his or her original license on or after January 1, 2011, shall renew his or her license on or before the immediately following November 30 for two years. Each subsequent renewal under subdivisions (a), (b), and (c) of this subsection shall be for a two-year period and shall be due on or before November 30 of each renewal year. Failure to remit renewal fees when due shall automatically cancel such license on December 31 of the renewal year, but otherwise the license shall remain in full force and effect continuously from the date of issuance unless suspended or revoked by the commission for just cause. Any licensee who fails to file an application for the renewal of any license and pay the renewal fee as provided in this section may file a late renewal application and shall pay, in addition to the renewal fee, an amount to be established by the commission of not more than twenty-five dollars for each month or fraction thereof beginning with the first day of December if such late application is filed before July 1 of the ensuing year.

(3) Any check presented to the commission as a fee for either an original or renewal license or for examination for license which is returned to the State Treasurer unpaid or any electronic payment presented to the commission as a fee for either an original or renewal license or for examination for license that is not accepted against the commission shall be cause for revocation or denial of license.

(4) An inactive broker or salesperson may renew his or her license by submitting an application before December 1 prior to the ensuing year. Such broker or salesperson shall submit the renewal fee together with the completed renewal application on which he or she has noted his or her present inactive status. Any broker or salesperson whose license has been renewed on such inactive status shall not be permitted to engage in the real estate

business until such time as he or she fulfills the requirements for active status. Any license which has been inactive for a continuous period of more than three years shall be reinstated only if the licensee has met the examination requirement of an original applicant.

81-885.15. Fees; deposited in State Real Estate Commission's Fund; investment.

All fees collected under the Nebraska Real Estate License Act shall be deposited in the state treasury in a fund to be known as the State Real Estate Commission's Fund. The commission may use such part of the money in this fund as is necessary to be used by it in the administration and enforcement of the act. Transfers may be made from the fund to the General Fund at the direction of the Legislature through June 30, 2011. The State Real Estate Commission's Fund shall be paid out only upon proper vouchers and upon warrants issued by the Director of Administrative Services and countersigned by the State Treasurer, as provided by law. The expenses of conducting the office must always be kept within the income collected and deposited with the State Treasurer by such commission and such office, and the expense thereof shall not be supported or paid from any other state fund. Any money in the State Real Estate Commission's Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

81-885.16. Real Property Appraiser Act; applicability; broker's price opinion or comparative market analysis; requirements.

(1) The Real Property Appraiser Act shall not apply to a person licensed under the Nebraska Real Estate License Act who, in the ordinary course of his or her business, gives a broker's price opinion or comparative market analysis, except that such opinion or analysis shall not be referred to as an appraisal.

(2) No compensation, fee, or other consideration shall be charged for a broker's price opinion or comparative market analysis other than a real estate commission or brokerage fee charged or paid for brokerage services rendered in connection with the sale of the real estate involved unless the opinion or analysis is in writing, is signed by the preparer, includes the date on which it was prepared, and contains or has attached thereto the following disclosure in bold fourteen-point type: This opinion or analysis is not an appraisal. It is intended only for the benefit of the addressee for the purpose of assisting buyers or sellers or prospective buyers or sellers in deciding the listing, offering, or sale price of the real property, for lending purposes in a transaction other than a federally related transaction, or for real property tax appeal purposes. This opinion or analysis is not governed by the Real Property Appraiser Act.

(3) A broker's price opinion or comparative market analysis prepared for an existing or potential lienholder originating, extending, renewing, or modifying a loan in a transaction other than a federally related transaction may not be used as the sole basis to determine the value of the real estate for the purpose of originating a loan secured by such real estate, and the person giving the opinion or analysis must be engaged directly by the lienholder or its agent. Such person shall have no duty to inquire as to any other basis used to determine such value.

81-885.17. Nonresident broker's license; nonresident salesperson's license; issuance; requirements; fingerprinting; criminal history record information check; reciprocal agreements.

(1)(a) A nonresident of this state who is actively engaged in the real estate business, who maintains a place of business in his or her resident regulatory jurisdiction, and who has

been duly licensed in that regulatory jurisdiction to conduct such business in that regulatory jurisdiction may, in the discretion of the commission, be issued a nonresident broker's license.

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

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

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

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

(4) An applicant for an original nonresident 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.

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

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

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

81-885.18. Application; refusal; hearing; decision.

(1) If the director of the commission, after an application in proper form has been filed with the commission, accompanied by the proper fee, refuses to accept the application, the director shall give notice of the fact to the applicant within twenty days after his or her ruling, order, or decision.

(2) Upon written request from the applicant, filed within thirty days after receipt of such notice by the applicant, the commission shall set the matter down for a hearing to be conducted within ninety days after receipt of the applicant's request.

(3) The hearing shall be at such time and place as the commission shall prescribe. At least twenty days prior to the date set for the hearing the commission shall notify the applicant and other persons protesting, and the notice shall set forth the reasons why the director refused to accept the application. Such written notice of hearing may be served by delivery personally to the applicant and protesters or by mailing the same by registered or certified mail to the last-known business address of the applicant and protesters.

(4) At the hearing the applicant shall be entitled to examine, either in person or by counsel, any and all persons protesting against him or her, as well as all other witnesses whose testimony is relied upon to substantiate any protest or denial of the application. The applicant shall be entitled to present such evidence, written and oral, as he or she may see fit and as may be pertinent to the inquiry.

(5) At the hearing all witnesses shall be duly sworn by the chairperson of the commission, or any member thereof, and stenographic notes of the proceedings shall be taken. Any party to the proceedings desiring a copy of the stenographic notes shall be furnished with a copy upon the payment to the commission of such fee as the commission shall prescribe, if the request is made within ten days after the date of any order issued by the commission.

(6) The commission shall render a decision on any application within sixty days after the final hearing on such application and shall immediately notify the parties to the proceedings, in writing, of its ruling, order, or decision.

81-885.19. License; form; broker's branch office; license; fee.

(1) The commission shall prescribe the forms of brokers' and salespersons' licenses.

(2) If a broker maintains more than one place of business within the state, he or she shall obtain a branch office license for each branch office so maintained by him or her. The commission shall issue a branch office license upon the payment of an annual fee to be established by the commission of not more than fifty dollars per license. The broker or an associate broker shall be the manager of a branch office.

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

81-885.20. Broker, salesperson; change in place of business or status; notify commission; fee.

(1) Should the broker change his or her place of business, he or she shall forthwith notify the commission in writing of such change.

(2) When a salesperson or associate broker leaves the employ of a broker, the employing broker shall immediately forward the license of such employee to the commission and shall furnish such information regarding the termination of employment as the commission may require.

(3) When a salesperson or associate broker transfers from one employing broker to another, when an associate broker changes his or her status from associate broker to that of broker, or when a broker changes his or her status to that of associate broker, a transfer fee to be established by the commission of not more than fifty dollars shall be paid to the commission.

81-885.21. Broker; separate trust account; notify commission where maintained; examination by representative of commission; broker entitled to money; when.

(1) Except as provided in subsection (7) of this section, each broker other than an inactive broker shall maintain in a bank, savings bank, building and loan association, or savings and loan association a separate, insured checking account in this state in his or her name or the name under which he or she does business which shall be designated a trust account in which all downpayments, earnest money deposits, or other trust funds received by him or her, his or her associate brokers, or his or her salespersons on behalf of his or her principal or any other person shall be deposited and remain until the transaction is closed or otherwise terminated unless all parties having an interest in the funds have agreed otherwise in writing. Such trust account may be either an interestbearing or a non-interest-bearing account. Any broker using an interest-bearing account shall comply with subsection (6) of this section.

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

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

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

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

(6) If the trust account is an interest-bearing account, as authorized under subsection (1) of this section, the interest from the interest-bearing account may be distributed or otherwise accrue only to nonprofit organizations that promote housing in Nebraska and that are exempt from the payment of federal income taxes. A broker may use an interest-bearing account for a transaction only if the use of such account for purposes of promoting housing in Nebraska has been approved by all parties whose money will be deposited into such account. The commission may further define policies and procedures for the processing of and distributions from interest-bearing trust accounts by rule and regulation.

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

81-885.22. Broker, failure to comply with separate bank accounts and trust account provisions; report to Attorney General; action by Attorney General; receiver.

Whenever it shall appear to the commission from any examination or report provided by the laws of this state that a broker has failed to comply with the provisions of section 81-885.21, or if any broker shall refuse to submit his or her books, papers, and affairs to the inspection of any examiner, the commission shall have reason to conclude that the trust account of such broker is in an unsafe or unsound condition and the commission shall forthwith submit a complete report to the Attorney General of all information available to it. An action may be brought by the State of Nebraska to enjoin such broker from engaging in or continuing such violation or doing any act or acts in furtherance thereof. In any such action an order or judgment may be entered awarding such preliminary or final injunction as may be deemed proper. In addition to all other means provided by law for the enforcement of a restraining order or injunction, the court in which such action is brought shall have power and jurisdiction to impound and appoint a receiver for the property and business of the defendant, including books, papers, documents, and records pertaining thereto or as much thereof as the court may deem reasonably necessary to prevent violations of the law or injury to the public through or by means of the use of such property and business. Such receiver, when so appointed and qualified, shall have such powers and duties as to custody, collection, administration, winding up, and liquidation of such property and business as shall, from time to time, be conferred upon him or her by the court.

81-885.23. Attorney General; special counsel; appoint; fees allowed; taxed as costs.

The Attorney General may appoint special counsel to prosecute the action as provided for in section 81-885.22, and all fees allowed to the receiver and to counsel so appointed shall be taxed as costs in such action as the court may direct.

81-885.24. Commission; investigative powers; disciplinary powers; civil fine; violations of unfair trade practices.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(22) Making any substantial misrepresentations;

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

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

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

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

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

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

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

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

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

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

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

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

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

81-885.25. Censure, revoke, or suspend license; impose civil fine; cease and desist order; hearing; notice; contents.

(1) Before the commission censures a licensee, imposes a civil fine, revokes or suspends a license, or issues a cease and desist order, the commission shall send to the licensee or violator a copy of the complaint by certified mail which contains the charges against the licensee or violator and, unless the licensee or violator waives the right to a hearing and has executed a consent order, give the licensee or violator a hearing on the matter.

(2) The licensee or violator shall have full authority to be heard in person or by counsel before the commission in reference to such charges. The commission shall, at least twenty days prior to the date set for hearing, notify the licensee or violator in writing of the date and place of the hearing. Such notice may be served by delivering it personally to the licensee or violator or by sending it by either registered or certified mail to the last-known business address of such licensee or any known address of the violator. If the licensee is an associate broker or a salesperson, the commission shall also notify the broker employing the licensee by mailing a copy of such notice to the broker's last-known business address.

81-885.26. Answer to complaint; when.

Within twenty days from the time of service of the complaint and notice the licensee may file his or her sworn answer thereto which shall contain all defenses which he or she intends to assert. No motions or other pleadings shall be authorized.

81-885.27. Hearing; witnesses; subpoenas; depositions.

In the preparation and conducting of the hearing, the director shall have power to issue and sign subpoenas to require the attendance and testimony of any witness and the production of any papers, books, or documents. The chairperson or any member of the commission may administer oaths, examine the witnesses, and take any evidence he or she deems pertinent to the determination of the charges. Any witness subpoenaed shall be entitled to the same fees as prescribed by law in judicial proceedings in the district courts of this state in civil actions and mileage at the rate provided in section 81-1176 for state employees, but the payment of such fees and mileage shall be paid out of and kept within the limits of the funds created from license fees. The party against whom such charges may be filed shall have the right to obtain from the director a subpoena for any witnesses which he or she may desire at such hearing. Depositions may also be taken and used as in civil cases in the district courts.

81-885.28. Refusal of witness to attend or testify; proceedings in district court.

(1) If any witness so subpoenaed shall refuse to attend the taking of a deposition or the hearing, or if attending shall refuse to testify, the commission may apply to the district court of the county in which the deposition is to be taken or in which the hearing is to be held for

an order compelling the attendance of the witness, the giving of testimony, and the production of books, papers, and documents.

(2) The application shall be by petition, setting forth:

(a) That due notice has been given of the time and place of attendance of the witness or the production of the books, papers, and documents;

(b) That the witness has been subpoenaed in the manner prescribed by section 81-885.27; and

(c) That the witness has failed and refused to attend or produce the papers required by subpoena before the commission, or officer taking the deposition in the cause or proceeding named in the subpoena, or has refused to answer questions propounded to him or her in the course of the hearing or deposition.

(3) The court, upon petition of the commission, shall enter an order directing the witness to appear before the court at a time and place to be fixed by the court in such order, the time to be not more than ten days from the date of the order, and then and there show cause why he or she has not attended, testified, or produced the books, papers, or documents before the commission. A certified copy of the order shall be served upon the witness.

(4) If at the show-cause hearing, it shall appear to the court that the subpoena was regularly issued by the director of the commission, the court shall thereupon enter an order that the witness appear before the commission or the officer taking the deposition at the time and place fixed in the order and testify or produce the required books, papers, or documents, and upon failure to obey such order the witness shall be dealt with as for contempt of court.

81-885.29. Findings and determination by commission; license revoked or suspended; when; censure; civil fine; stay of execution; probation.

After the hearing the commission shall state in writing, officially signed by the chairperson and attested to by the director, its findings and determination and its order in the matter. If the commission determines that the licensee has been guilty of any violation of the Nebraska Real Estate License Act or the rules and regulations of the commission or the violator has been guilty of a violation of section 81-885.03, the commission may revoke or suspend the license, enter an order censuring the licensee, or impose a civil fine on a licensee pursuant to section 81-885.10 or on a violator pursuant to section 81-885.03. The execution of a penalty of suspension may be stayed by the commission and the licensee may be placed on probation for the suspension period, after satisfactory completion of which his or her license shall be fully reinstated. Any violation of the act or the rules and regulations by the licensee during the period of probation shall cause the immediate execution of the suspension penalty.

81-885.30. Appeal; procedure.

An order of the commission which has become final may be appealed, and the appeal shall be in accordance with the Administrative Procedure Act.

81-885.31. Civil fines; distribution; collection procedure.

(1) All civil fines collected pursuant to the Nebraska Real Estate License Act shall be remitted to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska.

(2) Any civil fine imposed pursuant to the act which remains unpaid for more than sixty days shall constitute a debt to the State of Nebraska which may be recovered by the Attorney General, along with reasonable attorney's fees and court costs, in a proper form of action in the name of the state in the district court of the county in which the violator resides. The commission shall consider such debt to be grounds for denial, refusal to renew, or refusal to reinstate a license under the act or grounds for additional disciplinary action by the commission.

81-885.32. Repealed. Laws 1978, LB 361, § 14.

81-885.33. Subdivision real estate; sale or offer to sell; requirements.

It shall be unlawful for any person, partnership, limited liability company, or corporation to sell or offer for sale any real estate in a subdivision except by a broker and his or her employees duly licensed in this state.

81-885.34. Subdivision real estate; sale; subdivision certificate; application; contents; fee.

Prior to the time when such subdivision real estate is offered for sale, such person, partnership, limited liability company, or corporation shall make application for a subdivision certificate to the commission in writing on a form to be prescribed by the commission and approved by the Attorney General. Such application shall be accompanied by a filing fee of one hundred dollars plus twenty-five dollars for each one hundred lots or fraction thereof to be offered for sale. Such application shall contain the following information and supporting documents:

(1) The name and address of the applicant and whether the applicant is a person, partnership, limited liability company, or corporation;

(2) If the applicant is a partnership, the names and addresses of the individual members thereof;

(3) If the applicant is a limited liability company, the names and addresses of the individual members thereof;

(4) If the applicant is a corporation, the place of incorporation and the names and addresses of its officers and members of its board of directors;

(5) The legal description and area of the real estate to be offered for sale, including maps and recorded plats thereof showing the area involved;

(6) The name and address of the legal owner of the real estate to be offered for sale;

(7) A certified, audited financial statement fully and fairly disclosing the current financial condition of the developer;

(8) A statement of the condition of the title of the subdivided lands including encumbrances as of a specified date within thirty days of the application;

(9) Copies of the instruments by which the interest in the subdivided lands was acquired and a statement of any lien or encumbrances upon the title and copies of the instruments creating the lien or encumbrances, if any, with dates as to recording, along with the documentary evidence that any mortgagee or trustee of a deed of trust has subordinated his or her interest in the real estate to the interest of a purchaser of the real estate;

(10) A true statement of the terms and conditions on which it is intended to dispose of the real estate, together with copies of any contracts intended to be used, which contracts shall contain (a) a provision entitling the purchaser, if he or she has not seen the land, to an unconditional right of refund of all payments made under the contract if such right is exercised within fourteen days after inspecting the land and if inspection is made within a time provided in the contract which shall not be less than four months from the date of the contract and (b) a provision granting to the purchaser an unconditional right to rescind the contract for a period of fourteen days if he or she has not inspected the land within the time provided in the contract for inspection;

(11) A statement of the zoning and other governmental regulations affecting the use of the land to be sold or offered for sale disclosing whether or not such regulations have been satisfied; and

(12) A copy of an offering statement which sets forth the material facts with respect to the land to be offered or sold.

After receiving the application, the commission may require such additional information concerning the real estate as it deems necessary.

81-885.35. Subdivision real estate; investigation; expenses; certificate; conditions.

(1) The commission shall thoroughly investigate all matters relating to the application and may require a personal inspection of the real estate by a person or persons designated by it. All expenses incurred by the commission in investigating such real estate and the proposed sale thereof in this state shall be borne by the applicant and the commission shall require a deposit sufficient to cover such expenses prior to incurring the same.

(2) No application shall be approved by the commission unless the subdivider offers satisfactory proof of his or her ability to provide promised public improvements such as but not limited to water, sewer, gas, and streets. Satisfactory proof shall be in the form of performance bonds or other security.

(3) Obtaining a certificate of registration shall constitute sufficient contact with this state for the exercise of personal jurisdiction over such applicant in any action arising out of the applicant's activity in this state.

81-885.36. Subdivision real estate; application for certificate; approval; fee; renewal.

If the application is approved, the commission shall issue a certificate of registration to the applicant. After issuance of a certificate, an annual fee of fifty dollars plus ten dollars for each one hundred lots or fraction thereof computed on the number of lots in the original application shall be due and payable on or before January 1 of each year. Failure to remit annual fees when due shall automatically cancel such certificate, but otherwise such certificate shall remain in full force and effect if the commission determines from satisfactory investigation that such certificate should be renewed. Before issuing the renewal certificate each year, the certificate holder shall furnish to the commission such information as may be requested by the commission. If an investigation is required, the cost of making the investigation shall be paid by the certificate holder.

81-885.37. Subdivision real estate; instrument conveying an interest; recordable form; recording.

Any instrument conveying an interest in the subdivided real estate shall be in recordable form and the subdivider or buyer may record such instrument in the county where the real estate is located and in the office where deeds are recorded.

81-885.38. Subdivision real estate; representations that commission has inspected and approved; unlawful.

No broker or salesperson shall in any manner refer to the commission or any member or employee thereof in selling, offering for sale, or advertising or otherwise promoting the sale, mortgage, or lease of any such real estate, nor make any representation whatsoever that such real estate has been inspected or approved or otherwise passed upon by the commission or any state official, department, or employee.

81-885.39. Subdivision real estate; cease and desist orders.

The director, with the consent of the commission, shall have the power to issue a cease and desist order upon determination that sections 81-885.33 to 81-885.38 have been or are about to be violated.

81-885.40. Subdivision real estate; failure to comply with sections; contract void; repayment of money with interest.

Failure on the part of any person, partnership, limited liability company, or corporation to comply with sections 81-885.33 to 81-885.39 shall render any contract (1) entered into in this state or (2) arising out of contacts between the purchaser and subdivider within this state void and unenforceable, and any money paid under such contract to the subdivider, together with interest at the rate of six percent per annum from date of such payment, may be recovered in an action at law brought in the county where the cause of action or some part thereof arose.

81-885.41. Subdivision real estate; industrial or commercial properties.

Sections 81-885.33 to 81-885.40 shall not apply to the sale or lease of lots in a subdivision for industrial or commercial properties.

81-885.42. Subdivision real estate; sales of twenty-five or more lots.

Sections 81-885.33 to 81-885.40 shall not apply to sale or lease of real estate not pursuant to a common promotional plan to offer or sell twenty-five or more lots in a subdivision.

81-885.43. Violations; Attorney General; maintain action.

Except as provided in subsection (2) of section 81-885.31, whenever, in the judgment of the commission, any person has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of the Nebraska Real Estate License Act, the Attorney General may maintain an action in the name of the State of Nebraska, in the district court of the county in which such violation or threatened violation occurred, to abate and temporarily and permanently enjoin such acts and practices and to enforce compliance with the act. The plaintiff shall not be required to give any bond nor shall any court costs be adjudged against the plaintiff.

81-885.44. Complaint for violations of act.

The commission by and through its director may prefer a complaint for violation of the Nebraska Real Estate License Act.

81-885.45. Acting without license or certificate; penalty.

Any person or subdivider acting as a broker, salesperson, or subdivider without having first obtained the required license or subdivision certificate or while his or her license or subdivision certificate is under suspension shall be guilty of a Class II misdemeanor.

81-885.46. License or certificate under prior law; renewal.

Any real estate license or subdivision certificate issued prior to September 2, 1973, shall, for purposes of renewal, be considered to have been originally issued under the Nebraska Real Estate License Act.

81-885.47. Repealed. Laws 2009, LB 30, § 17.

81-885.48. Terms, how construed.

Except for purposes of section 81-885.04, the terms employ, employed, employer, or employee as used in the Nebraska Real Estate License Act shall not necessarily be construed to imply an employer and employee relationship. The use of such terms shall not prohibit the establishment of any independent contract or other relationship between a business and an individual, between individuals, or between businesses, including an employer and employee relationship.

81-885.49. Continuing education and training; purpose.

The purpose of sections 81-885.49 to 81-885.54 is to establish requirements for continuing education and training of real estate brokers and salespersons who are licensed in order to maintain and improve the quality of real estate services provided to the public.

81-885.50. Continuing education and training; terms, defined.

As used in sections 81-885.49 to 81-885.54, unless the context otherwise requires:

(1) Commission shall mean the State Real Estate Commission;

(2) Licensee shall mean a natural person who is licensed by the commission as a real estate broker or salesperson; and

(3) Two-year period shall mean twenty-four months commencing on January 1 following either the date of licensing of the real estate broker or salesperson or March 8, 1985, whichever is later, and each succeeding twenty-four-month period.

81-885.51. Continuing education and training; evidence of completion.

In each two-year period, every licensee shall complete twelve hours of approved continuing education activities and six hours of broker-approved training. Evidence of completion of such continuing education and training activities for the two-year period shall be submitted to the commission pursuant to rules and regulations adopted and promulgated by the commission.

81-885.52. Continuing education and training; certify activities.

(1) The commission shall certify as approved continuing education activities those courses, lectures, seminars, or other instructional programs which it determines would protect the public by improving the competency of licensees. The commission may require descriptive information about any continuing education or training activity and refuse approval of any continuing education or training activity which does not advance the purposes of sections

81-885.49 to 81-885.54. The commission shall not approve any provider of continuing education or training courses, lectures, seminars, or other instructional programs unless such provider meets the standards established by the commission.

(2) The commission shall certify the number of hours to be awarded for participation in an approved continuing education activity, based upon contact or classroom hours or other criteria prescribed by rule and regulation of the commission.

(3) The commission may certify the number of hours to be awarded for successful completion of a course delivered in a distance education format, based upon the number of hours which would be awarded in an equivalent classroom course or program or other criteria prescribed by rule and regulation of the commission.

81-885.53. Continuing education and training; licensee; requirements.

Except for inactive licensees, the commission shall not renew a license or issue a new license to any licensee who has failed to comply with the requirements of sections 81-885.49 to 81-885.54. Inactive licensees may renew their licenses at the end of the two-year period without having completed the hours of continuing education and training activities required by section 81-885.51 for each two-year period. Inactive licensees shall not be activated until the licensee has satisfactorily completed the total number of deficient hours of continuing education activities and filed evidence of such completion with the commission, except that no inactive licensee shall be required to make up more than the number of hours of continuing education required by section 81-885.51 for a two-year period.

81-885.54. Continuing education and training; rules and regulations.

The commission shall adopt and promulgate rules and regulations necessary for the effective administration of sections 81-885.49 to 81-885.54 pursuant to the Administrative Procedure Act. Such rules and regulations may include, but not be limited to, the establishment of minimum standards for schools, courses, and instructors.

81-885.55. Errors and omissions insurance; commission; duties; certificate of coverage; required; when; group plan unavailable at a reasonable premium; effect.

(1) Every licensee under the Nebraska Real Estate License Act, except an inactive broker or salesperson, shall have errors and omissions insurance to cover all activities contemplated under the act. The commission shall make the errors and omissions insurance available to all licensees by contracting with an insurer for a group policy after competitive bidding. Any group policy obtained by the commission shall be available to all licensees with no right on the part of the insurer to cancel any licensee. Licensees may obtain errors and omissions insurance independently if the coverage complies with the minimum requirements established by the commission.

(2) The commission shall determine the terms and conditions of coverage required under this section, including the minimum limits of coverage, the permissible deductible, and permissible exemptions. Each licensee shall be notified of the required terms and conditions at least thirty days prior to the annual license renewal date. A certificate of coverage showing compliance with the required terms and conditions shall be filed with the commission by the annual license renewal date by each licensee who does not participate in the group program administered by the commission.

(3) If the commission is unable to obtain errors and omissions insurance coverage to insure all licensees who choose to participate in the group program at a reasonable premium not

to exceed five hundred dollars, the errors and omissions insurance requirement of this section shall not apply during the year for which coverage cannot be obtained.

81-885.56. **Team leader.**

A team leader shall be responsible for supervising the real estate activities of his or her team performed under the Nebraska Real Estate License Act subject to the overall supervision by the designated broker of the team leader and team members.

NEBRASKA REAL ESTATE COMMISSION

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Title 299 - NEBRASKA REAL ESTATE COMMISSION

Chapter 1 - LICENSES; APPLICATIONS; TERMS, DEFINED; EXAMINATIONS; SURRENDER, SUSPENSION OR REVOCATION; RENEWAL; CANCELLATION; REINSTATEMENT; TRANSFER OF LICENSE.

001 All applications for real estate broker's or salesperson's original licenses must be filed in the Office of the Real Estate Commission and the applicant approved in accordance with the Nebraska Real Estate License Act prior to the date of examination. All applications to re-take an examination must be filed in the Office of the Real Estate Commission and the applicant re-approved in accordance with the Nebraska Real Estate License Act prior to the date of re-examination.

002 An applicant shall forfeit the examination fee when said applicant fails to appear to take the examination for which said applicant has been scheduled, unless said applicant has given the required cancellation notice as contracted by the Real Estate Commission with the examination provider.

003 Each original application for a broker's or salesperson's original license must include the Social Security Number of the applicant and be accompanied by a passport-type picture of the applicant taken within the past year.

004 Persons desiring to secure a broker's license must first file with the Commission such application for a broker's license and pass a written examination. Written examination includes examinations completed by paper and pencil and computerized or electronic examinations as contracted for by the Real Estate Commission.

004.01 The words "have first served actively for two years," as provided in Subsection (3) of Section 81-885.13 of the Nebraska Real Estate License Act, shall mean that the applicant must have devoted his or her full-time experience to activities requiring the holding of a salesperson's license or, if less than full time, for a period of time equal to two years of full-time experience.

004.02 Courses of study provided in Section 81-885.13 of the Nebraska Real Estate License Act shall be courses of study approved by the Real Estate Commission and which are offered by (1) Nebraska accredited baccalaureate degree granting institutions and Nebraska or non-Nebraska institutions offering programs from which credits can be transferred to an accredited Nebraska baccalaureate degree granting institution, (2) Nebraska Community Colleges, (3) Special Institutes relating to real estate which Institutes are approved by the Real Estate Commission and (4) Proprietary Schools as provided in Section 81-885.13(6) of the Nebraska Real Estate License Act; Provided, the Real Estate Commission may give credit for similar courses taken at similar institutions in other states.

004.03 Courses of study provided for in Section 81-885.13 of the Nebraska Real Estate License Act which are offered in a distance education format must be approved by the Real Estate Commission and certified by the Association of Real Estate License Law Officials, with the exception that such certification will not be required of courses in a correspondence study format that held the certification by the Association of Real Estate License Law Officials and were in good standing as of January 1, 2012, and such courses shall remain exempt from Association of License Law Officials certification through January 1, 2017.

004.04 After January 1, 2017, courses of study provided for in Section 81-885.13 offered in correspondence study format shall be certified as to delivery method by the Real Estate

Commission. Such certification shall include: learning objectives stated through performance terms, required levels of cognition higher than rudimentary knowledge, intellectual interactions with the content, and a combination of purposeful formative and summative assessments.

004.05 A student must complete the distance education course within one year of the date of enrollment. Distance education as used in this subsection shall mean courses in which instruction does not take place primarily by means of real time audio and visual interaction between teacher and student.

005 All examinations will be given under the supervision of the Director or his or her representative. The examination will be given no less than monthly unless otherwise ordered by the Commission. The Commission will inform applicants of approval to sit for the examination. In conducting the examination, the Commission may utilize professional testing services.

006 The Commission shall pass upon the granting of broker's and salesperson's licenses and upon applications for reciprocal and non-resident licenses.

007 An associate broker or salesperson, upon surrendering his or her license or when an order of suspension or revocation of his or her license becomes final, shall have their license forwarded by the employing broker at once to the Commission. If such license is that of a broker, such broker shall forward to the Commission with his or her own broker's license, all salesperson's or associate broker's licenses in his or her possession or in his or her office and shall be responsible for all missing licenses of his or her salespersons or associate brokers.

008 Failure to make application for the renewal of a license prior to December 1st of the year the licensee's renewal is due as defined by Section 81-885.14 will automatically cancel the license of a real estate broker or a real estate salesperson as of December 31st of that year and such real estate broker or real estate salesperson is prohibited from engaging in the real estate business in the State of Nebraska until such license has been renewed in accordance with Section 81-885.14 of the Nebraska Real Estate License Act.

009 Any licensee whose license has been canceled for failure to pay the renewal fee when due must comply with all requirements of a new applicant and comply with Section 81-885.53 of the Nebraska Real Estate License Act, if applicable, in order to secure reinstatement of his or her license, except as provided in Section 81-885.14(1) of the Nebraska Real Estate License Act.

010 Any inactive broker or salesperson may renew his or her license by making application, before December 1st by submitting the renewal fee, together with the completed renewal application on which he or she has noted his or her present "Inactive Status". Any licensee whose license has been renewed on such "Inactive Status" shall not be permitted to engage in activities which require a real estate license under the Nebraska Real Estate License Act until such time as he or she fulfills the requirements for active status. Any license which has been inactive for a continuous period of more than three years shall be reinstated only after the licensee sits for and passes the applicable licensing examination in use at the time of activating the license and has made-up the required continuing education as set forth in Section 81-885.53 of the Nebraska Real Estate License Act.

011 All licensees who enter the armed service or are called to active duty after issuance of a real estate license are not required to pay the renewal fee or complete the continuing education requirement during the period of service. Upon discharge from said service the license shall be reinstated if the date of discharge is within three years of the date of beginning such service. In order to be eligible for reinstatement upon discharge from said service, the licensee may make application for said reinstatement within six months of the date of discharge as long as the date of discharge is within three years of the date of beginning such service. In any case of reinstatement, the licensee shall show proof, in the form of a photostatic copy of his or her discharge or papers of separation, that his or her discharge was other than dishonorable. If date of discharge is after three years from the date of beginning such service, the licensee shall be required to meet all the requirements for active status including the successful completion of the current real estate examination before the license will be reinstated.

012 When a licensee is transferring his/her license, the licensee shall not be deemed transferred until all required documents, fees and information have been received by the Commission. The licensee will be considered to be on inactive status from the date employment is terminated until the transfer is completed.

Laws 1973, LB 68 §7; RS 1943, §81-885.07(5) R.S. Supp., 1974. Effective date September 2, 1973.

Title 299 - NEBRASKA REAL ESTATE COMMISSION

Chapter 2 - BUSINESS PRACTICES; EMPLOYMENT OF SALESPERSON OR ASSOCIATE BROKER; ADVERTISING; SOLICITING LISTINGS OR REPRESENTATION; TRANSMISSION OF WRITTEN OFFERS TO OWNER; CLOSING REAL ESTATE TRANSACTIONS; GOOD FUNDS; REPRESENTING ANOTHER BROKER; RETENTION OF SIGNS; BRANCH OFFICES.

001 It shall be presumed that a duly licensed broker whose principal business is other than that of a real estate broker is unable to supervise licensed employees, and said broker shall not be allowed to employ a real estate salesperson or an associate broker until such presumption is overcome by satisfactory evidence to the contrary.

002 Each broker shall record with the Commission the type of business form under which the broker is doing business, i.e., sole proprietorship, general or limited partnership, corporation, limited liability company, or any other entity authorized by law under which a broker may be operating a real estate business, and the legal name of such entity if it is not a sole proprietorship. A broker may operate only under one business entity. In addition, the broker shall record with the Commission all names under which the broker will be conducting business. All trade names shall be recorded with the Commission only after registration with the Secretary of State's Office.

003 Advertising shall include all forms of identification, representation, promotion, and solicitation disseminated in any manner and by any means of communication to the public for any purpose related to licensed real estate activity. All advertising shall be under the direct supervision of the broker, and prominently display the name the broker is conducting business as recorded with the Commission in a way that is conspicuous, discernible, and easily identifiable by the public. Advertising which is contrary to Sections 003 to 006 of these regulations shall constitute misleading or inaccurate advertising under Section 81-885.24(2) of the Nebraska Real Estate License Act.

003.01 Each broker who is operating as an independent broker or sole proprietorship, without being a corporation or limited liability company or filing a trade name, shall advertise in his or her name as recorded with the Commission and include the word(s) "Broker" or "Real Estate Broker", e.g. Sara Stone, Broker or Sara Stone, Real Estate Broker.

003.02 Each broker, when operating under a franchise, shall clearly set forth in all advertising, in addition to the franchise name, the name under which the broker is doing business as recorded with the Commission and, if applicable, registered with the Secretary of State.

003.03 Each broker who is operating under one or more trade names as registered with the Secretary of State and recorded with the Commission will advertise in the trade name(s) as recorded. The broker is not required to identify all trade names on each advertisement but must advertise, without exception, in the name of one of the trade names as registered with the Secretary of State and as recorded with the Commission. This section applies to independent brokers, sole proprietorships, franchises, corporations, partnerships, limited liability companies, or any other entity authorized by law under which a broker may be operating a real estate business.

003.04 Each broker who is operating under a corporation will advertise in the name of the corporation as registered with the Secretary of State and recorded with the Commission. If the corporation also registers one or more trade names with the Secretary of State, such trade name(s) shall be recorded with the Commission, and the corporation may advertise in either the corporate name or the trade name(s).

003.05 Each broker who is operating under a limited liability company will advertise in the name of the limited liability company as registered with the Secretary of State and recorded with the Commission. If the limited liability company also registers one or more trade names with the Secretary of State, such trade name(s) shall be recorded with the Commission, and the limited liability company may advertise in either the limited liability company name or the trade name(s).

003.06 If registered and recorded names have in their titles, "Co.", "Inc." or the like, such designations may be excluded from advertising, provided that such exclusion is likely to neither deceive nor confuse the public with regard to the identity of the real estate business being advertised.

003.07 Real estate affiliate and team advertising:

003.07a Team advertising shall always include the team name as recorded with the team's designated broker.

003.07b Team advertising shall prominently display the name which the broker supervising the team conducts business under as recorded with the Commission adjacent to the team name and similar or greater in size and visibility than the team name.

003.07c Advertising featuring the name of an affiliated associate broker or salesperson shall prominently display the name which the broker supervising the affiliated salesperson or associate broker conducts business under as recorded with the Commission adjacent to affiliated licensee's name and similar or greater in size and visibility than the affiliated licensee's name.

003.08 Real estate team names:

003.08a Must always include the word "team" or "group" as part of the team name.

003.08b Real estate team names shall not include the words:

(i) Realtors,
(ii) Company,
(iii) Corporation,
(iv) Corp.,
(v) Inc.,
(vi) LLC,
(vii) Inc.,
(viii) LP or LLP,
(ix) LP or LLP,
(x) or similar words suggesting the team is a separate real estate brokerage or company.

003.08c Real estate team names may include the words "real estate" or "realty" only if such terms are immediately followed by the word "team" or "group"

004 A broker shall not advertise to sell, buy, exchange, rent, or lease real property in a manner indicating that the offer to sell, buy, exchange, rent, or lease such real property is being made by a private party not engaged in the real estate business, and no advertisement shall be inserted in any publication where only a post office box number, telephone number, or street address appears.

005 Every salesperson, associate broker, and broker is prohibited from advertising under his or her own name the offering for sale, purchase, or exchange of any real property unless he or she is the owner thereof. Every licensee, when advertising his or her own property for sale, purchase, or exchange must disclose in such advertising that he or she is a licensed real estate salesperson, associate broker, or broker.

006 Every licensee is prohibited from soliciting or attempting to secure listings or to represent a purchaser or tenant without first advising the owner or prospective purchaser or tenant that he or she is a licensee, and that he or she is engaged in the real estate business.

007 In the event that more than one written offer is made before the owner has accepted an offer and closed on that offer, any other written offer presented to the licensee, whether by a prospective purchaser, an agent of a prospective purchaser, or a cooperating broker, shall be transmitted forthwith to the owner for his or her consideration.

008 A salesperson or associate broker shall not participate in the closing of any real estate transaction except under the supervision and with the consent of the broker under whom such salesperson or associate broker is licensed. A broker shall not authorize any person who is not licensed as a salesperson or associate broker to conduct the closing of a real estate transaction. This shall not prevent an unlicensed person, such as a closing secretary, from doing the preparatory work for the closing, subject to the approval of the licensee conducting the closing; and does not apply to real estate closing agents authorized under Neb. Rev. Stat. 76-2,121 et seq.

009 A broker closing a real estate transaction shall be in compliance with Neb. Rev. Stat. Sections 76-2,121 through 76-2,123.

010 The consent required from the employing broker for an associate broker or salesperson to represent another real estate broker or to accept a commission or other valuable consideration from anyone other than the employing broker as set forth in Neb. Rev. Stat. 81-885.24(7) and (8), respectively, shall be given in writing by the broker in advance of the licensee representing the other broker or the acceptance of the commission or other valuable consideration from the other party. A copy of the consent shall be maintained by the employing broker for five years following the date of such consent.

011 The word "Placing..." as used in 81-885.24(11) of the Nebraska Real Estate License Act shall also be construed to mean the retention of such sign. Written authorization is required to place and retain a sign, and the sign must be removed within a reasonable period of time after the termination of such written authorization.

012 A branch office is any location, other than the main office of a real estate business, where: 1)

one or more licensees spend a substantial amount of time transacting real estate business requiring a license; and 2) such licensee(s) advertises that they can be contacted for real estate business purposes; and 3) such licensee(s) maintains what would, in the normal business context, be considered a business office. Nothing in this Section should be construed to include the advertising of a home phone number and address by a licensee in the alphabetical listing of subscribers section, or white pages, of the telephone directory to come within the branch office definition. A model home utilized as an office on a temporary basis would not be considered a branch office.

013 A real estate broker, who is not otherwise involved in the real estate transaction before a written agreement has been entered into for the purchase, sale, or exchange of the real estate, may close the real estate transaction as long as the broker complies with all provisions of the Nebraska Real Estate License Act and Rules of the Commission.

013.01 For the purpose of 013 above, the word "close" refers to services as an independent party to perform the ministerial actions necessary to complete the transaction, which may include the receipt and disbursement of funds. When providing only the above ministerial actions, the broker shall disclose, in writing, to all parties to the transaction, prior to the closing of the transaction, that the broker is only providing this ministerial service and is not acting as an agent for either party. The disclosure shall be signed by both parties and a copy shall be maintained in accordance with 299 NAC 3-001.

013.02 Whenever a broker participates in a real estate transaction before a written agreement has been entered into for the purchase, sale, or exchange of real estate, the broker must fulfill the applicable obligations of a broker to the seller and the buyer in accordance with the provisions of the Nebraska Real Estate License Act and the Rules of the Commission.

014 In the event that a team or group leader's license is suspended or revoked, unless dissolved, the team or group must forthwith designate a new leader and provide the name of the new group leader to the team's designated broker. If a team or group member for whom the team or group is named has his or her license suspended or revoked the team must forthwith designate a new name for the team or group which does not use or incorporate the revoked or suspended licensee's name. This provision shall not apply to periods when a team or group member for whom the team or group is named is serving his or her suspension on probation.

015 The operative date of the amendments found in sections 003 and 014 of this chapter shall be July 1, 2017.

Laws 1973, LB 68, §7; RS 1943, §81-885.07 (5) R. S. Supp., 1974. Effective date September 2, 1973.

Laws 1994, LB 1275, §3; RS 1943, §76-2,123 R.S. Cum. Supp., 1994. Effective date July 16, 1994.

Laws 2016, LB678, §3: RS 1943, §81-885.56 R.S. Cum. Supp., 2016, Effective Date, October 1, 2016.

Laws 2016, LB678, §4: RS 1943, §81-885.24 R.S. Cum. Supp., 2016, Effective Date, October 1, 2016.

Title 299 - NEBRASKA REAL ESTATE COMMISSION

Chapter 3 - RECORDS; TRUST ACCOUNTS; REQUIREMENTS; DISPOSITION OF EARNEST DEPOSITS.

001 A designated broker shall maintain and preserve records related to all licensed activity under the broker's supervision as provided below:

001.01 In instances where there is a real estate transaction which is consummated, records relating to the transaction shall be preserved for five years following its consummation.

001.02 In instances where a written listing or other agency agreement, is entered into, but no real estate transaction is consummated, records relating to such listing or agency shall be maintained for five years after the agency agreement is terminated or expires.

001.03 In instances where a fully executed real estate purchase contract, lease, or other agreement creating or transferring title or an interest in real estate is entered into, but such contract or agreement is not consummated, records relating to the contract or agreement shall be maintained for five years after the agreement is terminated, expires, or ends through breach or default.

001.04 In instances where a broker's price opinion or comparative market analysis is performed for compensation other than a real estate commission or brokerage fee charged or paid for brokerage services rendered in connection with the sale of real estate, records related to such opinion or analysis shall be maintained for five years after such opinion or analysis is completed.

001.05 Records of team members and team leaders as required by Neb. Rev. Stat. §81-885.24(32) shall be maintained for five years after such team dissolves or cease to engage in or hold itself out as engaging in real estate activity.

002 Every broker shall maintain a bookkeeping system which will accurately and clearly disclose full compliance with the law relating to the maintaining of trust accounts.

003 Funds referred to in Subsection (1) Section 81-885.21 of the Nebraska Real Estate License Act shall include but not be limited to earnest money deposits, money received upon final settlements, rents, security deposits, money advanced by a buyer or seller for the payment of expenses in connection with the closing of real estate transactions and money advanced by a broker's principal for expenditures on behalf of such principal.

004 Funds deposited in the trust account will necessarily include monies which will ultimately belong to the broker but such monies shall be separately identified in his or her trust account records and shall be paid to the broker by check drawn on the trust account after the same are due the broker. The fact that a trust account contains money belonging to the broker does not constitute "commingling the money or other property of his or her principals with his or her own," as prohibited by Subsection (4) Section 81-885.24 of the Nebraska Real Estate License Act.

005 Earnest money deposits and other deposits relating to the sale of real estate shall be kept in a separately identified trust account and all other trust funds may be deposited in another separately identified trust account.

006 In the case of cooperative sales between brokers, the selling broker, unless all parties to the transaction with an interest in the funds have agreed otherwise in writing, shall deposit the earnest money payment in his or her real estate trust account within 72 hours or before the end of the next banking day, after an offer is accepted, in writing, and then forthwith transfer such earnest money deposit to the listing broker by issuing a check drawn on the selling broker's trust account.

006.01 If for any reason the earnest money check tendered to the selling broker is returned by the financial institution unpaid, the selling broker shall forthwith notify the listing broker, who shall immediately refund from his or her trust account the earnest money deposit which has been tendered by the selling broker.

007 In the event of a dispute over the return or forfeiture of any earnest deposit held by a broker, the broker shall continue to hold said deposit in his or her trust account until he or she has a written release from all parties consenting to its disposition or until a civil action is filed to determine its disposition at which time the broker may pay it into court.

007.01 In the absence of a pending civil action, it shall not be grounds for disciplinary action where a broker returns an earnest money deposit to a purchaser, where the return of such deposit is based upon a good faith decision that a contingency in the purchase agreement has not been met, notwithstanding the failure of the seller to agree to said return.

007.02 In the absence of a pending civil action and upon the passage of one-year's time from the date of an accepted offer to purchase, it shall not be considered grounds for disciplinary action for a broker to pay out an earnest money deposit to a seller when the payment of such earnest money deposit has been based on a good faith decision that the buyer has abandoned any claim to such earnest money deposit.

Laws 1973, LB 68, §7; RS 1943, §81-885.07 (5) R. S. Supp., 1974. Effective date September 2, 1973.

Title 299 - NEBRASKA REAL ESTATE COMMISSION

Chapter 4 - SUBDIVISIONS; ADVERTISING; DESIGNATED NEBRASKA REAL ESTATE BROKER; FINANCIAL STATEMENT REQUIREMENTS.

001 All advertising used in Nebraska, by a subdivider of subdivided lands in promoting the sale of subdivided lands, must contain the name and address of the designated Nebraska real estate broker representing the subdivider.

002 Every designated broker promoting the sale of subdivided lands shall submit a statement on forms provided by the Commission, accepting said designation and acknowledging responsibility for the subdivider's actions in this state.

003 The certified audited financial statement required by Neb. Rev. Stat. Section 81-885.34(7) shall be prepared in accordance with generally accepted accounting principles and shall be the report of an independent certified public accountant, which report shall contain: a balance sheet reporting assets, liabilities, capital and surplus; cash flows; and a statement of changes in capital and surplus including all notes, references, and explanations of the accountant.

Laws 1973, LB 68, §10; RS 1943, §81-885.07 (5) R. S. Supp., 1974. Effective date September 2, 1973.

Title 299 - NEBRASKA REAL ESTATE COMMISSION

Chapter 5 - DISCIPLINARY MATTERS; COMMISSION DISPUTES; DISCUSSION BY COMMISSIONERS; ACTIONS DEMONSTRATING NEGLIGENCE, INCOMPETENCY, OR UNWORTHINESS.

001 The Commission will not enter into disputes between licensees over payment or division of commissions.

002 It shall be improper for a Real Estate Commissioner to discuss with a licensee or any other person, except members of the Commission staff, any matter of a disciplinary nature which is set for hearing by the Commission.

003 Actions demonstrating negligence, incompetency, or unworthiness under Section 81-885.24(29) of the Nebraska Real Estate License Act shall include but not be limited to the following:

003.01 Preparing a land contract or trust deed for use in closing a real estate transaction without each separate land contract or trust deed being approved by an attorney.

003.02 Conspiring with an applicant to represent to any lender, guaranteeing agency, or any other interested party, either verbally or through the preparation of false documents, an amount in excess of the true and actual sale price of the real estate or terms differing from those actually agreed upon.

003.03 Permitting a salesperson or associate broker to conduct a real estate business under a broker's name or under the name recorded with the Commission in which the broker is doing business when in fact said broker is not operating said real estate business.

003.04 Failure to make known, in writing, to any purchaser or seller any interest the licensee has in the property he or she is buying or selling. If the licensee has any interest in the property for sale, said written disclosure shall take place prior to the buyer becoming obligated to purchase the property. In a situation where a licensee is purchasing property for themselves or for an entity in which they have any interest, said written disclosure by the licensee shall take place prior to the seller becoming obligated to sell such property. Said written disclosure shall be signed and dated by the other party. A copy of the signed and dated disclosure shall be maintained by the licensee for five years from the date of the receipt by the other party. In a case where the subject property is listed by a real estate broker, such disclosure may be maintained in the transaction file, in accordance with 299 NAC 3-001.

003.05 Failure to timely disclose, in writing, the acceptance, giving, or charging of any commission, rebate, or direct profit on an expenditure made for a principal as set forth in Neb. Rev. Stat. 81-885.24(6). Said written disclosure shall take place no later than at the time the principal agrees to the expenditure resulting in the commission, rebate, or direct profit. A copy of said written disclosure shall be delivered to and signed and dated by the principal. A copy of the signed and dated disclosure shall be maintained in the transaction file in accordance with 299 NAC 3-001.

003.06 Failure of a licensee, if being compensated by more than one party, to disclose this fact, in writing, to all parties. Said written disclosure shall be signed and dated by all parties prior to either party becoming obligated to complete the transaction. A copy of the signed and dated disclosure shall be maintained in the transaction file in accordance with 299 NAC 3-001.

003.07 Failure of a licensee to comply with the requirements set forth in Neb. Rev. Stat. Sections 76-2401 - 76-2430.

003.08 Failure to disclose, in writing, in accordance with Neb. Rev. Stat. Sections 76-2401 through 76-2430, the fact that said licensee is acting in the dual capacity of agent and principal in a transaction as set forth in Neb. Rev. Stat. Section 81-885.24(9). Said written disclosure shall be signed and dated by the other principal to the transaction. A copy of the signed and dated disclosure shall be maintained in the transaction file in accordance with 299 NAC 3-001.

003.09 Failure to obtain the informed written, signed, and dated consent of all parties involved in a transaction prior to a licensee acting for more than one party in the transaction. Informed written consent means that the licensee must obtain the written agreement of said parties, as well as the licensee's employing broker, prior to acting in such a manner. A copy of said informed written consent shall be signed, dated, and maintained in the transaction file in accordance with 299 NAC 3-001. If no transaction results then the informed written consent shall be maintained by the licensee's employing broker for five years after the date of the agreement.

003.10 Failure of the licensee to identify in writing to the seller-client, or to a seller-customer if offered pursuant to Neb. Rev. Stat. 76-2421 (4) (b), at the time the offer is presented and accepted, those categories of costs the seller will be expected to pay at closing. At the same time, the licensee shall prepare a written estimate of the costs the seller will be expected to pay at closing, to the extent the necessary cost information is reasonably available. Said written information shall be signed and dated by the seller, and a copy of the signed and dated document(s) shall be maintained in the transaction file in accordance with 299 NAC 3-001. This subsection shall not apply to the sale of new construction; lots; agricultural property; commercial property, including residential property with five or more dwelling units; or to third-party relocation companies acting as sellers. For the purposes of this subsection, the term "agricultural property" shall mean property zoned agricultural by a county in which any part of the property is located, or, if a county does not zone land agricultural, then property any part of which is assessed as agricultural property by a county assessor.

003.11 Failure of the licensee to identify in writing to the prospective purchaser-client, or to a purchaser-customer if offered pursuant to Neb. Rev. Stat. 76-2421 (3) (b), at the time an offer is written by the purchaser or a counter offer is accepted by the purchaser, those categories of costs the purchaser will be expected to pay at closing. At the same time, the licensee shall prepare a written estimate of the costs the purchaser will be expected to pay at closing, to the extent the necessary cost information is reasonably available. Said written information shall be signed and dated by the purchaser. A copy of the signed and dated

document shall be given to the purchaser and, when a transaction results, one copy

shall be maintained in the transaction file in accordance with 299 NAC 3-001. This subsection shall not apply to the sale of land or a lot or lots to an entity or individual representing itself, himself or herself as a builder or developer; agricultural property; commercial property, including residential property with five or more dwelling units; or to third-party relocation companies acting as purchasers. For the purposes of this subsection, the term "agricultural property" shall mean property zoned agricultural by a county in which any part of the property is located, or, if a county does not zone land agricultural, then property any part of which is assessed as agricultural property by a county assessor.

003.12 Failure without just cause to surrender unto the rightful owner, upon demand, any document or instrument coming into his or her possession.

003.13 Accepting other than cash or an immediately cashable check as earnest money unless such fact is communicated to the owner prior to his or her acceptance of the offer to purchase, and such fact is shown in the earnest money receipt. In the case of a cooperative sale in which the buyer offers a promissory note as an earnest money deposit, the note should be made payable to the listing broker or should be endorsed without recourse by the selling broker to the listing broker. The promissory note shall be delivered to the listing broker with the offer.

003.14 Failure to deposit any funds received as an earnest money deposit within 72 hours or before the end of the next banking day, after an offer is accepted, in writing, unless otherwise provided in the purchase agreement. In the event an offer is not accepted, said earnest money deposit shall be returned forthwith.

003.15 Withholding earnest money when the purchaser or seller is rightfully entitled to the money; provided, a broker may retain funds to cover expenses he or she has prepaid for a purchaser or seller from the broker's funds.

003.16 Advising against the use of the services of an attorney in any real estate transaction.

003.17 Failure to produce any document, book, or record in the licensee's possession, or under his or her control, concerning any real estate transaction under investigation by the Commission.

003.18 Failure to reduce an offer to writing where a prospective purchaser requests such offer be submitted when the licensee is: the limited seller's agent for the property; the prospective purchaser's limited buyer's agent; or the dual agent of the seller and the prospective purchaser.

003.19 Failure by any licensee to supervise persons hired to assist the licensee in his or her licensed real estate activities.

003.20 Failure to disclose, in writing, to a buyer, at or prior to the time the buyer signs an Offer to Purchase, an adverse material fact regarding the condition of a parcel of real estate of which a broker or salesperson has knowledge. Said written disclosure shall be signed and dated by the buyer, and a copy of the signed and dated disclosure shall be maintained in the transaction file on that parcel of real estate in accordance with 299 NAC 3-001. An adverse material fact is one which significantly affects the desirability or value of the property, and which is not reasonably ascertainable or known to the buyer.

003.21 Failure by a designated or employing broker to return: (a) a salesperson's or associate broker's license to the Real Estate Commission within fifteen days of the salesperson's or associate broker's request for transfer of his or her license; or (b) his or her broker's license, an associate broker's license, a salesperson's license, or a branch office license to the Real Estate Commission within fifteen days of the Real Estate Commission's request.

003.22 Failure by a designated or employing broker to supervise his or her associate brokers and salespersons.

003.23 Failure by the agent of the seller to assure that a copy of the Seller Property Condition Disclosure Statement is delivered to the purchaser or to the agent of the purchaser on or before the effective date of any contract which binds the purchaser to purchase the residential real property.

003.24 Failure by the agent of a purchaser to assure that a copy of the Seller Property Disclosure Statement is delivered to the purchaser on or before the effective date of any contract which binds the purchaser to purchase the residential real property, and to obtain the signed receipt of the purchaser.

003.25 Failure by a licensee who knows of an error, inaccuracy, or omission in a Seller Property Condition Disclosure Statement completed pursuant to Neb. Rev. Stat. Section 76-2,120 to disclose the error, inaccuracy, or omission, in writing, to a potential purchaser and the seller. Such disclosure shall be attached to the Seller Property Condition Disclosure Statement.

003.26 Conspiring with any lender, guaranteeing agency, or any other interested party, either verbally or by submitting false documents, to misrepresent the true and actual sale price of the real estate or the terms actually agreed upon.

003.27 Failure by any affiliated licensee, to whom the designated or employing broker has delegated the authority to supervise other affiliated licensees whose licenses are placed with said broker, to supervise said licensees. Nothing in this subsection shall relieve the designated or employing broker of his or her supervisory responsibilities.

Laws 1973, LB 68, §10; RS 1943, §81-885.07 (5), R. S. Supp., 1974. Effective date September 2, 1973.

Title 299 - NEBRASKA REAL ESTATE COMMISSION

Chapter 6 - COMPLAINT PROCEDURE; FILING; INVESTIGATION; HEARINGS.

Repealed. (Title 305, Chapter 4 replaces this Chapter effective November 19, 1997.)

Title 299 - NEBRASKA REAL ESTATE COMMISSION

Chapter 7 - CONTINUING EDUCATION ACTIVITIES; REQUIRED HOURS; APPROVAL; RESTRICTIONS; DENIAL; REVOCATION; APPEAL PROCESS; RECORD KEEPING.

001 Of the twelve hours of continuing education required in Section 81-885.51 of the Nebraska Real Estate License Act, (a) six hours in each two-year period shall be taken in continuing education activities which are derived from material covering ethical decision-making or federal or state laws, rules, or regulations dealing with or pertaining to real estate or real estate transactions, and which are approved and designated by the Commission as meeting this six-hour requirement, (b) three hours shall be required in each two year period in a property management course or courses approved and designated by the Commission as meeting this requirement for all licensees who provide property management services during such two year period, or who supervise a licensee or licensees who provide property management services during such two year period, and (c) three hours shall be required in courses on teams or team leadership which are approved and so designated by the Commission for all team members, team leaders, and designated brokers who supervise teams within 180 days after being designated a team member or team leader, or in the case of a designated broker within 180 days of the creation of any team under the broker's supervision. Continuing education taken on or after January 1, 2017 may be used to meet the requirements of section (c) of this section.

001.01 Continuing education activities approved under this Section are not subject to the duplication provision as set forth in Section 0034.07 of this Chapter, except that continuing education activities approved under this Section and which are of the same content, or if in the opinion of the Commission so similar as to be indistinguishable in content, cannot be duplicated within the same two-year continuing education period.

001.02 For purposes of this chapter property management shall mean and include: Acting under a written contract as a third party for a landlord or owner of property in the collection and or holding of rent, deposits, or other monies from tenants for the benefit of the property owner.

001.03 Continuing education activities required under Section 001(c) of this section shall meet the education requirements for the two year continuing education period in which they are taken and the ensuing two year continuing education period. Team members, team leaders and designated brokers who supervise teams shall complete the required team training a minimum of once every four years.

002 The six hours of training required in Section 81-885.51 of the Nebraska Real Estate License Act may be fulfilled by satisfactorily completing training activities approved by the licensee's designated broker and recognized by the Commission **OR** by satisfactorily completing Commission approved continuing education activities **OR** by some combination of both. Training activity shall be required to be met and submitted as provided in the License Act and these regulations beginning in calendar year 2012.

003 Qualifications for approval of continuing education activities shall be as stated herein.

003.01 A continuing education activity offered in the State of Nebraska shall be qualified for approval if the Real Estate Commission determines that:

003.01A The continuing education activity contributes to the maintenance and improvement of the quality of real estate services provided by real estate licensees to the public; and

003.01B An in-class continuing education activity must consist of at least three in-class clock hours but no more than eight in-class clock hours in any one day of instruction. In the case of a continuing education activity delivered in a distance education format there must be at least the content equivalent of three in-class clock hours, and certification pursuant to 299 NAC 7-002.02. An in-class clock hour is defined as 50 minutes in length; and

003.01C The provider has submitted a complete application as prescribed by the Real Estate Commission at least thirty days prior to the beginning of the continuing education activity; and

003.01D All instructors have met the qualification standards as established by the Real Estate Commission; and

003.01E The provider has met the provisions of all other applicable state laws.

003.02 Continuing education activities offered in a distance education format must be certified by the Association of Real Estate License Law Officials, with the exception that such certification will not be required of courses in a correspondence study format that held the certification by the Association of Real Estate License Law Officials and were in good standing as of January 1, 2012, and such courses shall remain exempt from Association of License Law Officials certification through January 1, 2017. A student must complete the distance education activity within one year of the date of enrollment. Distance education as it is used in this chapter shall mean courses in which instruction does not take place in a traditional classroom setting but rather through other media where instructor and student are separated by distance and sometimes by time.

003.03 Courses taken by salesperson licensees toward meeting the broker pre-license requirements, with the exception of Real Estate Principles and Practices or its equivalent courses, may be used toward meeting the continuing education requirement and also as meeting the pre-license broker requirement.

003.04 In addition to continuing education activities directly approved by the Real Estate Commission, the Commission shall accept:

003.04A Continuing education activities approved to meet the continuing education requirements for renewal of a salesperson or broker license in another real estate jurisdiction and taken outside the State of Nebraska.

003.04B Instruction by instructors of approved continuing education activities toward meeting the continuing education requirement. The same restrictions of usage as set forth in Title 299, Chapter 7, Section 003 will apply.

003.04C Reviews of continuing education activities that are provided in a distance education format and have been submitted for approval as provided in this Chapter when the appointed reviewer, who must meet the same qualification standards established for continuing education instructors, successfully completes the activity and provides a report prescribed by the Commission.

003.04D The Commission shall have no obligation to accept a continuing education activity otherwise considered acceptable under this subsection if the activity has been identified by the Commission as unacceptable according to Nebraska continuing education criteria.

003.04E Written affirmation from non-resident licensees that they have met the current continuing education requirement in their state of residence.

003.05 Licensees may use appraisal continuing education approved by the Nebraska Real Estate Appraiser Board toward their salesperson or broker continuing education requirement, when taken during the applicable two-year period for their salesperson or broker license.

004 The following activities shall not be approved as continuing education and cannot be used toward meeting the continuing education requirement:

004.01 Those which are specifically examination preparation in nature.

004.02 Those which deal with office or business skills, such as typing, speed reading, memory improvement, body language, motivation and similar activities.

004.03 Those which are completed by a challenge examination (testing-out of the activity).

004.04 Sales promotion or sales meetings held in conjunction with a brokerage firm's general business.

004.05 Orientation courses for licensees held by trade organizations.

004.06 Continuing education activities taken prior to approval date of the continuing education activity.

004.07 Continuing education activities of the same content, or if in the opinion of the Commission an activity is so similar as to be indistinguishable in content, cannot be used for a minimum of four years after the activity was taken to be applied toward meeting the continuing education requirement, except that activities meeting the required hours set forth in Section 001 of this Chapter may be repeated but not in the same two-year continuing education period.

004.08 Broker licensees cannot retake courses taken as part of their pre-license requirement and use them toward meeting their continuing education requirement except as provided in Title 299, Chapter 7, Section 0034.07.

004.09 Continuing education activities taken to make up a deficiency of the continuing education requirement from a previous continuing education period may not be used toward the current period's continuing education requirement.

005 Qualifications for recognition of training activities shall be as stated herein.

005.01 A training activity offered in the State of Nebraska shall be recognized by the Real Estate Commission pursuant to Section 81-885.51 if the Real Estate Commission determines that:

005.01A The training activity directly relates to real estate services provided by real estate licensees to the public; and

005.01B The training does not materially misstate elements of the Real Estate License Act or other provisions of the law; and

005.01C A training activity must consist of at least one sixty minute hour. In the case of a training activity delivered in a distance education format there must be at least the content equivalent of one sixty-minute hour; and

005.01D The provider has submitted a complete application as prescribed by the Real Estate Commission at least thirty days prior to the beginning of the training activity.

005.02 The Commission shall have the authority to require additional information regarding training content in order to determine eligibility.

005.03 The Commission may determine that an activity submitted to meet the training requirement would more appropriately be recognized as continuing education because the level of complexity or legal nature of the training requires a more detailed review of the subject matter as provided in these regulations for continuing education.

006 The following activities cannot be used toward meeting the training requirement:

006.01 Those which are specifically examination preparation in nature.

006.02 Those which are completed by a challenge examination (testing-out of the activity).

006.03 Orientation courses for licensees held by trade organizations.

006.04 Training activities taken prior to the Commission's recognition date of the training activity.

007 The Commission shall notify applicants in a timely manner, in writing, whether an application is approved or denied. If an application is denied, the denial notice shall state the reason(s) for denial. This section applies to initial submittals of applications for approval of training activities, and providers, activities, and instructors of Nebraska real estate continuing education; resubmittals of continuing education activities for reapproval every three years; and resubmittals of activities due to substantial changes in the activities.

008 Approved continuing education activities shall be resubmitted by the provider for approval and reviewed every three years by the Commission unless substantial changes are made in the activity prior to that time.

009 Training activity recognition will expire three years from the date of original recognition.

010 If substantial changes are made, the activity shall be submitted by the provider for review and approval, and may not be offered prior to receiving notice that the altered activity has been approved.

011 Decisions of the Real Estate Commission to deny approval of training activities or continuing education providers, activities, or instructors may be reviewed by the Commission when such review is requested within twenty days of notification of said decision. The Real Estate Commission may at any time re-evaluate an approved training activity or continuing education provider, activity, or instructor. If a basis for consideration of revocation of approval is found, the Commission shall notify said provider by mail at least twenty business days prior to said hearing on the revocation.

012 Providers of approved training or continuing education activities shall be governed by the provisions of this Section in addition to any other applicable statutes or rules and regulations.

012.01 The provider shall submit to the Commission a notice of the scheduling of an approved activity prior to offering the activity. The notice shall be submitted in a form prescribed by the Commission. This subsection shall not apply to distance education activities offered in an independent study format.

012.02 Successful completion of an approved training or continuing education activity requires full-time attendance at the activity.

012.03 A completion certificate, not larger than 8 ½ by 11, must be issued to each student upon completion of the activity and shall include such information required by the Commission.

012.04 In the case of students using a pre-license broker course toward both pre-license and continuing education as set forth in Title 299, Chapter 7, Section 002.03, upon request by the student a separate continuing education completion certificate will be issued by the provider upon completion of the course in addition to the pre-license proof of completion.

012.05 Records shall be maintained by each provider on each individual student for four years. Said records to include: name and real estate license identification number of the student; residence or business address of the student; the title of the activity completed in full; the number of training or continuing education hours granted the activity; the date the student completed the activity; and, activity content numbers for continuing education activities.

012.06 A verification listing of the attendees at an approved training or continuing education activity who have met the requirements of completion as established by the Commission pursuant to Section 81-885.52 of the Nebraska Real Estate License Act shall be submitted to the Commission, in the current format specified by the Commission, within ten business days of the conclusion of the activity.

012.07 By January 31st of each year all approved providers shall submit to the Commission a chronological list to include the title, number of hours granted, date, location, instructor and number of attendees for each training or continuing education activity conducted during the preceding year.

013 Nothing in this Chapter shall be construed to preclude training or educational offerings sponsored, or conducted, by the Real Estate Commission from being accepted toward meeting the continuing education requirement of the Nebraska Real Estate License Act.

014 The operative date of the amendments found in sections 001 of this chapter shall be July 1, 2017.

Laws 1973, LB 68, §7; RS 1943, §81-885.07 (5) R. S. Supp., 1974. Effective date September 2, 1973.

Laws 1985, LB 101, §10; RS 1943, §81-885.54, R.S. Supp., 1985. Effective date March 7, 1985.

Laws 2016, LB678, §3: RS 1943, §81-885.56 R.S. Cum. Supp., 2016, Effective Date, October 1, 2016.

Laws 2016, LB678, §4: RS 1943, §81-885.24 R.S. Cum. Supp., 2016, Effective Date, October 1, 2016.

TITLE 299 - NEBRASKA REAL ESTATE COMMISSION

CHAPTER 8 - ERRORS AND OMISSIONS INSURANCE: CERTIFICATE OF INSURANCE; GROUP PLAN; TERMS AND CONDITIONS; EQUIVALENT INSURANCE; FAILURE TO COMPLY; SANCTIONS.

001. Every licensee under the Nebraska Real Estate License Act, except an inactive broker or inactive salesperson, shall have in effect a policy of Errors and Omissions Insurance to cover all activities contemplated under the Nebraska Real Estate License Act, and shall certify such coverage to the Commission in the form and manner prescribed in Section 002 of this Chapter. Licensees covered under the Group Plan provided for under Section 003 of this Chapter shall be deemed to have satisfied the certification requirement upon written certification from the Group Plan Administrator of coverage thereunder.

002. The certificate of coverage, as provided for in Section 001 of this Chapter for licensees obtaining the equivalent coverage specified in Section 004 of this Chapter, shall be signed by an authorized agent or employee of the insurance carrier and shall be in the following form:

NEBRASKA REAL ESTATE COMMISSION

CERTIFICATION OF COVERAGE
UNDER NEB. REV. STAT. SECTION 81-885.55
AND
299 N.A.C. CHAPTER 8

I hereby certify that the insurance company listed below has at least a "B+" rating from the A.M. Best Company Insurance Rating Service and maintains an AM Best Financial Size Category of Class VI or higher. I further certify that:

INSURED NAME: _____

LICENSE IDENTIFICATION NUMBER: _____

REAL ESTATE
COMPANY NAME: _____

ADDRESS: _____

_____

POLICY NO.: _____

INSURANCE AGENT: _____

ADDRESS: _____

INSURANCE CO.: _____

ADDRESS: _____

POLICY DATES: Effective: _____ Expiration: _____

SPECIFY WHETHER BLANKET OR INDIVIDUAL POLICY: _____

is insured against claims resulting from real estate licensee's errors and omissions and the above-referenced policy includes, at a minimum, the standards set forth in 299 N.A.C. Chapter 8 and the Nebraska Real Estate License Act.

It is further understood and agreed that coverage for the person(s) insured by this policy may not be terminated, cancelled, lapsed, or non-renewed, regardless of cause or reason, without the Company having provided the Director of the Nebraska Real Estate Commission with ten (10) days prior written notice.

SIGNATURE: _____ DATE: _____
(Insurance Representative)

TITLE: _____

003. The Commission shall make available to all licensees, subject to availability from a qualified insurance carrier, a policy of Errors and Omissions Insurance under a Group Plan secured by the Commission.

003.01 For the purposes of this section, a "qualified insurance carrier" shall mean an insurance carrier:

a. which, for the entire term of its contract to provide the Group Plan of Errors and Omissions Insurance contemplated by this Chapter, maintains an A.M. Best Company rating of "B+" or better, and an AM Best Financial Size Category of Class VI or higher;

b. which is and will remain for the policy term duly authorized by the State of Nebraska Department of Insurance to do business in the State of Nebraska as an insurance carrier;

c. which is and will remain for the policy term qualified and authorized by the State of Nebraska Department of Insurance to write in the State of Nebraska policies of Errors and Omissions Insurance of the type contemplated by this Chapter;

d. which, after competitive bidding, has been notified by the Commission that it is the successful bidder for the Group Plan to provide the Errors and Omissions Insurance contemplated by this Chapter; and

e. which has entered into a contract to provide said group errors and omissions plan in conformity with said contract, this Chapter, and the Nebraska Real Estate License Act.

003.02 The group policy obtained by the Commission under this Chapter shall be available to all licensees with no right on the part of the carrier to cancel any licensee.

003.03 The group policy obtained by the Commission shall be subject to such terms and conditions as are customary in the insurance industry for such policies of insurance, which are otherwise permissible under Nebraska law and the rules and regulations of the State of Nebraska Department of Insurance, and which are contained in a policy of insurance which has been approved by the State of Nebraska Department of Insurance; provided, however, that said Group Plan shall provide, at a minimum, the following terms and conditions:

a. not less than $100,000.00 combined single limit liability coverage for each occurrence;

b. an annual aggregate limit of not less than $300,000.00;

c. a deductible amount of not greater than 3% of the total combined single limit liability coverage amount for each occurrence;

d. the minimum coverage requirements of this subsection shall apply to each individual licensee; and

e. a reasonable premium not to exceed the maximum premium set forth in section 81-885.55 of the Nebraska Real Estate License Act, as amended.

003.04 For the purposes of these regulations and the fulfillment of the Commission's obligations under the Nebraska Real Estate License Act, approval by the State of Nebraska Department of Insurance of the group policy of Errors and Omissions Insurance to be issued pursuant to this Chapter shall be conclusive proof that the terms and conditions of said policy meet the standards and practices in the insurance industry with respect to such policies, and that said policy meets the requirements of Nebraska law and of the rules and regulations of the State of Nebraska Department of Insurance with respect to such policies of insurance.

004. Licensees may obtain equivalent Errors and Omissions Insurance independently of the Group Plan available from the Commission; subject, however, to the terms and conditions set forth in Sections 004.01 and 004.02 of this Chapter.

004.01 The term "equivalent insurance" shall mean a policy of Errors and Omissions Insurance which shall provide the following terms and conditions:

a. Covers all activities contemplated under the Nebraska Real Estate License Act, under such terms and conditions as are customary in the insurance industry for such policies of insurance, which are otherwise permissible under Nebraska law and the rules and regulations of the State of Nebraska Department of Insurance, and which are contained in a policy of insurance which has been approved by the State of Nebraska Department of Insurance;

b. Specifies not less than $100,000.00 combined single limit liability coverage for each occurrence;

c. Specifies an annual aggregate limit of not less than $300,000.00;

d. Specifies a deductible amount of not greater than the deductible amount specified in the group policy secured by the Commission for the calendar year during which the equivalent insurance goes into effect. Any equivalent insurance which extends into a calendar year when the deductible on the group policy has changed effective January 1 of the year may retain the deductible amount until such time as the equivalent insurance is renewed or renegotiated in that calendar year;

e. The minimum limits specified in b. and c. above shall be available to each licensee; and

f. The terms and conditions set forth above shall apply for equivalent insurance, filed with the Commission, to show compliance with this subsection for the annual renewal of a license.

004.02 For the purposes of these regulations and the fulfillment of the licensees' obligations under the Nebraska Real Estate License Act, approval by the State of Nebraska Department of Insurance of the policy of equivalent Errors and Omissions Insurance covering the licensee shall create a presumption that the terms and conditions of said policy meet the standards and practices in the insurance industry with respect to such policies, and that said policy meets the requirements of Nebraska law and of the rules and regulations of the State of Nebraska Department of Insurance with respect to such policies of insurance.

004.03 A carrier issuing a policy of equivalent insurance shall meet all of the requirements of a qualified carrier set forth in Subsections b and c of Section 003.01 of this Chapter, and shall maintain an A.M. Best Company rating of "B+" or better and an AM Best Financial Size Category of Class VI or higher.

005. Any applicant for issuance of an original license on active status or renewal of a license on active status shall not be issued such active license unless he or she has been certified in writing by the Group Plan Administrator as being covered thereunder, or unless he or she shall have first caused to be filed with the Commission the certificate of coverage required by Sections 001 and 002 of this Chapter.

006. Failure of the Group Plan Administrator to provide certification of coverage under the Group Plan or failure of the licensee to cause to be filed the certificate of equivalent coverage required by Section 001 of this Chapter shall result in inactivation of any active license issued pursuant to the Nebraska Real Estate License Act.

006.01 For purposes of this Section, the effective date of inactivation shall be the date on which the Errors and Omissions Insurance of said active licensee is scheduled to expire, as reflected in the certification by the Group Plan Administrator or the certificate of equivalent coverage filed by, or on behalf of, the licensee.

006.02 Within five working days of the date of inactivation under this Section, the Commission shall cause to be sent, by certified mail to the licensee's residence address as reflected in the records of the Commission Office, a notice to any affected licensee of the inactivation of license.

006.03 Any licensee whose license has been subject to inactivation pursuant to this Section shall be entitled to activation of said license, relating back to and including the date of inactivation, provided that, within thirty days of the date of inactivation, the licensee or Group Plan Administrator files with the Commission a certificate of coverage showing that such coverage has been and is currently in effect on and from the date of inactivation, and the licensee submits required transfer documents and fees. In the event the certificate of coverage shows an effective date later than the date of inactivation, said license shall be activated as of the effective date of said insurance, as reflected in the certificate of coverage, and upon submission of required transfer documents and fees.

007. Any licensee who, acting alone or in concert with others, willfully or knowingly causes or allows a certificate of coverage to be filed with the Commission which is false, fraudulent, or misleading, shall be subject to sanctions, including but not limited to suspension or revocation of license, after complaint, notice, and hearing provided for in the rules of the Commission; provided, however, that nothing herein shall entitle such licensee to notice and hearing on the automatic inactivation of license provided for in Section 006 of this Chapter.

Laws 1973, LB 68, §10; RS 1943, §81-885.07(5), R.S. Supp., 1974.
Effective date September 2, 1973.

TITLE 299 - NEBRASKA REAL ESTATE COMMISSION

CHAPTER 9 - NEBRASKA TIME-SHARE ACT

001. Exchange agent filings shall expire three years from the date the initial filing is approved by the Nebraska Real Estate Commission.

002. Existing exchange agent filings may be extended an additional three years by filing the information required by Neb. Rev. Stat. §76-1732.

003. Extensions of existing exchange agent filings must be properly filed no sooner than six calendar months of the expiration date and no later than 14 days prior to the date of expiration of the existing filing.

NEBRASKA REAL ESTATE COMMISSION

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Title 305 - NEBRASKA REAL ESTATE COMMISSION

Chapter 1 - Rules of Practice and Procedure for Negotiated Rulemaking

001 General Information

001.01 Application of Rules. These rules are promulgated pursuant to Neb. Laws 1994, LB 446, and 53 Nebraska Administrative Code, Chapter 1.

002 Negotiated rulemaking generally. The purpose of these regulations is to establish a framework for the conduct of negotiated rulemaking consistent with the Administrative Procedure Act and the Negotiated Rulemaking Act. The negotiated rulemaking process can be used by the Commission, whenever appropriate, to resolve controversial issues prior to the commencement of formal rulemaking. Negotiated rulemaking is not a substitute for the requirements of the Administrative Procedure Act, but may be used as a supplemental procedure to permit the direct participation of affected interests in the development of new rules or the amendment or repeal of existing rules. The negotiated rulemaking process also does not preclude other Commission efforts or processes designed to reach consensus with affected or interested persons concerning the content of rules or regulations. A consensus agreement on a proposed rule reached by a negotiated rulemaking committee may be modified by the Commission as a result of a subsequent formal rulemaking process.

003 Definitions. For purposes of this Chapter:

003.01 APA shall mean the Administrative Procedure Act, NEB. REV. STAT. sections 84-901 et seq., Revised Statutes of Nebraska, 1943, as amended.

003.02 Agency shall mean the Commission and its employees, including the Director, any Deputy Directors and staff.

003.03 Commission shall mean the State Real Estate Commission of the State of Nebraska.

003.04 Consensus shall mean unanimous concurrence among the interests represented on a negotiated rulemaking committee unless the committee agrees upon another specified definition.

003.05 Convener shall mean a person who impartially assists the Commission in determining whether establishment of a negotiated rulemaking committee is feasible and appropriate for a particular rulemaking procedure.

003.06 Director shall mean the person appointed as the Director of the Commission by the Commission pursuant to section 81-885.07(4), Revised Statutes of Nebraska, 1943, as amended.

003.07 Facilitator shall mean a person who impartially aids in the discussion and negotiations among the members of a negotiated rulemaking committee to develop a proposed rule. A facilitator shall not have decision-making authority.

003.08 Interest shall mean, with respect to an issue or matter, multiple parties that have a similar point of view or that are likely to be affected in a similar manner.

003.09 Negotiated rulemaking shall mean rulemaking through the use of a negotiated rulemaking committee.

003.10 Negotiated rulemaking committee or committee shall mean an advisory committee established to consider and discuss issues for the purpose of reaching a consensus in the development of a proposed rule.

003.11 Person shall mean an individual, partnership, limited liability company, corporation, association, governmental subdivision, agency, or public or private organization of any character.

003.12 Rule or regulation shall mean any rule, regulation, or standard issued by the Commission, including the amendment or repeal thereof, whether with or without prior hearing, and designed to implement, interpret, or make specific the law enforced or administered by it or governing its organization or procedure, but not including rules and regulations concerning the internal management of the Commission not affecting private rights, private interests, or procedures available to the public, and any rules of interpretation thereof, and for the purpose of the APA, every rule and regulation which shall prescribe a penalty shall be presumed to have general applicability or to affect private rights and interests.

004 Establishment of a Negotiated Rulemaking Committee; Criteria. The Commission may establish a negotiated rulemaking committee to negotiate and develop a proposed rule if the Commission determines that the use of the negotiated rulemaking procedure is in the public interest. In making that determination, the Commission shall consider whether:

004.01 There is a need for the rule.

004.02 There are a limited number of identifiable interests that will be significantly affected by the rule.

004.03 There is a reasonable likelihood that a committee can be convened with a balanced representation of persons who:

004.03A Can adequately represent the interests identified; and

004.03B Are willing to negotiate in good faith to reach a consensus on the proposed rule.

004.04 There is a reasonable likelihood that a committee will reach a consensus on the proposed rule within a fixed period of time.

004.05 The negotiated rulemaking procedure will not unreasonably delay the notice of proposed formal rulemaking and the issuance of the final rule pursuant to the APA.

004.06 The Commission has adequate resources and is willing to commit those resources, including technical assistance, to the committee.

004.07 The Commission, to the maximum extent possible consistent with the legal obligations of the Commission, will use the consensus of the committee as the basis of the rule proposed by the Commission in the formal rulemaking process of the APA.

005 Conveners; selection; duties. The Commission, at its discretion, may use the services of the convener.

005.01 The Commission may employ or contract for an organization or an individual to serve as a convener, or may use the services of a state employee to act as a convener. A convener shall not have a financial or other interest that would preclude him or her from serving in an impartial and independent manner. The Commission shall determine whether a person under consideration as a convener has such an interest. A person disqualified under this criterion shall be dropped from further consideration.

005.02 The convener may assist the Commission in making the determination of need for a negotiated rulemaking process discussed in section 004 above. The convener may also assist the Commission in:

005.02A Identifying persons who will be significantly affected by a proposed rule.

005.02B Conducting discussions with affected persons on the issues of concern and ascertaining whether the establishment of a negotiated rulemaking committee is feasible and appropriate for the particular rulemaking.

005.03 The convener shall report findings and make recommendations to the Commission. Upon request of the Commission, the convener shall ascertain the names of persons who are willing and qualified to represent the interests that will be significantly affected by the proposed rule. That report by the convener and any recommendations of the convener shall be public records and made available to the public for review upon request.

006 Petitions for the use of a negotiated rulemaking committee. Any person may petition the Commission to request the use of a negotiated rulemaking committee in the development or revision of a rule, as provided below.

006.01 A negotiated rulemaking process may be requested on any topic appropriate for a rule or regulation by the Commission.

006.01A A negotiated rulemaking process may be requested only to develop or revise rules which carry out statutes that are within the authority of the Commission to implement.

006.01B A negotiated rulemaking process may not be requested to develop a rule or regulation to vary or change the specific terms of a statute.

006.01C A negotiated rulemaking process may not be requested to negotiate a rule on a matter which is not within the definition of a rule or regulation as set forth in subsection 003.12 above.

006.02 A request for the use of a negotiated rulemaking procedure shall be made by a petition that meets the requirements of form set out in this subsection. In the event that it does not, the Commission may refuse to accept it.

006.02A A petition may be in the form of a pleading that contains a caption, heading, and name as set forth on "Attachment 1," which is attached to these model rules and made a part of them by reference.

006.02B A petition may also be made in the form of a letter so long as the letter contains all of the information required by these regulations and is clearly delineated as a petition for negotiated rulemaking.

006.02C All petitions must be on white, letter sized paper (8 ½ by 11) of standard weight.

006.02D Petitions must be legible, and may be typewritten, photostatically reproduced, printed, or handwritten. If handwritten, petitions must be in ink. Only one side of a page of a petition shall contain any writing.

006.02E Any documents that are intended to accompany a petition shall be securely fastened, clearly marked as attachments to the petition, and meet the other requirements of this section as to size, print and legibility.

006.03 A petition for a negotiated rulemaking procedure shall meet the following requirements for content and substance. In the event that it does not, the Commission may refuse to accept it.

006.03A The petition must identify the general subject matter about which the negotiated rulemaking procedure is requested, including the statutes or legislative bill(s) which provide authority for the desired regulation, and, if amendments to existing regulations are sought, identification of the regulations by title, chapter and name.

006.03B The petition must identify the specific issue(s) proposed for inclusion in the negotiated rulemaking process.

006.03C The petition must discuss the facts surrounding each problem or issue proposed for inclusion in the negotiated rulemaking process.

006.03D The petition must discuss why a negotiated rulemaking process is in the public interest, including information on each of the criteria set out in subsections 004.01 through 004.05 above. The petition may also include information on the criteria included in subsections 004.06 and 004.07 above, to the extent such information is available to the petitioner. The petitioner may also submit such other information as may assist the Commission in making a decision.

006.03E The petition must identify persons who will be significantly affected by any rule which might result from the proposed negotiated rulemaking process, to the extent known by the petitioner. The petitioner may also suggest the names of persons who are willing and qualified to represent the interests that will be significantly affected by the negotiated rulemaking process and the proposed rule.

006.04 A petition for a negotiated rulemaking process shall be filed with the Agency. Filing may be made by personal delivery during regular Agency office hours or by mail.

006.05 The Director or Agency employee or convener designated by the Commission may recommend to the Commission whether a negotiated rulemaking process should be initiated after the filing of a petition for a negotiated rulemaking procedure.

006.06 Within sixty (60) days after submission of a petition for a negotiated rulemaking procedure, the Commission shall:

006.06A Deny the petition in writing, stating the reason(s) for denial; or

006.06B Initiate the negotiated rulemaking process as provided in these rules.

006.07 The decision of the Commission with respect to a petition for a negotiated rulemaking procedure may be made in the form of a pleading or a letter clearly designated as the decision on the petition. The petitioner shall be served with a copy of the Commission's final decision by certified mail, return receipt requested.

006.08 A decision by the Commission with respect to a petition for a negotiated rulemaking procedure is not subject to judicial review, although nothing herein shall bar a judicial review if such is otherwise provided by law.

007 Notice of a Negotiated Rulemaking Committee; Comment; Applications for Membership. If the Commission decides to go forward with the establishment of a negotiated rulemaking committee, the Commission shall proceed with the following process.

007.01 The Agency shall give notice to the Secretary of State, publish notice in a newspaper having general circulation in the state, and, as appropriate, publish notice in other newspapers and publications. The notice shall include:

007.01A An announcement that the Commission intends to establish a negotiated rulemaking committee to negotiate and develop a proposed rule.

007.01B A description of the subject and scope of the rule to be developed and the issues to be considered.

007.01C A list of interests likely to be significantly affected by the proposed rule.

007.01D A list of the persons proposed to represent the affected interests and the Agency.

007.01E A proposed schedule for completing the work of the committee.

007.01F An explanation of how a person may apply for or nominate another person for membership on the committee.

007.02 Persons interested in making comments upon the formation of a particular proposed negotiated rulemaking committee shall have thirty (30)

days from the date of publication of the notice concerning that committee to do so. Such comments shall be in writing, and shall either be personally delivered or mailed to the Agency at its business office.

007.03 Persons interested in applying for membership on a particular proposed negotiated rulemaking committee or in nominating other persons for such membership shall have thirty (30) days from the date of publication of the notice concerning that committee to do so. Persons making application for membership or nominations for membership shall do so on "Attachment 2" which is attached to these regulations and made a part of these regulations by reference, and which shall be provided by the Agency. Persons making application for membership or nominations for membership may also do so by letter, so long as the letter contains all of the information set out in "Attachment 2" and is clearly delineated as an application or nomination for membership on a specific negotiated rulemaking committee.

008 Establishment of a Negotiated Rulemaking Committee; Procedure. After publication of notice and termination of the comment and membership application period, the Commission will consider the comments and membership applications for a particular negotiated rulemaking committee and determine whether such a committee can adequately represent the interests of the persons that will be significantly affected by a proposed rule, and whether such a committee is feasible and appropriate in the particular rulemaking. In making the final determination as to creation of a negotiated rulemaking committee, the Commission may use the services of a convener as set out in Section 005 above. In making the final determination as to creation of a negotiated rulemaking committee, the Commission and its Director will apply the criteria set out in 004 above.

008.01 If, after such a determination, the Commission decides that a negotiated rulemaking procedure is feasible, it shall establish a negotiated rulemaking committee as provided in these regulations. The committee will negotiate issues and develop proposed rules for use by the Commission in formal rulemaking.

008.02 If, after such a determination, the Commission decides not to establish a negotiated rulemaking committee, the Agency shall:

008.02A Notify the persons who commented on, applied for membership on or nominated persons for membership on the particular negotiated rulemaking committee of the reasons for the decision not to establish such a committee.

008.02B Publish notice of the decision not to establish the particular negotiated rulemaking committee in a newspaper having general circulation in the state, and, as appropriate, in other newspapers and publications.

009 Negotiated Rulemaking Committee; membership. All members of a negotiated rulemaking committee shall participate in the deliberations of the committee with the same rights and responsibilities as other members.

009.01 Members of a negotiated rulemaking committee may include:

009.01A A Commissioner or employee of the Agency designated by the Commission to represent the Agency. This person shall be authorized

to fully represent the Agency in the discussions and negotiations of the committee.

009.01B Persons selected by the Commission as willing and qualified to represent the interests that will be significantly affected by the proposed rule.

009.01C Persons contacted and recruited by the negotiated rulemaking committee itself by consensus as essential to the success of the negotiated rulemaking process.

009.01D Persons selected by the negotiated rulemaking committee by consensus upon committee review of a petition for membership or nomination as set out in subsection 009.02 below.

009.02 Persons who will be significantly affected by a proposed rule and who believe that their interests will not be adequately represented by any person on a negotiated rulemaking committee may petition for or nominate another person for membership on the negotiated rulemaking committee.

009.02A Each petition or nomination for committee membership shall be in writing and be submitted to the negotiated rulemaking committee by delivering or mailing the same to the Agency. All such petitions or nominations shall include:

009.02A1 Identification of the applicable negotiated rulemaking proceeding.

009.02A2 The name of the petitioner or nominee, and a description of the interests the person represents.

009.02A3 Evidence that the petitioner or nominee is authorized to represent parties related to the interests the person proposes to represent.

009.02A4 A written commitment that the petitioner or nominee will actively participate in good faith in the development of the rule under consideration.

009.02A5 An explanation of reasons that the persons already on the negotiated rulemaking committee do not adequately represent the interests of the person submitting the petition or nomination.

009.02B Persons wishing to file such a petition for membership or nomination to a negotiated rulemaking committee may use the form attached hereto as "Attachment 3." "Attachment 3" is made a part of these regulations by reference. Persons wishing to file such a petition for membership or nomination to a negotiated rulemaking committee may also do so by letter, provided that the letter contains the information set forth above.

009.02C Upon receiving a petition for membership on or nomination to a particular negotiated rulemaking committee, the committee in question shall decide, by consensus at its next meeting, whether or not to expand its membership.

010 Negotiated rulemaking committee; operation. A negotiated rulemaking committee established under these rules shall consider the matter proposed by the Commission for consideration and shall attempt to reach consensus concerning a proposed rule and any other matter the committee determines is relevant to the proposed rule.

010.01 A negotiated rulemaking committee may adopt procedures or ground rules for the operation of the committee consistent with these rules and the pertinent Nebraska statutes.

010.02 The Agency shall provide appropriate administrative support to a negotiated rulemaking committee including technical assistance and support.

010.03 The person representing the Agency on a negotiated rulemaking committee shall participate in the deliberations of the committee with the same rights and responsibilities as other members of the committee and shall be authorized to fully represent the Agency in the discussions and negotiations of the committee.

010.04 If a negotiated rulemaking committee achieves consensus on a proposed rule at the conclusion of the negotiations, the committee shall transmit to the Commission a report containing the proposed rule.

010.05 If a negotiated rulemaking committee does not reach a consensus on the proposed rule, the committee shall transmit to the Commission a report specifying areas in which the committee reached consensus and the issues that remain unresolved. The committee may include in the report any other information, recommendations, or materials that the committee considers appropriate. Any member of the committee may include as an addendum to the report additional information, recommendations or materials.

011 Facilitators; selection; duties. A facilitator shall be selected to assist a negotiated rulemaking committee with its duties.

011.01 The Agency may nominate a person to serve as a facilitator for the negotiations of a negotiated rulemaking committee, subject to the approval of the committee by consensus. If the committee does not approve the Agency's nomination for facilitator, the Agency shall submit a substitute nomination. If the committee does not approve the substitute nomination of the Agency for facilitator, the committee shall select, by consensus, a person to serve as facilitator.

011.02 The Agency may employ or contract for an organization or an individual to serve as a facilitator for a negotiated rulemaking committee or the Agency may use the services of a state employee to act as a facilitator. A person designated by the Agency to represent it on a negotiated rulemaking committee with respect to substantive issues may not serve as the facilitator. A facilitator shall not have a financial or other interest that would preclude him or her from serving in an impartial and independent manner. The Agency shall determine whether a person under consideration for facilitator has such an interest. A person disqualified under this criterion shall be dropped from further consideration.

011.03 A facilitator approved or selected by a committee shall:

011.03A Preside at the meetings of the committee in an impartial manner.

011.03B Impartially assist members in conducting discussions and negotiations and achieving consensus.

011.03C Manage the keeping of minutes and records.

012 Negotiated rulemaking committee; expenses. Members of a negotiated rulemaking committee shall be responsible for their own expenses of participation. However, the Agency may pay for a committee member's actual and necessary expenses incurred in serving on the committee as provided in NEB. REV. STAT. sections 81-1174 through 81-1177 and a reasonable per diem rate of compensation if:

012.01 The committee member certifies a lack of adequate financial resources to participate on the committee using the form at "Attachment 4" which is attached to these regulations and made a part of them by reference; and,

012.02 The Commission determines that the committee member's participation is necessary to assure an adequate representation of the interests of the members.

013 Grants or gifts. The Agency may accept grants or gifts from any source to fund a negotiated rulemaking process if:

013.01 Information on the name of the person giving the grant or gift and the amount of the grant or gift is available to the public.

013.02 The grant or gift is given to and accepted by the Agency without placing any condition on the membership of a committee or the outcome of the negotiated rulemaking process.

013.03 There is a consensus among the members of the negotiated rulemaking committee that the acceptance of the grant or gift will not diminish the integrity of the negotiated rulemaking process.

014 Negotiated rulemaking committee; termination. A negotiated rulemaking committee shall terminate upon the adoption of the final rule under consideration by the Commission pursuant to the APA, unless the Commission, after consulting the committee, or the committee itself specifies an earlier termination date.

015 Negotiated rulemaking procedure; judicial review. Any action of the Commission relating to establishing, assisting or terminating a negotiated rulemaking committee under the Negotiated Rulemaking Act shall not be subject to judicial review, except that nothing in this section shall bar judicial review if such judicial review is otherwise provided by law.

305 NAC 1 - ATTACHMENT 1
SAMPLE

BEFORE THE STATE REAL ESTATE COMMISSION
STATE OF NEBRASKA

In the Matter of [insert statute numbers or name] by [insert name of Petitioner]	)))	Petition for Negotiated Rulemaking

COMES NOW the petitioner, [insert name of Petitioner], according to the Nebraska Negotiated Rulemaking Act and according to the State Real Estate Commission rules and regulations for Petitions for Negotiated Rulemaking, and requests that the State Real Estate Commission establish a negotiated rulemaking committee as set forth in this Petition.

In support of this request, the Petitioner states as follows:

1. The State Real Estate Commission administers the provisions of [insert sections of the statutes or legislative bill numbers for which negotiated rulemaking is sought], and is responsible for development of rules and regulations to implement these statutes.

2. Petitioner seeks a negotiated rulemaking procedure to [check one]:

(____) develop new rules
(____) amend existing rules, specifically ____ NAC ____, entitled _____.
(____) repeal certain existing rules, specifically ____, NAC _____, entitled _____.

3. A negotiated rulemaking committee should be established to negotiate and develop rules on each of the following issues concerning the statute(s), legislative bill(s) or regulation(s) identified above [identify each issue as to each statute, legislative bill or regulation and the general scope of the rulemaking proposed]:

4. The facts surrounding each of the issues listed in paragraph 3 above are as follows:

5. Establishment of a negotiated rulemaking committee would be in the public interest under each of the following criteria based upon the information the Petitioner hereby submits.

A. There is a need for rulemaking on the issue(s) identified above because:

B. There are a limited number of identifiable interests that will be significantly affected by the rule, including the following interests:

C. There is a reasonable likelihood that a negotiated rulemaking committee can be convened with a balanced representation of people (1) who can adequately represent the interests identified above and (2) are willing to negotiate in good faith to reach a consensus on the proposed rule, as shown by the following:

D. There is a reasonable likelihood that a committee will reach a consensus on the proposed rule within a fixed period of time because:

E. The use of this procedure will not unreasonably delay formal rulemaking and issuance of a final rule because:

F. [Optional for response by Petitioner] The State Real Estate Commission should commit its resources, including technical assistance, to such a committee because:

G. [Optional for response by Petitioner] The State Real Estate Commission should, to the maximum extent possible consistent with its legal obligations, use a consensus of such a committee as the basis for a rule to be adopted under the Administrative Procedure Act because:

6. The following persons will be significantly affected by any rule which might result from the negotiated rulemaking procedure which is the subject of this Petition [identify such persons by name and address where possible]:

7. The following persons may be willing and qualified to represent the interests that will be significantly affected by any rule which might result from the negotiated rulemaking procedure which is the subject of this Petition [identify such persons by name and address where possible]:

8. Petitioner offers the following additional information for use by the Commission in consideration of this request [if any]:

9. Petitioner has attached the following documents in support of this request [list all documents attached]:

Dated this _____ day of _____, _____.

_____
Signature of Petitioner

List Petitioner's name [typed or printed]
List Petitioner's full mailing address
List Petitioner's telephone number [including area code]

305 NAC 1 - ATTACHMENT 2
SAMPLE

BEFORE THE STATE REAL ESTATE COMMISSION
STATE OF NEBRASKA

In the Matter of the Negotiated Rulemaking Committee for [Insert name of the proposed Negotiated Rulemaking Committee], _____NAC_____	)))))	Application/Nomination for membership on the committee.

APPLICATION FOR MEMBERSHIP
(complete if applicable)

1. The undersigned person (the applicant) hereby applies for membership on the above-referenced negotiated rulemaking committee proposed by the Commission.

_____
Name of applicant (typed or printed)

_____
Full address of applicant

_____
Applicant's telephone number
(including area code)

2. The applicant represents the following identifiable interest which will be significantly affected by the proposed administrative rule to be considered by the above-referenced negotiated rulemaking committee:

3. The applicant is authorized to represent parties related to the interest listed above because:

4. The applicant can adequately represent the parties and interest listed above because:

5. In support of his or her application, the applicant has attached the following documents to this petition (list all attachments):

6. By signing this application, the applicant hereby certifies that he or she will represent the interest identified above to the best of his or her ability in the negotiation process, and that he or she is willing to actively negotiate in good faith to reach a consensus on the proposed rule to be considered by the above-referenced negotiated rulemaking committee.

_____ Date _____
Signature of Applicant

NOMINATION FOR MEMBERSHIP
(complete if applicable)

1. The undersigned person (the nominating party) hereby nominates the following person (the nominee) for membership on the above-referenced negotiated rulemaking committee proposed by the State Real Estate Commission.

_____
Name of nominee (typed or printed)

_____
Full address of nominee

_____
Nominee's telephone number
(including area code)

2. The nominee represents the following identifiable interest which will be significantly affected by the proposed administrative rule to be considered by the above-referenced negotiated rulemaking committee:

3. The nominee is authorized to represent parties related to the interest listed above because:

4. The nominee can adequately represent the interest and parties listed above because:

5. In support of the nomination of the nominee, the nominating party has attached the following documents to this petition (list attachments):

6. The nominating party believes that the nominee will represent the interest identified above to the best of his or her ability and that the nominee is willing to negotiate in good faith to reach a consensus on the proposed rule to be considered by the above-referenced negotiated rulemaking committee because:

_____ Date _____
Signature of Nominating Party

_____
Name of nominating party
(printed or typed)

_____
Full address of nominating party

_____
Telephone number of nominating party
(including area code)

305 NAC 1 - ATTACHMENT 3
SAMPLE

BEFORE THE STATE REAL ESTATE COMMISSION
STATE OF NEBRASKA

In the Matter of the Negotiated Rulemaking Committee for [Insert name of the proposed Negotiated Rulemaking Committee], _____ NAC _____	))))	Application/Nomination for membership on the Committee (interest inadequately represented)

APPLICATION FOR MEMBERSHIP
(complete if applicable)

1. The undersigned person (the applicant) hereby applies for membership on the above-referenced negotiated rulemaking committee.

_____
Name of applicant (typed or printed)

_____
Full address of applicant

_____
Applicant's telephone number
(including area code)

2. The applicant represents the following identifiable interest which will be significantly affected by the proposed administrative rule being considered by the above-referenced negotiated rulemaking committee:

3. The applicant is authorized to represent parties related to the interest listed above because:

4. The applicant can adequately represent the parties and interest listed above because:

5. Reasons that persons already serving on the above-referenced negotiated rulemaking committee do not adequately represent the interest listed in paragraph 2 above include:

6. In support of his or her application, the applicant has attached the following documents to this petition (list all attachments):

7. By signing this application, the applicant hereby certifies that he or she will represent the interest identified above to the best of his or her ability in the negotiation process, and that he or she is willing to actively negotiate in good faith to reach a consensus on the proposed rule being considered by the above-referenced negotiated rulemaking committee.

_____ Date _____
Signature of Applicant

NOMINATION FOR MEMBERSHIP
(complete if applicable)

1. The undersigned person (the nominating party) hereby nominates the following person (the nominee) for membership on the above-referenced negotiated rulemaking committee.

_____
Name of nominee (typed or printed)

_____
Full address of nominee

_____
Nominee's telephone number
(including area code)

2. The nominee represents the following identifiable interest which will be significantly affected by the proposed administrative rule being considered by the above-referenced negotiated rulemaking committee:

3. The nominee is authorized to represent parties related to the interest listed above because:

4. The nominee can adequately represent the interest listed above because:

5. Reasons that persons already serving on the above-referenced negotiated rulemaking committee do not adequately represent the interest listed in paragraph 2 above include:

6. In support of the nomination of the nominee, the nominating party has attached the following documents to this petition (list attachments):

7. The nominating party believes that the nominee will represent the interest identified above to the best of his or her ability and that the nominee is willing to actively negotiate in good faith to reach a consensus on the proposed rule to be considered by the above-referenced negotiated rulemaking committee because:

_____ Date _____
Signature of Nominating Party

_____
Name of nominating party
(typed or printed)

_____
Full address of nominating party

_____
Telephone number of nominating party
(including area code)

305 NAC 1 - ATTACHMENT 4
SAMPLE

BEFORE THE STATE REAL ESTATE COMMISSION
STATE OF NEBRASKA

In the matter of the Negotiated Rulemaking Committee for [Insert name of the proposed Negotiated Rulemaking Committee], _____ NAC _____.	))))	Certification of Financial Need

STATE OF NEBRASKA)
) ss.
COUNTY OF _____)

COMES NOW the undersigned, being first duly sworn, and hereby states and certifies as follows:

1. I am a member of the above-referenced negotiated rulemaking committee created by the State Real Estate Commission.

2. In connection with my duties on that committee, I represent [insert the name of the appropriate identified interest].

3. In connection with my duties on that committee, I have incurred or will incur expenses and/or other costs.

4. I certify that I have a lack of adequate financial resources to serve on the above-referenced negotiated rulemaking committee, and that I need financial assistance from the Commission in order to serve.

_____
Signature of Affiant

Subscribed and sworn to before me this ____ day of _____, _____.

_____
Notary Public

TITLE 305 - NEBRASKA REAL ESTATE COMMISSION

Chapter 2 - Rules of Practice and Procedure for Petitioning for Rulemaking

001 General Information.

001.01 Application of Rules. These rules are promulgated pursuant to Neb. Laws 1994, LB 446, and 53 Nebraska Administrative Code, Chapter 2.

002 Rulemaking Petition.

002.01 Petition. Any person may petition the State Real Estate Commission requesting the promulgation, amendment, or repeal of a rule or regulation.

002.02 Form. The petition:

002.02A Shall be clearly designated as a petition for a rule change;

002.02B In the case of a proposed new rule or amendment of an existing rule, shall set forth the desired rule in its entirety;

002.02C In the case of a petition for the repeal of an existing rule, shall state that it is a petition for repeal and shall either set forth the rule to be repealed in full or shall refer to it, by the State Real Estate Commission rule number;

002.02D Shall describe the reason for the rule change;

002.02E Shall include an address and telephone where the petitioner can be reached during regular work hours; and

002.02F Shall be signed by:

002.02F1 The Petitioner or his or her attorney, in which case the attorney shall also state his or her address, telephone number, and bar number;

002.02F2 A duly authorized officer of the petitioner, if petitioner is a corporation or other legal entity.

003 Petition Consideration and Disposition.

003.01 Within sixty (60) days after submission of a petition, the State Real Estate Commission shall:

003.01A Deny the petition in writing, stating its reasons therefor;

003.01B Initiate rulemaking proceedings in accordance with the Administrative Procedure Act;

003.01C If otherwise lawful, adopt a rule or regulation.

Title 305 - NEBRASKA REAL ESTATE COMMISSION

Chapter 3 - Rules of Practice and Procedure for Petitioning for Declaratory Orders

001 General Information.

001.01 Application of Rules. These rules are promulgated pursuant to Neb. Laws 1994, LB 446, and 53 Nebraska Administrative Code, Chapter 3.

001.02 Scope of this Chapter. This Chapter pertains solely to the procedures to be used by any person or entity seeking issuance of a declaratory order by the Commission.

001.03 Related Regulations. In addition to this Chapter, related regulations pertaining to administrative procedures before the Commission are: 305 NAC Chapter 1 Procedures for Negotiated Rulemaking; 305 NAC Chapter 2, Petitioning for Rulemaking; 305 NAC Chapter 4, Rules of Practice and Procedure for Hearings for Contested Cases.

002 Definitions. As used in this Chapter:

002.01 Agency shall mean the Commission and its employees, including the Director, any Deputy Directors and staff.

002.02 Argument shall mean the oral statement of the petitioner or any other party which explains his or her view of the facts and issue to be decided, the law applicable to the question presented, and the reasoning that connects the facts and law.

002.03 Commission shall mean the State Real Estate Commission of the State of Nebraska.

002.04 Contested case shall mean a proceeding before the Commission in which the legal rights, duties, or privileges of specific parties are required by law or constitutional right to be determined after hearing before the Commission.

002.05 Declaratory order proceeding shall mean a proceeding initiated by a petitioner seeking issuance of a binding order by the Commission as to the applicability of specified circumstances to a statute, rule, regulation, or order within the primary jurisdiction of the Commission.

002.06 Director shall mean the person appointed as Director of the Commission pursuant to section 81-885.07(4), Revised Statutes of Nebraska 1943, as amended.

002.07 Hearing officer shall mean the person or persons conducting a declaratory order proceeding pursuant to the Administrative Procedure Act, whether designated as the presiding officer, administrative law judge, or some other title.

002.08 Intervenor(s) shall mean persons, political subdivisions, corporations, organizations, or other entities who have or claim to have any interest, legal right, duty, privilege, or immunity, which would be directly affected by the Commission's issuance of a binding declaratory order.

002.09 Necessary party shall mean a person who or an entity which has a

specific interest in the applicability of the statute, rule, regulation, or order, as distinguished from a general interest such as may be the concern of the public at large. A necessary party is one which is or would be adversely affected in a legally cognizable way by the uncertainty sought to be resolved.

002.10 Parties shall mean persons, political subdivisions, corporations, organizations, or other entities subject to the jurisdiction of the Commission who are involved in a declaratory order proceeding according to the procedures set forth in this Chapter.

002.11 Petition shall mean the document filed in accordance with section 003 of this Chapter to initiate a declaratory order proceeding.

002.12 Petitioner(s) shall mean a party or parties who have filed a petition with the Commission seeking issuance of a declaratory order.

002.13 Pleading shall mean any written petition, answer, or motion used in any declaratory order proceeding before the Commission as set forth in this Chapter.

003 Petition for Declaratory Order.

003.01 Generally. A request for a declaratory order must be made by a petition that meets the requirements of section 003.

003.02 Who May File. Any person may petition the Commission for issuance of a declaratory order as to the applicability to specified circumstances of a statute, rule, regulation, or order which is within the primary jurisdiction of the Commission.

003.03 When Order Appropriate. A declaratory order may be requested on the applicability of a statute, rule, regulation, or order enforced by the Commission. "Applicability" refers to the appropriateness of the relation of the law to the person, property, or state of facts, or its relevance under the circumstances given. It may include such questions as whether the law applies at all, to whom it applies, when it applies, how it applies, or which law applies. Considerations as to whether issuance of a declaratory order is appropriate include:

003.03A A declaratory order may be requested only on the applicability of existing statutes and rules and regulations.

003.03B A declaratory order may be requested to obtain a determination of proposed conduct, not to obtain a determination of the effect of conduct that has already occurred.

003.03C A declaratory order is not a mechanism for review or appeal of a decision made by the Commission in a contested case.

003.03D A declaratory order may not be requested to obtain a declaration by the Commission that a statute or regulation is unconstitutional or that a regulation of the Commission is invalid.

003.03E A declaratory order may not be issued by the Commission that would substantially prejudice the rights of a person who would be a

necessary party and who does not consent in writing to the determination of the matter by a declaratory order proceeding.

003.04 Form of Petition. A petition for declaratory order shall be in the form of either a pleading or letter which shall contain each of the following:

003.04A A caption, which shall include:

003.04A1 The venue: BEFORE THE STATE REAL ESTATE COMMISSION, STATE OF NEBRASKA;

003.04A2 A heading specifying the subject matter and the name of the petitioner; and

003.04A3 The name of the pleading: PETITION FOR DECLARATORY ORDER.

003.04B The statements required in subsection 003.05 of this Chapter.

003.04C The signature of the petitioner, or when represented by an attorney, the signature of the attorney.

003.04D The name and address of the petitioner, and when represented by an attorney, the name, address, telephone number, and bar number of the attorney.

003.04E Size and Paper. The petition shall be made on white, letter-sized (8½" x 11") paper.

003.04F Print. The petition shall be legibly typewritten, photostatically reproduced, printed, or handwritten. If handwritten, the petition must be written in ink. Only one side of a page shall contain any writing.

003.04G Attachments. Any documents attached to a petition shall be securely fastened to the pleading and shall meet the requirements of 003.04E and 003.04F and, when possible, be reproduced on 8½" x 11" paper or placed in an 8½" x 11" envelope and clearly marked as an attachment to the petition.

003.05 Contents of Petition. To be considered, the petition shall include the following:

003.05A The name and address of the petitioner;

003.05B The name and address of all persons or entities, known to the petitioner, who may have a specific interest in the applicability of the statute, rule, regulation, or order or who may be adversely affected by the issue sought to be resolved by the petitioner.

003.05C The statute, rule, regulation, or order upon which the petitioner seeks issuance of a declaratory order;

003.05D A detailed statement of all of the material facts and specific circumstances which apply to petitioner's request for issuance of a declaratory order;

003.05E All propositions of law or contentions asserted by the petitioner;

003.05F A demand for the relief to which the petitioner alleges entitlement. The petition shall state the petitioner's position as to how the Commission should rule and why the Commission should rule in the manner requested; and

003.05G Any documents pertinent to the petition that the petitioner wishes to be considered by the Commission.

003.06 The petition shall be subscribed and verified by the petitioner. If the petitioner is a corporation, political subdivision, or other entity, then the petition shall be subscribed and verified by a duly authorized agent of the petitioning entity.

003.07 Sample Petition. The petitioner may use the sample form of a petition which is attached as "Appendix A" and incorporated within this Chapter. The petitioner may also prepare a reasonable facsimile of "Appendix A" so long as the requirements of subsections 003.04, 003.05, and 003.06 of this Chapter are satisfied.

003.08 Written Consents. The petitioner shall also attach to the petition any written consents obtained from any necessary party that the petition may be determined by use of a declaratory order proceeding.

004 Submission and Service of Declaratory Order Petition.

004.01 The original petition for declaratory order shall be filed with the Agency by mail or in person during the Agency's normal business hours.

004.02 The petition shall be deemed as filed when it is actually received by the Agency. The Agency shall date stamp all petitions upon receipt.

004.03 At the same time the petition is filed with the Agency, the petitioner shall serve a copy of the petition, by certified mail, return receipt requested, on all necessary parties, including all persons, political subdivisions, corporations, organizations, or other entities who are known to have or claim any interest, legal right, duty, privilege, or immunity which would be directly affected by issuance of a declaratory order in this matter by the Commission.

005 Disposition of the Petition.

005.01 Generally. Upon the filing of a petition, acting on behalf of the Commission, the Director or, by the Director's delegation, another Agency employee or a hearing officer may review the petition and recommend a decision to the Commission. In reviewing the petition, the Director or his or her designee, may in his or her discretion, do one or more of the following:

005.01A Require that additional information be submitted before the

petition will be further considered;

005.01B Require a petitioner to provide notice to persons or entities who may be necessary parties and other persons that a request for a declaratory order has been filed with the Commission;

005.01C On behalf of the Commission, schedule a date, time, and location at which the petitioner and any other parties to the proceeding may make an oral presentation on the petition as set forth in subsection 005.02C of this Chapter;

005.01D Consider the petition and any attachments without oral presentation.

005.02 Within thirty (30) days after the petition is filed, the Commission shall, in writing:

005.02A Issue an order declaring the applicability of the statute, regulation, rule, or order in question to the specified circumstances; or

005.02B Agree to issue an order by a specified time declaring the applicability of the statute, regulation, rule, or order in question to the specified circumstances; or

005.02C Set the matter for specified proceedings as set forth in subsection 005.01 of this Chapter; or

005.02D Decline to issue a declaratory ruling, stating the reasons for the Commission's decision.

005.03 Notwithstanding section 005.02 of this rule, the Commission may determine at any time that it will not issue a declaratory order if issuance of an order under the circumstances would be contrary to any provisions of section 009 of this Chapter. The Commission shall notify the petitioner and, if applicable, any intervenor or necessary party in writing when the Commission determines not to issue a declaratory order.

006 Intervention in Declaratory Order Proceeding.

006.01 Intervention by any person or entity in a declaratory order proceeding shall be allowed when the following requirements are met:

006.01A A petition for intervention must be filed with the Agency. Copies must be mailed by the petitioner for intervention to all parties to the proceeding.

006.01B The contents of the petition must be as specified in 006.02.

006.01C The Commission must determine that the interests of justice and the orderly and prompt conduct of the proceedings will not be impaired by allowing the intervention.

006.01D The petition in intervention must be filed with the Agency and copies mailed to all parties named in any notice of hearing at least five days before the hearing.

006.02 Contents of Petition. The petition for intervention shall be submitted to the Commission, in writing, on 8½" x 11" white paper, and shall include each of the following:

006.02A The statute, regulation, rule, or order that may apply to or affect the person, property, entity, or facts at issue in the matter;

006.02B A statement of facts sufficient to show the intervenor's interest;

006.02C A statement of facts which demonstrate that the intervenor's legal rights, duties, privileges, immunities, or other legal interests may be substantially affected by the proceeding or that the intervenor may intervene pursuant to a provision of law;

006.02D All propositions of law or contentions asserted by the intervenor; and

006.02E A statement of the specific relief requested by the intervenor.

006.03 The Agency may, at its discretion, invite any person or entity to file a petition for intervention.

006.04 The Commission shall grant a petition for intervention if the requirements of subsections 006.01 and 006.02 are satisfied.

006.05 The Commission shall deny a petition for intervention upon determining that the interests of justice or the orderly and prompt conduct of the proceedings would be impaired by allowing the intervention.

006.06 The Commission's decision to grant or deny a petition for intervention shall be in writing and served upon all parties.

007 Declaratory Order Proceedings.

007.01 Oral Argument, When. Oral argument shall be had only on specific order of the Commission, the Director, an Agency employee designated by the Director, or the designated hearing officer. A petitioner, intervenor, necessary party, or the staff of the Commission may submit a motion for oral argument to the Commission or the designated hearing officer. If opportunity for oral argument is granted, then argument shall be scheduled to be conducted not more than forty-five (45) days after filing of the petition. Petitioner and all other parties or, when represented, their attorneys, shall be served by the Agency with a notice of the date, time, and location for oral argument. The Agency shall provide each of the parties with notice of the proceeding not less than seven (7) days in advance of the scheduled date. Service shall be made by certified mail, return receipt requested.

007.02 Oral Argument, Procedure. Oral argument will be made before a hearing officer or Commission. The hearing officer or Commission shall be in control of the proceeding and shall:

007.02A Identify the proceeding and introduce himself or herself and identify each party for the record;

007.02B Hear the oral argument of the petitioner, intervenor, or necessary parties;

007.02C Close the proceedings.

007.03 At the declaratory order proceeding, the Agency, including legal counsel, shall have the right to present oral argument.

007.04 The hearing officer or Commission may impose reasonable time limits on the amount of time allocated to each party for oral argument.

007.05 The parties and the Agency, including legal counsel, may file briefs in support of their respective positions. The hearing officer or Commission may fix the time and order of filing briefs and may direct that briefs be submitted prior to the date of oral argument.

007.06 The oral argument may be conducted either in person or by telephone conference call.

008 Issuance of Declaratory Order.

008.01 The Commission shall issue its declaratory order within sixty (60) days of the date on which the petition was filed.

008.02 The declaratory order shall be in writing and shall include the following:

008.02A The names of all parties to the proceeding upon which the order is based;

008.02B The facts upon which the order is based;

008.02C The statute, regulation, rule, or order at issue in the matter;

008.02D The Commission's conclusion as to the applicability of the statute, regulation, rule, or order to the facts;

008.02E The Commission's conclusion as to the legal effect or result of applying the statute, regulation, rule, or order to the facts; and

008.02F The reasons relied upon by the Commission to support its conclusions.

008.03 A copy of the declaratory order shall be served upon each party by certified mail, return receipt requested.

008.04 Effect of Declaratory Order. A declaratory order shall have the same status and binding effect as any other order issued in a contested case.

008.05 No Response within sixty (60) Days. If the Commission has not issued a declaratory order within sixty (60) days after the petition has been filed, then the petition shall be deemed to have been denied by the Commission.

009 Circumstances Under Which Commission will not Issue Declaratory Orders.

009.01 Grounds upon which the Commission shall refuse to issue a declaratory order include, but are not limited to, the following:

009.01A The petition requests a declaratory order on a matter that is outside the scope of authority of the Commission;

009.01B The petition requests review or appeal of a decision made by the Commission in a contested case;

009.01C The petition requests a declaratory order on the effect of past conduct;

009.01D An investigation for purposes of a formal adjudication, a contested case, or a petition to issue, amend, or repeal regulations is pending before the Commission involving the petitioner on substantially the same or similar facts or issues raised in the petition;

009.01E The petition seeks a declaration that a statute or rule or regulation is unconstitutional or invalid;

009.01F The issue raised in the petition has been settled by a change in circumstances or other means so as to render moot the need for a declaratory order;

009.01G An order would substantially prejudice the rights of a person or entity who would be a necessary party and who does not consent in writing to the determination of the matter by a declaratory order proceeding;

009.01H An order would not resolve the controversy or uncertainty; or

009.01I The question posed or facts presented are insufficiently specific, overly broad, or are otherwise inappropriate as a basis upon which to decide the matter.

009.02 Grounds upon which the Commission may determine to refuse to issue a declaratory order include, but are not limited to, the following:

009.02A Refusal is necessary to assure adequate allocation of Commission resources are available for issuing rulings on petitions raising questions of greater urgency or significance;

009.02B The question presented is of such complexity that the Commission has had insufficient opportunity or resources to develop a fully matured ruling;

009.02C The petitioner fails to submit any additional information

requested by the Commission, hearing officer, or Agency employee or submits such information after the date established in the request.

010 Appeal. A declaratory order is subject to review in the manner provided for review of contested cases by the Administrative Procedure Act, NEB. REV. STAT. sections 84-901 through 84-920. Specific procedures for appeal are set forth in NEB. REV. STAT. section 84-917.

305 NAC 3 Appendix A

BEFORE THE STATE REAL ESTATE COMMISSION,
STATE OF NEBRASKA

In the matter of the application of [name]	)))	PETITION FOR DECLARATORY ORDER

1. Petitioner's name and address;

2. The name and address of all persons who or entities which may have a specific interest in the applicability of the statute, rule, regulation, or order, or who may be adversely affected by the issue sought to be resolved;

3. All material facts and specific circumstances;

4. All rules of law which apply;

5. Petitioner's demand for relief;

DATED on this _____ day of _____, _____.

VERIFICATION

STATE OF _____)
) ss.
COUNTY OF _____)

_____[name]_____, being first duly sworn, states that he/she is the petitioner/petitioner's agent in the above entitled matter; that he/she has read the foregoing Petition For Declaratory Order; and that the allegations of fact therein are true.

_____
[Petitioner's signature]

SUBSCRIBED and sworn to before me on this ___ day of _____, _____.

NOTARY SEAL

_____
[Notary signature]

Title 305 - NEBRASKA REAL ESTATE COMMISSION

Chapter 4 - Rules of Practice and Procedure for Contested Cases

001 General Information.

001.01 Application of Rules. These rules are promulgated pursuant to Neb. Laws 1994, LB 446 and LB 414 and 53 Nebraska Administrative Code Chapter 4. They shall apply to all contested cases within the jurisdiction of the Commission.

001.02 Definitions. The following definitions shall apply as used throughout Chapter 4 of these rules and regulations.

001.02A Agency shall mean the Commission and its employees, including the Director, any Deputy Directors, and staff.

001.02B Chairperson shall mean the Secretary of State. In the event of the absence or inability of the Secretary of State to serve as Chairperson, it shall also mean the acting Chairperson appointed by the Secretary of State or, in the event no appointment is made by the Secretary of State, by the Commission.

001.02C Commission shall mean the State Real Estate Commission of the State of Nebraska, and shall include only duly appointed and acting members of the Commission, and not employees or agents of the Agency.

001.02D Contested Case shall mean a proceeding before the Commission in which the legal rights, duties, or privileges of specific parties are required by law or constitutional right to be determined after a Commission hearing.

001.02E Director shall mean the individual appointed as the Director of the Commission pursuant to Section 81-885.07(4) of the Real Estate License Act.

001.02F Ex Parte Communication shall mean an oral or written communication which is not on the record in a contested case with respect to which reasonable notice to all parties was not given. Ex parte communication shall not include:

001.02F1 Communications which do not pertain to the merits of a contested case;

001.02F2 Communications required for the disposition of ex parte matters as authorized by law;

001.02F3 Communications in a rulemaking proceeding; and

001.02F4 Communications to which all parties have given consent.

001.02G Hearing Officer shall mean the Chairperson or, for the purposes of conducting a prehearing conference and hearings on non-dispositive motions and other matters preliminary to a evidentiary hearing before the Commission, any individual appointed by the Chairperson pursuant to these rules. The individual appointed to handle prehearing conferences, hearings on non-dispositive motions, and other matters preliminary to the evidentiary hearing may, but need not be, a member the Commission or an employee of the Agency.

001.02H Membership Campground Act shall mean Sections 76-2101 et seq., Revised Statutes of Nebraska, 1943, as amended.

001.02I Non-Dispositive Hearing shall mean a hearing conducted by a hearing officer on motions regarding continuances, discovery matters, protective orders, and other procedural matters.

001.02J Party means the person by or against whom a contested case is brought, or a person allowed to intervene in a contested case.

001.02K Person or Persons shall include individuals, corporations, partnerships, associations, limited liability companies, or any other entities.

001.02L Prehearing Conference shall mean a conference before a hearing officer held for the purpose of identifying issues, witnesses, evidence, and other matters deemed relevant to the evidentiary hearing before the Commission, including discussion of potential settlement of a contested case.

001.02M Real Estate License Act shall mean the Nebraska Real Estate License Act, Sections 81-885.01 et seq., Revised Statutes Nebraska, 1943, as amended.

001.02N Retirement Communities and Subdivision Act shall mean Sections 76-1301 et seq., Revised Statutes of Nebraska, 1943, as amended.

001.02O State shall mean the State of Nebraska.

001.02P Subdivision Certification Law shall mean Sections 81-885.33 through 81-885.48, Revised Statutes of Nebraska, 1943, as amended.

001.02Q Time-Share Act shall mean Sections 76-1701 et seq., Revised Statutes of Nebraska, 1943, as amended.

002 Prohibitions Against Ex Parte Communications.

002.01 Prohibitions; when Applicable. The prohibitions found in this section concerning ex parte communications, as defined in subsection 001.02F, shall apply beginning with the commencement of a contested case as further defined at subsections 008.04B, 009.03A7, and 009.03B6.

002.02 Prohibitions; to whom Applicable.

002.02A Parties and Public. No party in a contested case or other person outside the Agency having an interest in the contested case shall make or knowingly cause to be made an ex parte communication to the hearing officer, to any member of the Commission, or to any agency employee who is or may reasonably be expected to be involved in the decision making process of the contested case.

002.02B Persons in decision making roles. No hearing officer, member of the Commission or employee who is or may reasonably be expected to be involved in the decision making process of the contested case shall make or knowingly cause to be made an ex parte communication

to any party in a contested case or other person outside the Agency having an interest in the contested case.

002.02C Investigators. No Agency employee or agent engaged in the investigation or enforcement of a contested case shall make or knowingly cause to be made an ex parte communication to a hearing officer, to a member of the Commission, or to an Agency employee who is or may reasonably be expected to be involved in the decision making process of the contested case.

002.03 Disclosure of contacts. The hearing officer, member of the Commission, or Agency employee who is or may reasonably be expected to be involved in the decision making process of the contested case who receives or who makes or knowingly causes to be made an ex parte communication set forth in subsections 002.02A through 002.02C shall file in the record of the contested case:

002.03A All such written communications;

002.03B Memoranda stating the substance of all such oral communications; and

002.03C All written responses and memoranda stating the substance of all oral responses to all the ex parte communications.

002.03D The filing shall be made with the Agency within two (2) working days of the receipt or making of the ex parte communication. Notice of the filing, with an opportunity to respond, shall be given to all parties of record.

002.03E Filing and notice of filing provided under subsection 002.03D shall not be considered on the record and reasonable notice for purposes of the definition of ex parte communication.

003 Intervention in a Contested Case.

003.01 Intervention in a contested case shall be allowed when the following requirements are met:

003.01A A petition for intervention must be filed with the Agency at least five (5) days before the hearing. Copies must be mailed by the petitioner for intervention to all parties named in the hearing officer's notice of the hearing;

003.01B The petition must state facts demonstrating that the petitioner's legal rights, duties, privileges, immunities, or other legal interests may be substantially affected by the proceeding or that the petitioner qualifies as an intervenor under any provision of law; and

003.01C The hearing officer must determine that the interests of justice and the orderly and prompt conduct of the proceedings will not be impaired by allowing the intervention.

003.02 The hearing officer may grant a petition for intervention at any time upon determining that the intervention sought is in the interests of justice and will not impair the orderly and prompt conduct of the proceedings.

003.03 If a petitioner qualifies for intervention, the hearing officer may impose conditions upon the intervenor's participation in the proceedings, either at the time that intervention is granted or at any subsequent time. Those conditions may include:

003.03A Limiting the intervenor's participation to designated issues in which the intervenor has a particular interest demonstrated by the petition;

003.03B Limiting the intervenor's use of discovery, cross-examination, and other procedures so as to promote the orderly and prompt conduct of the proceedings; and

003.03C Requiring two or more intervenors to combine their presentation of evidence and argument, cross-examination, discovery, and other participation in the proceedings.

003.04 The hearing officer at least twenty-four (24) hours before the hearing, shall issue an order granting or denying each pending petition for intervention, specifying any conditions and briefly stating the reasons for the order.

003.04A The hearing officer may modify the order at any time, stating the reasons for the modification.

003.04B The hearing officer shall promptly give notice of an order granting, denying, or modifying intervention to the petitioner for intervention and to all parties.

004 Form of Pleadings, Filing, Service, and Proof of Service.

004.01 A contested case may take the form of a complaint proceeding against a licensee or a petition for review of a decision of the Director. The procedures applicable only to a complaint proceeding are found at section 008. The procedures applicable only to a petition for review are found at section 009.

004.02 A party may appear on his or her own behalf in a contested case proceeding or may be represented by an attorney or other representative as permitted by law.

004.03 Any pleading filed in a contested case shall meet the following requirements:

004.03A The pleading shall contain a heading specifying the name of the Commission and the title or nature of the pleading, shall state material factual allegations and state concisely the action the Commission is being requested to take. The pleading shall be signed by the party filing the pleading, or when represented by an attorney, the signature of that attorney. When required by law, the pleading shall also be sworn to by the person filing the pleading.

004.03A1 Attorneys shall also include their address, telephone number and bar number.

004.03A2 An initial pleading shall also contain the name and address of the respondent.

004.03B All pleadings shall be made on white, letter-sized (8 ½ x 11) paper and shall be legibly typewritten, photostatically reproduced, printed or handwritten. If handwritten, a pleading must be written in ink.

004.04 All pleadings shall be filed with the Agency at its official office. Filing may be accomplished by personal delivery or mail and will be received during regular office hours of the Agency.

004.05 The provision for serving a Complaint on the Respondent is found at 008.03. The provisions for serving a Petition for Review are found at 009.03A2 and 009.03B3. The provision for serving a Petition for Imtervention is found at 003.01A.

004.06 All pleadings subsequent to the initial pleading shall be served by the party filing such pleading upon all attorneys of record or other representatives of record and upon all unrepresented parties. Service shall be made personally or by first-class or certified mail. Written proof of such service shall be filed with the Agency.

004.07 Unless state law provides that a hearing is not required, a hearing date shall be set by the Agency in accordance with statutory requirements. A written notice of the time and place of hearing shall be served by the Agency upon all attorneys of record or other representatives of record and upon all unrepresented parties. The notice must include a proof of such service and will be filed with the Agency.

004.08 In computing time prescribed or allowed by Chapter 4 of these rules and regulations or by any applicable statute in which the method of computing time is not specifically provided, days will be computed by excluding the day of the act or event and including the last day of the period. If the last day of the period falls on a Saturday, Sunday, or state holiday, the period shall include the next working day.

005 Hearing officer: criteria.

005.01 The Chairperson may appoint a hearing officer to whom will be delegated the functions of conducting prehearing conferences and ruling on non-dispositive motions, including but not limited to matters of discovery.

005.02 A person who has served as investigator, prosecutor, or advocate in a contested case or in its prehearing stage may not serve as hearing officer or assist or advise a hearing officer in the same proceeding except as provided in subsection 005.04. Nothing in this subsection shall prevent the Director from carrying out any and all ministerial duties on behalf of the Commission.

005.03 A person who is subject to the authority, direction, or discretion of one who has served as investigator, prosecutor, or advocate in a contested case or in its prehearing stage may not serve as hearing officer or advise a hearing officer in the same proceeding except as provided in

subsection 005.04. Nothing in this subsection shall prevent any staff or agent of the Agency from carrying out any and all ministerial duties on behalf of the Commission.

005.04 If all parties consent, a person who has served as, or who is subject to the authority, direction, or discretion of one who has served as investigator, prosecutor, or advocate in a contested case or in its prehearing stage may assist a hearing officer in the preparation of orders.

005.05 A person who has participated in a determination of probable cause or other equivalent preliminary determination in a contested case may serve as hearing officer or assist or advise a hearing officer in the same proceeding.

005.06 A person may serve as hearing officer at successive stages of the same contested case.

006 Prehearing Procedures.

006.01 Prehearing conferences and orders. A hearing officer designated to conduct a hearing may determine, subject to the Commission's rules and regulations, whether a prehearing conference will be conducted. If a prehearing conference is not held, a hearing officer for the hearing may issue a prehearing order, based on the pleadings, to regulate the conduct of the proceedings.

006.01A Not less than twenty (20) days before the date set for the evidentiary hearing the Director shall issue an order on behalf of the Commission requiring each party, or their respective counsel of record, to exchange with each other: 1) a copy of each exhibit which the party may introduce into evidence, and 2) a list containing the name, address, and telephone number of each witness whom the party may call to testify. It shall not be necessary to disclose a witness or exhibit to be used solely for purpose of impeachment. The exchange shall be completed at least ten (10) days before the date set for hearing and a copy of each witness list and exhibit list shall be filed with the Agency at least ten (10) days before the date set for hearing. Additional witnesses may be called or exhibits introduced only at the discretion of a hearing officer for good cause shown. The Director shall not issue an order pursuant to this subsection when a hearing officer has been designed to conduct prehearing conferences and to rule on non-dispositive motions and when the hearing officer 1) has issued a prehearing conference order, 2) has scheduled a prehearing conference, or 3) has issued a prehearing order based on the pleadings, without holding a prehearing conference, as provided in section 006.01.

006.01B If a prehearing conference is conducted:

006.01B1 The hearing officer shall promptly notify the Agency of the determination that a prehearing conference will be conducted. The Commission Chairperson may assign another hearing officer for the prehearing conference; and

006.01B2 The hearing officer for the prehearing conference shall set the time and place of the conference and give reasonable written notice to all parties and to all persons who have filed written petitions to intervene in the matter. The agency shall give notice to other persons entitled to notice.

006.01B3 The notice referred to in subsection 006.01B2 shall include the following:

006.01B3(a) The names and mailing addresses of all parties and other persons to whom notice is being given by the hearing officer;

006.01B3(b) The name, official title, mailing address, and telephone number of any counsel or employee who has been designated to appear for the Agency;

006.01B3(c) The official file or other reference number, the name of the proceeding, and a general description of the subject matter;

006.01B3(d) A statement of the time, place, and nature of the prehearing conference;

006.01B3(e) A statement of the legal authority and jurisdiction under which the prehearing conference and the hearing are to be held;

006.01B3(f) The name, official title, mailing address, and telephone number of the hearing officer for the prehearing conference;

006.01B3(g) A statement that a party who fails to attend or participate in a prehearing conference, hearing, or other stage of a contested case or who fails to make a good faith effort to comply with a prehearing order may be held in default under the Administrative Procedure Act; and

006.01B3(h) Any other matters that the hearing officer considers desirable to expedite the proceedings.

006.01C The hearing officer shall conduct a prehearing conference, as may be appropriate, to deal with such matters as exploration of settlement possibilities, preparation of stipulations, clarification of issues, rulings on identity and limitation of the number of witnesses, objections to proffers of evidence, determination of the extent to which direct evidence, rebuttal evidence, or cross-examination will be presented in written form and the extent to which telephone, television, or other electronic means will be used as a substitute for proceedings in person, order of presentation of evidence and cross-examination, rulings regarding issuance of subpoenas, and such other matters as will promote the orderly and prompt conduct of the hearing. The prehearing conference may include a hearing on any pending non-dispositive motions. The hearing officer shall issue a prehearing order incorporating the matters determined at the prehearing conference. Any proposed settlement or

final disposition of the contested case, agreed to by the parties at the prehearing conference, shall be set forth in the prehearing order, together with the hearing officer's recommendation, and forwarded to the Commission.

006.01D The hearing officer may conduct all or part of the prehearing conference by telephone, television, or other electronic means if each participant in the conference has an opportunity to participate in, to hear, and, if technically feasible, to see the entire proceeding while it is taking place.

006.02 Continuances. Any motion for a continuance shall be in writing, shall state in detail why a continuance is necessary, shall be served on all other parties, and shall be filed with the Agency. The Director shall have authority to grant a continuance upon the motion of any party unless otherwise directed by action of the Commission. If the Director denies a motion for continuance, the motion shall be directed to a hearing officer for determination under subsection 006.03. The Director also may order a continuance upon reasonable notice to the parties when the continuance is necessary for the orderly conduct of the Commission's agenda, unless otherwise prohibited by law.

006.03 Non-dispositive motions. Non-dispositive motions, including motions relating to the conduct of discovery, and other non-dispositive procedural motions may be directed to and allowed by a hearing officer as permitted by law or if stipulated to by the parties.

006.03A The hearing officer shall set the time and place of the non-dispositive hearing and shall give reasonable notice to all parties and to all persons who have filed written petitions to intervene in the matter.

006.03B The hearing officer may, in his or her discretion, grant extensions of time or continuances of hearings on the timely request of any party for good cause shown. A party must file a written motion for continuance which states in detail the reasons why a continuance is necessary and serve a copy of the motion on all other parties.

006.03B1 Good cause for an extension of time or continuance may include, but is not limited to, the following:

006.03B1(a) Illness of the party, legal counsel or witness;

006.03B1(b) A change in legal representation; or

006.03B1(c) Settlement negotiations are underway.

006.04 Discovery in contested cases.

006.04A The Director at the request of any party or the hearing officer shall issue subpoenas for discovery matters in accordance with the rules of civil procedure. The hearing officer, at the

request of any party or upon the hearing officer's own motion, may issue discovery orders and protective orders in accordance with the rules of civil procedure except as may otherwise be prescribed by law.

006.04B Any prehearing motion to compel discovery, motion to quash, motion for protective order or other discovery-related motion shall:

006.04B1 Quote the interrogatory, request, question, or subpoena at issue, or be accompanied by a copy of the interrogatory, request, subpoena or excerpt of a deposition;

006.04B2 State the reasons supporting the motion;

006.04B3 Be accompanied by a statement setting forth the steps or efforts made by the moving party or his or her counsel to resolve by agreement the issues raised and that agreement has not been achieved; and

006.04B4 Be filed with the Agency. The moving party must serve copies of all such motions on all parties to the contested case.

006.04C Other than as provided in subsection 006.04B4 above, discovery materials need not be filed with the Agency.

006.04D After a party has obtained an order to compel or other order pursuant to this subsection, the order may be enforced by the district court upon the application of the party obtaining the order.

006.05 Amendments.

006.05A An initial pleading may be amended at any time before an answer is filed or is due if notice is given to the opposing party or his or her attorney. In all other cases, a party must request permission to amend from the hearing officer.

006.05B A hearing officer may also allow, in his or her discretion, the filing of supplemental pleadings alleging facts material to the case occurring after the original pleadings were filed. A hearing officer may also permit amendment of pleadings where a mistake appears or where amendment does not materially change a claim or defense.

006.06 Informal Disposition. Unless otherwise precluded by law, informal disposition may be made of any contested case by stipulation, agreed settlement, consent order, or default.

007 Conducting a contested case hearing.

007.01 Order. At the discretion of the hearing officer, the hearing may be conducted in the following order:

007.01A The hearing is called to order by the hearing officer. Any preliminary motions, stipulations or agreed orders are entertained.

007.01B Each party may be permitted to make an opening statement. Opening statements take place in the same order as the presentation of evidence.

007.01C Presentation of Evidence. The order for presentation of evidence in a complaint proceeding shall be as set forth in section 008.07. The order for presentation of evidence in a petition for review proceeding shall be as set forth in section 009.07.

007.01C1 With regard to each witness who testifies, the following examination may be conducted:

007.01C1(a) Direct examination conducted by the party who calls the witness;

007.01C1(b) Cross-examination by the opposing party;

007.01C1(c) Examination by Commissioners;

007.01C1(d) Redirect examination by the party who called the witness; and

007.01C1(e) Recross-examination by the opposing party.

007.01C1(f) Additional examination by Commissioners.

007.01C1(g) Any additional redirect examination or recross-examination shall be permitted at the hearing officer's discretion.

007.01D After the evidence is presented, each party may have opportunity to make a closing argument. Closing arguments shall be made in the same order as the presentation of evidence. The hearing officer may request that the parties submit briefs in addition to or in lieu of closing arguments.

007.02 Evidence.

007.02A The Chairperson or hearing officer may admit and give probative effect to evidence which possesses probative value commonly accepted by reasonably prudent persons in the conduct of their affairs and may exclude incompetent, irrelevant, immaterial and unduly repetitious evidence.

007.02B Any party to a formal evidentiary hearing before the Commission, from which a decision may be appealed to the courts of this state, may request that the Commission be bound by the rules of evidence applicable in district court by filing with the Agency and serving on the other parties of record, at least three (3) days prior to the holding of the hearing, a written request therefore. Such request shall include the requesting party's agreement to be liable for the payment of costs incurred thereby and upon any appeal or review thereof, including the cost of court reporting services which the requesting party shall procure for the hearing.

007.02C Documentary evidence may be received in the form of copies or excerpts or incorporated by reference.

007.02D All evidence including records and documents in the possession of the Commission of which it desires to avail itself shall be offered and made a part of the record in the case. No factual information or evidence other than the record shall be considered in the determination of the case.

007.02E The Chairperson may administer oaths and issue orders governing the conduct of the hearing and the persons in attendance.

007.02F The Commission shall give effect to the rules of privilege recognized by law.

007.02G The Commission may take official notice of cognizable facts and in addition may take official notice of general, technical, or scientific facts within its specialized knowledge and the rules and regulations adopted and promulgated by the Commission.

007.02G1 Parties shall be notified either before or during the hearing or by reference in preliminary reports or otherwise of materials so noticed.

007.02G2 Parties shall be afforded an opportunity to contest facts so noticed.

007.02G3 The record shall contain a written record of everything officially noticed.

007.02H The Commission may utilize its experience, technical competence and specialized knowledge in the evaluation of the evidence presented to it.

007.02I The Director may issue subpoenas in accordance with the rules of Civil Procedure except as may otherwise be prescribed by law. Subpoenas issued under this subsection may be enforced by the district court upon application of the party requesting the subpoena. Orders issued by the Chairperson or Commission may be enforced by the district court upon application by the Chairperson.

007.03 Conducting the hearing by electronic means. The Chairperson may conduct all or part of the hearing by telephone, television, or other electronic means if each participant in the hearing has an opportunity to participate in, to hear, and, if technically feasible, to see the entire proceeding while it is taking place.

007.04 Official record.

007.04A The Agency shall prepare an official record, which shall include testimony and exhibits, in each contested case, but it shall not be necessary to transcribe the record of the proceedings unless requested for purpose of appeal, in which event the transcript and record shall be furnished by the Agency upon request and tender of the cost of preparation.

007.04B The Agency shall maintain an official record of each contested case under the Administrative Procedure Act for at least four (4) years following the date of the final order.

007.04C The Commission record shall consist only of the following:

007.04C1 Notices of all proceedings;

007.04C2 Any pleadings, motions, requests, preliminary or intermediate rulings and orders, and similar correspondence to or from the Commission pertaining to the contested case;

007.04C3 The record of the hearing before the Commission, including all exhibits and evidence introduced during such hearing, a statement of matters officially noticed by the Commission during the proceeding, and all proffers of proof and objections and rulings thereon; and

007.04C4 The final order.

007.04D As provided in 305 NAC 4 Section 002.03 the Chairperson, Commission member, or the hearing officer who receives or who makes or knowingly causes to be made an ex parte communication as set forth in that subsection shall make the appropriate filings which shall be included in the official record of the contested case.

007.04E Except to the extent that the Administrative Procedure Act or another statute provides otherwise, the Commission record shall constitute the exclusive basis for Commission action in contested cases under the act and for judicial review thereof.

007.05 Costs. All costs of a formal hearing shall be paid by the party or parties against whom a final decision is rendered.

008 Contested Cases Involving Licensure of Individuals.

008.01 Application of Rules. The rules in this section are applicable to filings and investigations of Complaints and Orders to Show Cause, and hearings on Complaints, Orders to Show Cause, and any other contested cases by or against licensees or any other individuals who are subject to the jurisdiction of the State Real Estate Commission pursuant to the Real Estate License Act or any lawful rules, regulations, or orders of the Commission thereunder.

008.02 Additional Definitions. In addition to the definitions used in Section 001.02, the definitions used in Nebraska Real Estate License Act are incorporated by this reference. The following definitions also shall apply to terms used in this section:

008.02A Answer shall mean a written statement filed by a Respondent in the form required by the Commission, answering the allegations of a Complaint.

008.02B Complainant shall mean the State of Nebraska, filing a Complaint on the relation of any person, including the Director, and the Commission.

008.02C Complaint shall mean a written statement filed by any person, by the Director, or by the Commission alleging that any individual subject to Commission jurisdiction has violated one or more provisions of the Real Estate License Act, or the rules and regulations or any lawful order of the Commission entered thereunder.

008.02D Licensee shall mean a real estate broker or real estate salesperson licensed by the Commission pursuant to the Real Estate License Act.

008.02E Party or parties shall include only the Complainant, the Respondent, and any intervenor. A person filing a Complaint is not a party to a complaint proceeding.

008.02F Respondent shall mean an individual against whom a Complaint has been filed.

008.02G Violation shall mean a violation of any portion of the Real Estate License Act, or any lawful rules, regulations, or orders of the Commission thereunder.

008.03 Filing and Serving Complaints and Answers.

008.03A Any person shall have the right to file a Complaint against a licensee or any other person subject to the Real Estate License Act, alleging a violation of that Act. The Complaint shall be sworn to by the person making it, and shall be filed in triplicate, by mail or in person, at the normal business address of the Agency. The Director shall cause the Complaint to be investigated.

008.03B The Director may file a Complaint on behalf of the Commission in the following circumstances: 1) when an examiner's report discloses facts which indicate that a licensee may have violated the Real Estate License Act; 2) when it appears in his or her opinion, after investigation, that a Complaint filed under Section 008.03A does not adequately set forth the facts or issues involved, the Director may amend the complaint or supersede it by filing a new complaint; and 3) under such other circumstances as the Commission may direct. The Complaint need not be sworn to.

008.03C The Commission may file a Complaint on its own motion. The Complaint need not be sworn to.

008.03D Any Complaint shall be in writing, shall set forth in clear and concise language the alleged violation, and shall include the section or sections of the Real Estate License Act, rule, regulation or order violated.

008.03E Any complaint shall be made on behalf of the State of Nebraska, ex rel. the name of the person filing the Complaint, the Director, or the Commission, respectively. The individual against whom the Complaint is being filed shall be designated as the Respondent in the Complaint. The form of the Complaint shall be as follows:

BEFORE THE STATE REAL ESTATE COMMISSION
OF THE STATE OF NEBRASKA

STATE OF NEBRASKA, ex rel. Jane Doe, Complainant,	)	Case No. _____
VS.	)	Complaint
Richard Rowe, Respondent.	)	

Approved forms and information concerning procedures for filing a Complaint may be obtained from the Director at the normal business address of the Agency.

008.03F The Director shall serve a copy of the Complaint on the Respondent unless, upon the request of the Director or upon its own motion, the Commission dismisses the Complaint because in the Commission's opinion the Complaint does not involve a violation of the Real Estate License Act.

008.03G Within twenty days following the service of the Complaint, the Respondent may file an Answer. The Answer shall be captioned in the manner designated in section 008.03E, except that it shall be denominated "Answer"; shall contain a concise response to each and every material allegation of the Complaint; shall contain a concise statement of all defenses upon which the Respondent intends to rely; and shall be sworn to by the Respondent. The Answer shall be filed with the Agency at its normal business address.

008.03H If the Respondent fails to timely file an Answer conforming to the requirements of section 008.03G, the Commission may accept the allegations of the Complaint as true and may, after notice and hearing, enter an order consistent with the allegations of the Complaint.

008.03I Substantive or dispositive pleadings other than the Complaint and Answer shall not be allowed, other than amendments thereto.

008.04 Notice of Hearing.

008.04A The Commission shall set a Complaint for hearing when, in the Commission's opinion, the pleadings and investigation reveal a sufficient probability that the alleged conduct of the Respondent may be such as to justify disciplinary action against him or her. The Commission may decide to set the Complaint for hearing either before or after an Answer is filed. If the Commission decides not to set a Complaint for hearing, it may dismiss the Complaint or direct the Agency to conduct a further investigation.

008.04B A contested case under Section 008 commences when the Commission sets the Complaint for hearing. The rules regarding ex parte communications shall apply beginning at the time the Complaint is set for hearing.

008.04C In the event the Commission sets a Complaint for hearing, notice of the hearing shall be sent to the Respondent by certified mail not later than twenty days prior to the date set for hearing.

008.05 Consent Orders. The following shall apply to Consent Orders:

008.05A The parties may enter into a written stipulation setting forth the terms and conditions of a Consent Order to be entered against the Respondent in a contested case. Such order shall contain findings of fact, conclusions of law, and the decision of the Commission, including sanctions to be imposed, if any, shall be signed by the Respondent, and shall be approved by the respective legal counsel of the parties, if any, as to form.

008.05B A proposed Consent Order shall not be binding unless or until it is signed by the Chairperson following approval by the Commission in an open meeting. The Commission shall have full discretion to reject any Consent Order, or to provide notice to the parties of other terms and conditions which it will approve, which terms and conditions shall be consistent with the facts of the case and the applicable law. Neither representations nor offers of settlement made by a party in the course of negotiations for a proposed Consent Order, nor the refusal of a party to enter into a proposed Consent Order, shall be used against him or her at hearing or to increase sanctions in the event a violation is found after hearing.

008.05C A Consent Order duly approved by the Commission and entered of record shall be served upon the parties and shall be effective in the same manner as an order entered after hearing.

008.06 Presentation of Evidence. Evidence in a Complaint proceeding will be presented in the following order:

008.06A Evidence is presented by the Complainant.

008.06B Evidence is presented by the Respondent.

008.06C Rebuttal evidence is presented by the Complainant.

008.06D Surrebuttal evidence is presented by the Respondent.

008.07 Orders to Show Cause. The following shall apply to Orders to Show Cause:

008.07A Upon application by the Director, supported by affidavit, the Chairperson may, in his or her discretion, issue an order requiring a licensee or any other person subject to the jurisdiction of the Commission under the Act to appear before the Commission and show cause why he or she should not be subject to sanctions for failing or refusing to abide by any specified conditions in an order of the Commission. Such person shall be given not less than five (5) days' notice by certified mail of the date upon which he or she is to appear before the Commission to respond to the Show Cause Order. Willful failure to accept service of the notice or to appear before the Commission and show cause on the date specified shall be grounds for imposing sanctions against for violation of Section 81-885.24(26) and (29) of

the Act, as amended, as well as for violation of the conditions set by the Commission in its original order.

008.07B After a hearing on the Order to Show Cause, the Commission shall prepare and file a written decision to include findings of fact, conclusions of law, and its ruling on the Order to Show Cause, and specify the sanctions, if any, against the person charged with violation of specified conditions in a Commission order.

009 Contested Cases Involving Registration.

009.01 Application. The rules in this section are applicable to contested cases involving filings, applications, registrations, certifications, public offering statements and related matters under the jurisdiction of the Commission with regard to the Retirement Communities and Subdivisions Act, the Time-Share Act, the Membership Campground Act, or the Subdivision Certification Law, or section 81-885.18 of the Real Estate License Act.

009.02 Definitions. The following definitions shall apply to this section, in addition to the statutory definitions of applicable laws and the definitions contained in section 001.02.

009.02A Decision of the Director shall mean any written decision by the Director pursuant to law or authorization by the Commission affecting the legal rights, duties or privileges of specific persons, including registration of an individual as a salesperson pursuant to Section 76-2115 of the Membership Campground Act, as amended, or rejection of a license application pursuant to Section 81-885.18 of the Real Estate License Act. Such written decisions shall include but are not necessarily limited to decisions which 1) reject, deny, suspend, or order modification of a public offering statement, certification, application or registration, or any amendment or renewal, 2) determine that a person is operating in violation of any registration law under the Commission's jurisdiction, or 3) order a person to cease and desist from a particular act.

009.02B Applicant shall mean a person who files an application for registration or certification pursuant to the Retirement Communities and Subdivisions Act, the Time-Share Act, the Membership Campground Act, or the Subdivision Certification Law, or licensure pursuant to the Real Estate License Act.

009.02C Petitioner shall mean a person who files a Petition for Review of a decision of the Director, unless the Petition is filed by the Director as provided in this section.

009.02D Respondent shall mean a person against whom the Director files a Petition for Review as provided in this section.

009.03 Petition for Review. Any person whose legal rights, duties or privileges are specifically affected by a decision of the Director may obtain a public hearing before the Commission by filing a Petition for Review as provided in this subsection. In those circumstances where a

person is entitled to a hearing before a decision of the Director may be enforced, the Director may file a Petition for Review.

009.03A Filed by Petitioner.

009.03A1 The Petition for Review filed by a petitioner shall be captioned as follows:

BEFORE THE STATE REAL ESTATE COMMISSION
OF THE STATE OF NEBRASKA

In the Matter of	**)**	**Case No. _____**
[Name of Petitioner]	**)**	**Petition for Review**

Approved forms and information concerning procedures for filing a Petition for Review may be obtained from the Director at the normal business address of the Agency.

009.03A2 A Petition filed by a petitioner shall state the name and address of the Petitioner, identify the decision of the Director for which review is sought and attach a copy of the decision, state with particularity the alleged errors of fact and/or law contained in the decision, set forth the Petitioner's contentions with regard to the facts, identify the applicable statutes and regulations, state the relief sought, and shall be sworn to by the Petitioner. Filing the Petition for Review with the Agency shall constitute service on the Director.

009.03A3 A Petition for Review under the Retirement Communities and Subdivisions Act, the Time-Share Act, or the Subdivision Certification Law, shall be filed within thirty (30) days after the decision of the Director was mailed.

009.03A4 A Petition for Review under the Membership Campground Act shall be filed within thirty (30) days after the decision of the Director was mailed, unless the decision of the Director is a summary suspension provided for in Section 76-2108, in which case the Petition for Review shall be filed within fifteen (15) days of the service of the decision of the Director.

009.03A5 Within twenty (20) days of the filing of the Petition for Review, the Director may file an Answer, setting forth any responses to the allegations contained in the Petition for Review. The Answer shall be served on counsel of record for the petitioner or on an unrepresented petitioner. Should the Director not file an Answer, the issues will be determined based upon the decision of the Director and the Petition for Review.

009.03A6 A petition for review under Section 81-885.18 must be filed within thirty days of the applicant's receipt of notice of the Commission' refusal to accept the application. Notice of the Commission's refusal to accept the application shall be given by certified mail to the applicant by the Director within twenty days after the decision by Commission.

009.03A7 A contested case against a person under section 009.03A will commence when the Petition for Review is filed. The rules regarding ex parte communications will apply when the Petition for Review is filed.

009.03B Filed by Director.

009.03B1 A Petition for Review filed by the Director shall be captioned as follows:

BEFORE THE STATE REAL ESTATE COMMISSION
OF THE STATE OF NEBRASKA

In the Matter of the	)	**Case No.** _____
Decision of the Director	)	
of the State Real Estate	)	**Petition for Review**
Commission Regarding	)	
[Name of Respondent]	)	

009.03B2 A Petition filed by the Director shall state the name and address of each Respondent, identify the decision of the Director for which review is sought and attach a copy of the decision, state with particularity the facts and/or law on which the decision is based, and state the relief sought.

009.03B3 The Director shall serve a copy of the Petition on each Respondent by certified mail.

009.03B4 Within twenty (20) days following service of the Petition, the Respondent may file an Answer. The Answer shall be captioned in the manner designated in section 009.03B1, except that it shall be denominated "Answer"; shall contain a concise response to each and every material allegation of the Petition; shall contain a concise statement of all defenses upon which the Respondent intends to rely; and shall be sworn to by the Respondent. The Answer shall be filed with the Agency at its normal business address.

009.03B5 If the Respondent fails to timely file an Answer conforming to the requirements of section 009.03B4, the Commission may accept the allegations of the Petition for Review as true and may, after notice and hearing, enter an order consistent with the allegations of the Petition for Review.

009.03B6 A contested case against a person under subsection 009.03B will commence when the Petition for Review is filed. The rules regarding ex parte communication will apply when the Petition for Review is filed.

009.04 Other Pleadings. Substantive or dispositive pleadings other than the Petition for Review and Answer shall not be allowed, other than amendments thereto.

009.05 Notice of Hearing. The following shall apply to setting hearings and noticing Petitions for Review for hearing:

009.05A Notice of a hearing shall be sent to the Petitioner or Respondent not later than twenty (20) days prior to the date set for hearing.

009.05B A hearing on a Petition for Review filed pursuant to Section 76-1736(2) of the Time-Share Act shall be held not more than forty-five (45) days after receipt of the Petition, unless the Petitioner consents to a later date.

009.05C A hearing on a petition for review filed pursuant to Section 81-885.18 of the Real Estate License Act shall be set down to be conducted within sixty days of receipt of the petitioner's petition for review.

009.06 Evidence in a Petition for Review proceeding will be presented in the following order:

009.06A Evidence is presented by the Director.

009.06B Evidence is presented by the opposing party, whether a petitioner or respondent.

009.06C Rebuttal evidence is presented by the Director.

009.06D Surrebuttal evidence is presented by the opposing party.

009.07 Consent Orders. The following shall apply to Consent Orders:

009.07A The parties may enter into a written stipulation setting forth the terms and conditions of a Consent Order to be entered regarding the applicant or other person subject to the registration or certification laws under the jurisdiction of the Commission. Such order shall contain findings of fact, conclusions of law, and the decision of the Commission, including any acceptance, rejection, or modification of an application for registration or certification. It shall be signed by the person to be bound and shall be approved as to form by the respective legal counsel of the parties, if any.

009.07B A proposed Consent Order shall not be binding unless or until it is signed by the Chairperson following approval by the Commission in an open meeting. The Commission shall have full discretion to reject any Consent Order, or to provide notice to the parties of other terms and conditions which it will approve, which terms and conditions shall be consistent with the facts of the case and applicable law. Neither representations nor offers of settlement made by a party in the course of negotiations for a proposed Consent Order, nor the refusal of a party to enter into a proposed Consent Order, shall be used against him, her, or it at any hearing on the Petition for Review.

009.07C A Consent Order duly approved by the Commission and entered of record shall be served upon the parties and shall be effective in the same manner as an order entered after hearing.

010 Decision and order in a contested case.

010.01 Every decision and order adverse to a party to the proceeding, rendered by the Commission in a contested case, shall be in writing or stated in the record and shall be accompanied by findings of fact and conclusions of law.

010.02 The decision and order should include:

010.02A The name of the Commission and name of the proceeding;

010.02B The time and place of the hearing;

010.02C The names of all parties or their attorneys who entered an appearance at the hearing;

010.02D The findings of fact consisting of a concise statement of the conclusions upon each contested issue of fact;

010.02E The conclusions of law consisting of the applications of the controlling law to the facts found and the legal results arising therefrom; and

010.02F The order consisting of the action taken by the Commission as a result of the facts found and the legal conclusions arising therefrom.

010.03 Parties to the proceeding shall be notified of the decision and order in person or by mail. A copy of the decision and order and accompanying findings and conclusions shall be delivered or mailed upon request to each party or his or her attorney of record.

011 Appeals.

011.01 Any person aggrieved by a final decision in a contested case is entitled to judicial review under the Administrative Procedure Act or to resort to such other means of review as may be provided by law.

011.02 Parties desiring to appeal a Commission decision must file a Petition for Review in the district court of the county where the Commission action is taken within thirty (30) days after the service of the final decision by the Commission. The thirty (30) day period for appeal commences to run from the date of mailing of the notice of order and decision to the parties or their attorneys of record. Service of the petition and summons must be made in accordance with Nebraska law.

011.03 Unless otherwise provided by statute, the procedures of NEB. REV. STAT. § 84-917 govern the procedure for taking an appeal.

ARTICLE 24

AGENCY RELATIONSHIPS

Section
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76-2401. Legislative findings. The Legislature finds, determines, and declares that (1) the application of the common law of agency to the relationships between real estate brokers or salespersons and persons who are sellers, landlords, buyers, or tenants of rights and interests in real property has resulted in misunderstandings and consequences that are contrary to the best interests of the public, (2) the real estate brokerage industry has a significant impact upon the economy of the State of Nebraska, and (3) it is in the best interests of the public to codify in statute the relationships between real estate brokers or salespersons and persons who are sellers, landlords, buyers, or tenants of rights and interests in real property.

76-2402. Definitions, where found. For purposes of sections 76-2401 to 76-2430, the definitions found in sections 76-2403 to 76-2415 shall be used.

76-2403. Adverse material fact, defined. Adverse material fact shall mean a fact which (1) significantly affects the desirability or value of the property to a party and is not reasonably ascertainable or known to a party or (2) establishes a reasonable belief that another party will not be able to, or does not intend to, complete that party's obligations under a contract creating an interest in real property.

76-2404. Affiliated licensee, defined. Affiliated licensee shall mean an associate broker as defined in section 81-885.01 or a salesperson as defined in such section who is under the supervision of a designated broker.

76-2404.01. Asset management company, defined. Asset management company means a business firm or association that, pursuant to a contractual agreement, common-law agency agreement, power of attorney, or other legal authorization, sells, conveys, or otherwise offers an interest in real property that belongs to a (1) bank, savings and loan association, or other financial institution created and regulated pursuant to state or federal law, (2) mortgage-holding entity chartered by Congress, or (3) federal, state, or local governmental entity.

76-2405. Brokerage relationship, defined. Brokerage relationship shall mean the relationship created between a designated broker and a client pursuant to sections 76-2401 to 76-2430 relating to the performance of services of a broker as defined in section 81-885.01 and shall also mean the relationship created between the client and the designated broker's affiliated licensees pursuant to section 76-2401 to 76-2430.

76-2406. Confidential information, defined. Confidential information shall mean information made confidential by statute, rule, regulation, or written instructions from the client unless the information is made public or becomes public by the words or conduct of the client to whom the information pertains or from a source other than the licensee.

76-2407. Client, defined. Client shall mean a seller, landlord, buyer, or tenant who has entered into a brokerage relationship with a licensee pursuant to sections 76-2401 to 76-2430 and is the seller, landlord, buyer, or tenant to whom the licensee owes the duty as set forth in such sections.

76-2408. Commission, defined. Commission shall mean the State Real Estate Commission.

76-2409. Customer, defined. Customer shall mean a seller, landlord, buyer, or tenant in a real estate transaction in which a licensee is involved but who has not entered into a brokerage relationship with a licensee.

76-2410. Designated broker, defined. Designated broker shall have the same meaning as in section 81-885.01.

76-2411. Dual agent, defined. Dual agent shall mean a limited agent who, with the written informed consent of all parties to a contemplated real estate transaction, has entered into a brokerage relationship with and therefor represents both the seller and buyer or both the landlord and tenant.

76-2412. Licensee, defined. Licensee shall mean a designated broker, an associate broker, and a salesperson all as defined in section 81-885.01

76-2413. Limited agent, defined. Limited agent shall mean a licensee whose duties and obligations to a client are those set forth in sections 76-2417 to 76-2419.

76-2414. Single agent, defined. Single agent shall mean a limited agent who has entered into a brokerage relationship with and therefor represents only one party in a real estate transaction. A single agent may be one of the following:

(1) Buyer's agent, which shall mean a licensee who represents the buyer in a real estate transaction;

(2) Landlord's agent, which shall mean a licensee who represents the landlord in a leasing transaction;

(3) Seller's agent, which shall mean a licensee who represents the seller in a real estate transaction; and

(4) Tenant's agent, which shall mean a licensee who represents the tenant in a leasing transaction.

76-2415. Subagent, defined. Subagent shall mean a designated broker, together with his or her affiliated licensees, engaged by another designated broker to act as a limited agent for a client. A subagent owes the same obligations and responsibilities to the client pursuant to section 76-2417 to 76-2418 as does the client's primary designated broker.

76-2416. Licensee; act as agent, when; agency relationships authorized; compensation, when.

(1) When engaged in any of the activities enumerated in subdivision (2) of section 81-885.01, a licensee may act as a limited agent in any transaction as a single agent, subagent, or dual agent. The licensee's general duties and obligations arising from the limited agency relationship shall be disclosed to the seller and the buyer or to the landlord and the tenant pursuant to sections 76-2420 to 76-2422. Alternatively, when engaged in any of the activities enumerated in subdivision (2) of section 81-885.01, a licensee may act as an agent in any transaction in accordance with a written contract as described in subsection (6) of section 76-2422.

(2) A licensee shall be considered a buyer's or tenant's limited agent unless:

(a) The designated broker enters into a written seller's agent or landlord's agent agreement with the party to be represented pursuant to subsection (2) of section 76-2422;

(b) The designated broker enters into a subagency agreement with another designated broker pursuant to subsection (5) of section 76-2422;

(c) The designated broker enters into a written dual agency agreement with the parties to be represented pursuant to subsection (4) of section 76-2422; or

(d) The designated broker enters into a written agency agreement pursuant to subsection (6) of section 76-2422.

(3) Sections 76-2401 to 76-2430 shall not obligate any buyer or tenant to pay compensation to a licensee unless the buyer or tenant has entered into a written agreement with the designated broker specifying the compensation terms in accordance with subsection (3) of section 76-2422.

(4) A licensee may work with a single party in separate transactions pursuant to different relationships, including, but not limited to, selling one property as a seller's agent and working with that seller in buying another property as a buyer's agent or as a subagent if the licensee complies with sections 76-2401 to 76-2430 in establishing the relationships for each transaction.

76-2417. Seller's agent or landlord's agent; powers and duties; confidentiality; immunity; disclosures required.

(1) A licensee representing a seller or landlord as a seller's agent or a landlord's agent shall be a limited agent with the following duties and obligations:

(a) To perform the terms of the written agreement made with the client;

(b) To exercise reasonable skill and care for the client;

(c) To promote the interests of the client with the utmost good faith, loyalty, and fidelity, including:

(i) Seeking a price and terms which are acceptable to the client, except that the licensee shall not be obligated to seek additional offers to purchase the property while the property is subject to a contract for sale or to seek additional offers to lease the property while the property is subject to a lease or letter of intent to lease;

(ii) Except as provided in section 76-2422.01, presenting all written offers to and from the client in a timely manner regardless of whether the property is subject to a contract for sale or lease or a letter of intent to lease;

(iii) Disclosing in writing to the client all adverse material facts actually known by the licensee; and

(iv) Advising the client to obtain expert advice as to material matters about which the licensee knows but the specifics of which are beyond the expertise of the licensee;

(d) To account in a timely manner for all money and property received;

(e) to comply with all requirements of sections 76-2401 to 76-2430, the Nebraska Real Estate License Act, and any rules and regulations promulgated pursuant to such sections or act; and

(f) to comply with any applicable federal, state, and local laws, rules, regulations, and ordinances, including fair housing and civil rights statutes and regulations.

(2) A licensee acting as a seller's or landlord's agent shall not disclose any confidential information about the client unless disclosure is required by statute, rule, or regulation or failure to disclose the information would constitute fraudulent misrepresentation. No cause of action for any person shall arise against a licensee acting as a seller's or landlord's agent for making any required or permitted disclosure.

(3) (a) A licensee acting as a seller's or landlord's agent owes no duty or obligation to a buyer, a tenant, or a prospective buyer or tenant, except that a licensee shall disclose in writing to the buyer, tenant, or prospective buyer or tenant all adverse material facts actually known by the licensee. The adverse material facts may include, but are not limited to, adverse material facts pertaining to: (i) Any environmental hazards affecting the property which are required by law to be disclosed; (ii) the physical condition of the property; (iii) any material defects in the property; (iv) any material defects in the title to the property; or (v) any material limitation on the client's ability to perform under the terms of the contract.

(b) A seller's or landlord's agent owes no duty to conduct an independent inspection of the property for the benefit of the buyer, tenant, or prospective buyer or tenant and owes no duty to independently verify the accuracy or completeness of any statement made by the client or any independent inspector.

(4) A seller's or landlord's agent may show alternative properties not owned by the client to prospective buyers or tenants and may list competing properties for sale or lease without breaching any duty or obligation to the client.

(5) (a) A seller or landlord may agree in writing with a seller's or landlord's agent that other designated brokers may be retained and compensated as subagents.

(b) Any designated broker acting as a subagent on the seller's or landlord's behalf shall be a limited agent with the obligations and responsibilities set forth in subsections (1) through (4) of this section.

76-2418. Buyer's agent or tenant's agent; powers and duties; confidentiality; immunity; disclosures required.

(1) A licensee representing a buyer or tenant as a buyer's or tenant's agent shall be a limited agent with the following duties and obligations:

(a) To perform the terms of any written agreement made with the client;

(b) To exercise reasonable skill and care for the client;

(c) To promote the interests of the client with the utmost good faith, loyalty, and fidelity, including:

(i) Seeking a price and terms which are acceptable to the client, except that the licensee shall not be obligated to seek other properties while the client is a party to a contract to purchase property or to a lease or letter of intent to lease;

(ii) Except as provided in section 76-2422.01, presenting all written offers to and from the client in a timely manner regardless of whether the client is already a party to a contract to purchase property or is already a party to a contract or a letter of intent to lease;

(iii) Disclosing in writing to the client adverse material facts actually known by the licensee; and

(iv) Advising the client to obtain expert advice as to material matters about which the licensee knows but the specifics of which are beyond the expertise of the licensee;

(d) To account in a timely manner for all money and property received;

(e) To comply with all requirements of sections 76-2401 to 76-2430, the Nebraska Real Estate License Act, and any rules and regulations promulgated pursuant to such sections or act; and

(f) To comply with any applicable federal, state, and local laws, rules, regulations, and ordinances, including fair housing and civil rights statutes or regulations.

(2) A licensee acting as a buyer's or tenant's agent shall not disclose any confidential information about the client unless disclosure is required by statute, rule, or regulation or failure to disclose the information would constitute fraudulent misrepresentation. No cause of action for any person shall arise against a licensee acting as a buyer's or tenant's agent for making any required or permitted disclosure.

(3) (a) A licensee acting as a buyer's or tenant's agent owes no duty or obligation to a seller, a landlord, or a prospective seller or landlord, except that the licensee shall disclose in writing to any seller, landlord, or prospective seller or landlord all adverse material facts actually known by the licensee. The adverse material facts may include, but are not limited to, adverse material facts concerning the client's financial ability to perform the terms of the transaction.

(b) A buyer's or tenant's agent owes no duty to conduct an independent investigation of the client's financial condition for the benefit of the customer and owes no duty to independently verify the accuracy or completeness of statements made by the client or any independent inspector.

(4) A buyer's or tenant's agent may show properties in which the client is interested to other prospective buyers or tenants without breaching any duty or obligation to the client. This section shall not be construed to prohibit a buyer's or tenant's agent from showing competing buyers or tenants the same property and from assisting competing buyers or tenants in attempting to purchase or lease a particular property.

(5) (a) A client may agree in writing with a buyer's or tenant's agent that other designated brokers may be retained and compensated as subagents.

(b) Any designated broker acting as a subagent on the buyer's or tenant's behalf shall be a limited agent with the obligations and responsibilities set forth in subsections (1) through (4) of this section.

76-2419. Dual agent; powers and duties; confidentiality; immunity; imputation of knowledge or information.

(1) A licensee may act as a dual agent only with the informed consent of all parties to the transaction. The informed consent shall be evidenced by a written agreement pursuant to section 76-2422.

(2) A dual agent shall be a limited agent for both the seller and buyer or the landlord and tenant and shall have the duties and obligations required by sections 76-2417 and 76-2418 unless otherwise provided for in this section.

(3) Except as provided in subsections (4) and (5) of this section, a dual agent may disclose any information to one client that the licensee gains from the other client if the information is relevant to the transaction or client. A dual agent shall disclose to both clients all adverse material facts actually known by the licensee.

(4) The following information shall not be disclosed by a dual agent without the informed written consent of the client to whom the information pertains:

(a) That a buyer or tenant is willing to pay more than the purchase price or lease rate offered for the property;

(b) That a seller or landlord is willing to accept less than the asking price or lease rate for the property;

(c) What the motivating factors are for any client buying, selling, or leasing the property; and

(d) That a client will agree to financing terms other than those offered.

(5) (a) A dual agent shall not disclose to one client any confidential information about the other client unless the disclosure is required by statute, rule, or regulation or failure to disclose the information would constitute fraudulent misrepresentation.

(b) No cause of action for any person shall arise against a dual agent for making any required or permitted disclosure.

(c) A dual agent does not terminate the dual-agency relationship by making any required or permitted disclosure.

(6) In a dual-agency relationship there shall be no imputation of knowledge or information between any client and the dual agent or among persons within an entity engaged as a dual agent.

76-2420. Designated broker; written policy; relationships.

(1) Every designated broker shall adopt a written policy which identifies and describes the relationships in which the designated broker and affiliated licensees may engage with any seller, landlord, buyer, or tenant as part of any real estate brokerage activities.

(2) A designated broker shall not be required to offer or engage in more than one of the brokerage relationships enumerated in section 76-2416.

76-2421. Licensee offering brokerage services; duties.

(1) At the earliest practicable opportunity during or following the first substantial contact with a seller, landlord, buyer, or tenant who has not entered into a written agreement for brokerage services with a designated broker, the licensee who is offering brokerage services to that person or who is providing brokerage services for that property shall:

(a) Provide that person with a written copy of the current brokerage disclosure pamphlet which has been prepared and approved by the commission; and

(b) Disclose in writing to that person the types of brokerage relationships the designated broker and affiliated licensees are offering to that person or disclose in writing to that person which party the licensee is representing.

(2) When a seller, landlord, buyer, or tenant has already entered into a written agreement for brokerage services with a designated broker or when a buyer or tenant has a brokerage relationship under sections 76-2401 to 76-2430 without a written agreement, no other licensee shall be required to make the disclosures required by this section.

(3) Before engaging in any of the activities enumerated in subdivision (2) of section 81-885.01, a licensee working as an agent or subagent of the seller or landlord with a buyer or tenant who is not represented by a licensee shall provide a written disclosure to the customer which contains the following:

(a) A statement that the licensee is an agent for the seller or landlord and is not an agent for the customer; and

(b) A list of the tasks that the agent acting as a seller's or landlord's agent or subagent may perform with the customer.

(4) Before engaging in any of the activities enumerated in subdivision (2) of section 81-885.01, a licensee working as an agent or subagent of the buyer or tenant with a seller or landlord who is not represented by a licensee shall provide a written disclosure to the customer which contains the following:

(a) A statement that the licensee is an agent for the buyer or tenant and is not an agent for the customer; and

(b) A list of the tasks that the agent acting as a buyer's or tenant's agent or subagent may perform with the customer.

(5) The written disclosure required pursuant to subsections (1),(3), and (4) of this section shall contain a signature block for the client or customer to acknowledge receipt of the disclosure. The customer's acknowledgement of disclosure shall not constitute a contract with the licensee. If the customer fails or refuses to sign the disclosure, the licensee shall note that fact on a copy of the disclosure and retain the copy.

(6) A licensee shall not be required to give the written disclosures required by this section to a corporation, limited liability company, partnership, limited liability partnership, or similar entity or to any entity which, if doing business in the State of Nebraska, would be required to be registered with the Secretary of State when such corporation, limited liability company, partnership, limited liability partnership, or entity is purchasing, leasing, or selling real property (a) on which there are five or more residential dwelling units, (b) which is subdivided for five or more residential dwelling units, or (c) any portion of which is zoned or assessed by the county assessor as commercial or industrial property.

(7) Disclosures made in accordance with sections 76-2401 to 76-2430 shall be sufficient to disclose brokerage relationships to the public.

76-2422. Written agreements for brokerage services; when required.

(1) All written agreements for brokerage services on behalf of a seller, landlord, buyer, or tenant shall be entered into by the designated broker on behalf of that broker and affiliated licensees, except that the designated broker may authorize affiliated licensees in writing to enter into the written agreements on behalf of the designated broker. A copy of a written agreement for brokerage services

shall be left with the client or clients.

(2) Before engaging in any of the activities enumerated in subdivision (2) of section 81-885.01, a designated broker intending to establish a single agency relationship with a seller or landlord shall enter into a written agency agreement with the party to be represented. Except as provided in section 76-2422.01, the agreement shall include a licensee's duties and responsibilities specified in section 76-2417, the terms of compensation, a fixed date of expiration of the agreement, and whether an offer of subagency may be made to any other designated broker, except that if a licensee is a limited seller's agent for a builder, the terms of compensation may be established for a specific new construction property on or before the builder's acceptance of a contract to sell.

(3) Before or while engaging in any of the acts enumerated in subdivision (2) of section 81-885.01, a designated broker acting as a single agent for a buyer or tenant may enter into a written agency agreement with the party to be represented. The agreement shall include a licensee's duties and responsibilities specified in section 76-2418, the terms of compensation, a fixed date of expiration of the agreement, and whether an offer of subagency may be made to any other designated broker.

(4) Before engaging in any of the activities enumerated in subdivision (2) of section 81-885.01, a designated broker intending to act as a dual agent shall obtain the written consent of the seller and buyer or landlord and tenant permitting the designated broker to serve as a dual agent. The consent shall include a licensee's duties and responsibilities specified in section 76-2419. The requirements of this subsection are met as to a seller or landlord if the written agreement entered into with the seller or landlord complies with this subsection. The requirements of this subsection are met as to a buyer or tenant if a consent or buyer's or tenant's agency agreement is signed by a potential buyer or tenant which complies with this subsection. The consent of the buyer or tenant does not need to refer to a specific property and may refer generally to all properties for which the buyer's or tenant's agent may also be acting as a seller's or landlord's agent and would be a dual agent. If a licensee is acting as a dual agent with regard to a specific property, the seller and buyer or landlord and tenant shall confirm in writing the dual-agency status and the party or parties responsible for paying any compensation prior to or at the time a contract to purchase a property or a lease or letter of intent to lease is entered into for the specific property.

(5) Before engaging in any of the activities enumerated in subdivision (2) of section 81-885.01, a designated broker intending to act as a subagent shall enter into a written contract with the primary designated broker for the client. If a designated broker has made a unilateral offer of subagency, another designated broker can enter into the subagency relationship by the act of disclosing to the customer that he or she is a subagent of the client.

(6) Before engaging in any of the activities enumerated in subdivision (2) of section 81-885.01, a designated broker who intends to establish an agency relationship with any party or parties to a transaction in which the designated broker's duties and responsibilities exceed those contained in sections 76-2417 and 76-2418 shall enter into a written agency agreement with a party or parties to the transaction to perform services on their behalf. The agreement shall specify the agent's duties and responsibilities, including any duty of confidentiality, and the terms of compensation. Any agreement under this subsection shall be subject to the common-law requirements of agency applicable to real estate licensees.

76-2422.01. Licensee; asset management company client; exempt from certain requirements.

(1) A licensee shall be exempt from the requirements of subdivision (1)(c)(ii) of section 76-2417 and subdivision (1)(c)(ii) of section 76-2418 if the client to whom the written offer is required to be presented by such licensee is an asset management company.

(2) A licensee shall be exempt from the provision contained in subsection (2) of section 76-2422 that requires the inclusion of specific duties and responsibilities specified in section 76-2417 in the written agreement if the client is an asset management company.

76-2423. Representation; commencement and termination; when.

(1) (a) The relationships set forth in sections 76-2401 to 76-2430 shall commence at the time that the licensee begins representing a client and continue until performance or completion of the representation.

(b) If the representation is not performed or completed for any reason, the relationship shall end at the earlier of:

(i) The date of expiration agreed upon by the parties; or

(ii) The termination or relinquishment of the relationship by the parties.

(2) Except as otherwise agreed in writing, a licensee shall owe no further duty or obligation after termination or expiration of the contract or representation or completion of performance except the duties of:

(a) Accounting for all money and property related to and received during the relationship; and

(b) Keeping confidential all information received during the course of the relationship which was made confidential by sections 76-2401 to 76-2430, by instructions from the client, or by the policy of the designated broker unless:

(i) The client to whom the information pertains grants written consent to disclose the information; or

(ii) Disclosure of the information is required by law.

76-2424. Compensation; payment.

(1) In any real estate transaction, the designated broker's compensation may be paid by the seller, the landlord, the buyer, the tenant, or a third party or by sharing the compensation between designated brokers.

(2) Payment of compensation by itself shall not establish an agency relationship between the party who paid the compensation and the designated broker or any affiliated licensee.

(3) A seller or landlord may agree that a single agent designated broker or subagent may share with another designated broker the compensation paid by the seller or landlord.

(4) A buyer or tenant may agree that a single agent designated broker or subagent may share with another designated broker the compensation paid by the buyer or tenant.

(5) A designated broker may be compensated by more than one party for services in a transaction if the parties consent in writing to the multiple payments at or before the time of entering into a contract to buy, sell, or lease.

76-2425. Violation; unfair trade practice; commission; powers. Violation of any provision of sections 76-2401 to 76-2430 by a licensee shall constitute an unfair trade practice pursuant to section 81-885.24 for which the commission may investigate and take administrative action against the licensee pursuant to the Nebraska Real Estate License Act.

76-2426. Misrepresentation; liability.

(1) A client shall not be liable for a misrepresentation of his or her limited agent arising out of the limited-agency agreement unless the client knew or should have known of the misrepresentation.

(2) A licensee who is serving as a limited agent or subagent of a client shall not be liable for a misrepresentation of his or her client arising out of the brokerage-services agreement unless the licensee knew or should have known of the misrepresentation.

(3) A licensee who is serving as a limited agent of a client shall not be liable for a misrepresentation of any subagent unless the licensee knew or should have known of the misrepresentation.

(4) A licensee who is serving as a subagent shall not be liable for a misrepresentation of the primary limited agent unless the subagent knew or should have known of the misrepresentation.

76-2427. Designated broker; appointment of limited agent; effect. A designated broker entering into a limited agency agreement with a client for the listing of property or for the purpose of representing that person in the buying, selling, exchanging, renting, or leasing of real estate may appoint in writing those affiliated licensees who will be acting as limited agents of that client to the exclusion of all other affiliated licensees. A designated broker shall not be considered to be a dual agent solely because he or she makes an appointment under this section, except that any licensee who personally represents both the seller and buyer or both the landlord and tenant in a particular transaction shall be a dual agent and shall be required to comply with the provisions of sections 76-2401 to 76-2430 governing dual agents.

76-2428. Affiliated licensees; powers and duties; immunity.

(1) All affiliated licensees to the extent allowed by their licenses shall have the same duties and responsibilities to the client and customer pursuant to sections 76-2417 to 76-2419 as the designated broker except as provided in section 76-2427.

(2) All affiliated licensees have the same protections from vicarious liability as their designated broker.

76-2429. Sections; supersede common law; extent; construction. Sections 76-2401 to 76-2430 shall supersede the duties and responsibilities of the parties under the common law, including fiduciary responsibilities of an agent to a principal, except as provided in subsection (6) of section 76-2422. Sections 76-2401 to 76-2430 shall be construed broadly to accomplish their purposes.

76-2430. Commission; rules and regulations. The commission shall adopt and promulgate rules and regulations to carry out sections 76-2401 to 76-2430.

NEBRASKA REAL ESTATE COMMISSION

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Title 301 - NEBRASKA REAL ESTATE COMMISSION

Chapter 1 - AGENCY RELATIONSHIPS; CONFIDENTIAL INFORMATION.

001 The following information shall not be disclosed by a real estate licensee acting as a seller's or landlord's limited agent without the informed written consent of the seller or landlord:

001.01 That the seller or landlord is willing to accept less than the asking price or lease rate for the property;

001.02 What the motivating factors are for the party selling or leasing the property; and

001.03 That the seller or landlord will agree to financing terms other than those offered.

This section shall become effective July 1, 1995.

002 The following information shall not be disclosed by a real estate licensee acting as a buyer's or tenant's limited agent without the informed written consent of the buyer or tenant:

002.01 That the buyer or tenant is willing to pay more than the purchase price or lease rate offered for the property;

002.02 What the motivating factors are for the party buying or leasing the property; and

002.03 That the buyer or tenant will agree to financing terms other than those offered.

This section shall become effective July 1, 1995.

003 Those real estate licensees under the supervision of a designated broker, as defined in Neb. Rev. Stat. Section 81-885.01(4), who elects to use the designation authority set forth in Neb. Rev. Stat. Section 76-2427 and which licensees also act in a supervisory capacity under the designated broker, such as branch managers, sales managers and the like, may be treated in the same manner as the designated broker for purposes of determining dual agency under the aforementioned Section only if the broker designates such supervisory positions in his or her written policy as required in Neb. Rev. Stat. Section 76-2420.

This section shall become effective July 1, 1995.

004 A licensee, who is offering real estate brokerage services as an auctioneer, shall make the disclosures to a buyer and obtain the acknowledgement of receipt required by Neb. Rev. Stat. § 76-2421, not later than when the buyer enters into a written purchase contract for the property. The identification of the successful bidder shall constitute the first substantial contact with a buyer within the meaning of the statute. After the first substantial contact, the first practicable opportunity to make the required disclosures to the buyer shall depend upon the circumstances.

This section shall become effective July 1, 1995.

Laws 1994, LB 883 §30; RS 1943, §76-2430, R.S. Cum. Supp., 1994. Effective date July 16, 1994.

NEBRASKA REAL ESTATE COMMISSION

GUIDELINES FOR DEVELOPMENT OF DESIGNATED BROKER POLICY

Neb. Rev. Stat. Section 76-2420 of the Agency Relationships Statute requires every designated broker to adopt a **written** policy which identifies and describes the relationships in which the designated broker and his or her affiliated licensees may engage with any seller, landlord, buyer, or tenant as part of any real estate brokerage activities. The State Real Estate Commission has prepared these guidelines as an aid to designated brokers as they implement policies which meet the requirements of the law. In these guidelines, the Commission has used the words "must" or "shall" to indicate those steps which the statute makes mandatory. The Commission has used the words "may" or "should" to convey Commission suggestions.

The designated broker must first identify which of the allowed agency relationships his or her firm will offer. The designated broker must offer at least one type of agency relationship, but may offer all or any combination of the allowed relationships.

Those relationships allowed under the Statute are:

a) **Buyer limited agency** - A licensee working with a buyer in a particular transaction is considered a buyer's limited agent unless he or she has a written agreement as an agent under c), d), e), or f) **OR** has been appointed by the designated broker as an agent under c), d), e), or f) **OR** the designated broker of the licensee has accepted subagency under c) or d). A written agreement may also be entered into for buyer limited agency, if it is set out in the designated broker's policy. Subagency can only be offered with the written consent of the buyer.

b) **Tenant limited agency** - A licensee working with a tenant in a particular transaction is considered a tenant's limited agent unless he or she has a written agreement as an agent under c), d), e), or f) **OR** has been appointed by the designated broker as an agent under c), d), e), or f) **OR** the designated broker of the licensee has accepted subagency under c) or d). A written agreement may also be entered into for tenant limited agency if it is set out in the designated broker's policy. Subagency can only be offered with the written consent of the tenant.

c) **Seller limited agency** - A designated broker must have a **written** agreement with seller or have accepted subagency in accordance with the designated broker's policy.

d) **Landlord limited agency** - A designated broker must have a **written** agreement with landlord or have accepted subagency in accordance with the designated broker's policy.

e) **Dual limited agency** - A designated broker must have the **written** informed consent of all parties to a real estate transaction in accordance with the designated broker's policy.

f) **Common law agency** - A designated broker must have a **written** agreement with the client in accordance with the designated broker's policy.

Only the designated broker can enter into written agreements or consents with the client, unless the designated broker has authorized in writing some or all affiliated licensees to do so. The designated broker may want to state in the policy that no affiliated licensees have the authority to enter into written agreements and consents on the designated broker's behalf, or the designated broker may want to place written authorizations in the written policy, with such conditions or restrictions as the designated broker chooses. For example, the designated broker may want to state that affiliated licensees do not have authority to enter into consent to dual agency or common law agency agreements without the designated broker's direct approval.

The designated broker may indicate in the written policy whether he or she will accept subagency offered by another designated broker on a client's behalf, and if so, whether the designated broker will accept it only by a written agreement with the other designated broker or whether a unilateral offer of subagency from another designated broker may be accepted by disclosing to the customer that he or she is a subagent of the other designated broker.

Another issue the designated broker may want to set out in his or her policy also deals with subagency, that is, whether or not subagency will be offered by the designated broker on behalf of his or her clients. If so, then the client on whose behalf the subagency is offered **MUST AGREE IN WRITING** to offer subagency and to allow the designated broker to compensate other designated brokers who accept the offer of subagency.

Neb. Rev. Stat. Section 76-2427 authorizes a designated broker to appoint in writing one or more affiliated licensees to act as a limited agent of a client to the exclusion of all other affiliated licensees. The designated broker may want to make some or all of those appointments in the written policy. For example, the designated broker could decide that since both seller and buyer, or landlord and tenant, limited agency relationships are being offered to consumers by his or her company, that **only** the affiliated licensee who, on behalf of the designated broker, entered into the listing agreement with the seller, or the leasing agreement with the landlord, will represent the seller or landlord as that client's limited agent. All other affiliated licensees with the designated broker will represent buyers, or tenants, as their limited agents in any transaction dealing with the subject property.

The statute only requires that the designated broker adopt a written policy which responds to the requirements of the statute. In performance of the designated broker's duty to supervise his or her affiliated licensees, the written policy should be made generally available to all affiliated licensees and should be used as a basis for inservice training.

Agency Disclosure Form Instructions (July 1, 2017 Amendments)

Effective July 1, 2017, the Commission will require a new amended Agency Disclosure Information Form to be used when making required agency disclosures to clients and customers. The amended form contains additional contact information about the brokerage on the back, and is mandatory for use at all times when a new agency disclosure is required on or after July 1, 2017.

First and foremost it should be noted that the laws regarding agency disclosure and agency duties have not been changed. Agency disclosure should still be provided at first substantial contact, further interpretation of first substantial contact was recently adopted by the Commission, and can be found here: http://www.nrec.ne.gov/legal/policyinterpretation.html#pi38

Licensees must start using the new form July 1, 2017. If a client or customer completed the old form prior to July 1, and nothing has changed in the relationship, the old form will still be effective after July 1. In other words licensees will not have to redo their current agency disclosures done on the old form simply because the new form goes into effect on July 1. However, if there are any changes in a pre-existing agency relationship after July 1, then the new agency disclosure form must be used.

Filling Out the Form:

Most of the features of the form are intended to be self-explanatory, but licensees should have a good working knowledge of how the forms work and how to complete them.

There are three forms, a Buyer/Seller Agency Disclosure form, a Landlord/Tenant Form and a Common Law Agency Addendum (because common law agency is practiced less often and there simply was not room on the one page form for an explanation of it).

Buyer/Seller and Landlord/Tenant Form

The basic premise here is for the licensee to explain the capacity in which he or she is proposing to act for the customer or client and have them initial the appropriate box and sign the form. There are some additional details noted below (for ease of discussion the customer/client will be referred to as "consumer" where it is not necessary to make a distinction between the two):

It is a unified form, with no tear off portion to be left with the consumer like the old form had. Licensees should make a copy, keep the original for their records, and of course provide a copy to the consumer, or if no copier is available, it is acceptable to fill the form out twice.

Since the form has edited versions of agency responsibilities, the form has a link to more detailed information about agency as well as general information for consumers on the Nebraska Real Estate Commission's website. We urge licensees to point this link out and advise consumers to review the information provided. The consumer page can be found here: http://www.nrec.ne.gov/consumer-info/index.html

There is room for two parties to sign and initial the form. If you are presenting the form to more than two people, please use additional forms.

Customer Only and Optional Information on the Form

If dealing with a customer, the form is straightforward, simply have the customer or customers initial at the top of the customer box, and check within that box that matches the capacity the licensee presenting the form is working as (buyer's agent, seller's agent, etc.). Please note if the proposed relationship is customer only, the duties performed for a customer information must be provided (examples below). The duties performed for a customer may be put on the back of the form or provided on a separate sheet provided by your brokerage.

The designated broker may also put what types of brokerage services they offer as well as concise, factual wording regarding additional services performed for clients in the various agency relationships on the back of the form.

Please note the unrepresented customer services list is shown as optional on our sample form because it may be included either on the form or on a separate sheet provided to the customer.

Contact information (Chain of Command Statement)

The contact information on the back of the form is mandatory, and should be filled out for all information applicable to the licensee presenting the form. The verbiage will be as follows:

Contact Information:

1. Agent(s) name(s) and phone number(s):

Only the agent(s) named in #1 (above) is offering to represent you as your agent. Other licensees of the same brokerage or members of the same team may work for another party to the transaction and should NOT be assumed to be your agent. _____Init. _____Init (this paragraph is not applicable if the proposed agency relationship is a customer only or the brokerage does not practice designated agency)

2. Team name, Team Leader name and phone number (only if applicable):

3. Managing Broker(s) name(s) and phone number(s) (only if applicable):

4. Designated Broker name, name designated broker does business under (if different), and phone number:

Please note, Items 1 and 4 must always be included. Items 2 and 3 only need to be included if applicable. If there is no team involved, item 2 goes away completely. If there are no managing brokers (sales managers, branch managers) in the firm, item 3 may be deleted, and the remaining items are renumbered accordingly. If the brokerage firm does not practice designated agency (brokerage firms where, for example, if one agent is acting as seller's agent that means all agents are acting as seller's agent) the initialed part under section 1 can go away.

The licensee filling out the form should provide the names and phone numbers as indicated. These may be pre-printed, or provided at the time the document is presented. It is suggested that at least broker

and managing broker (if applicable) should be pre-printed, as it should stay relatively static across the brokerage.

The purpose of the information provided is to let consumers know how the brokerage is structured and who they can call if they have problems.

The back of the form can still provide the optional information regarding types of agency offered and services offered to unrepresented customers following the chain of command disclosure above.

If there is not adequate space to provide the information regarding agents proposing to represent the client or other information on the back of the form, additional pages may be attached with relevant information clearly identified.

Customer or Client Name on Second Page

A space is provided on the back or second page of the form to identify the consumer(s) the form is being presented to. This will help avoid confusion and keep the proper pages together if the forms are printed one sided on two pages instead of front and back on one piece of paper.

Dual Agency

Licensees no longer have to mark potential dual agent on the disclosure form as has been advised in the past, dual agent will likely only be marked in a few situations on first substantial contact, such as when the licensee has a listing and is talking to a potential buyer for that listing who the licensee would represent as a buyer's agent. Please note that the required written disclosures and written consent to dual agency would still be required when dual agency occurs, however, the agency disclosure form does not need to be redone, as the client will have been made aware of the dual agency capacity through the required written disclosures.

Common Law Agency

Because common law agency occurs less frequently, and in order to keep the main form simple, common law agency is dealt with through the use of an addendum.

Two thirds of the way down on the Buyer/Seller, and Landlord/Tenant main form is a place to check that the licensee will be acting as a common law agent, and in what capacity he or she is acting as a common law agent. Those spaces need to be checked on the main form, and the addendum, should be presented and explained to the consumer, filled out, signed, and attached to the main form. The licensee retains the original, copy to the consumer, or execute in duplicate.

Please note, that pursuant to Commission policy it is not required that a common law agent provide the agency disclosure form to an unrepresented customer, but that the licensee may do so, and if they do, the form provides information for the customer regarding who the common law agent is representing.

The new forms can be found on the Commission's website at:
http://www.nrec.ne.gov/legal/brokeragerelationshipinfo.html

Examples of Services a Brokerage May Provide to an Unrepresented Customer:

In the development of the disclosure forms required under Nebraska Agency Relationships statutes, the Commission left space so that additional information may be provided on the back of the form. This space has been provided so that designated brokers may use it to include information and disclosures the statute also requires. Examples have been set out in A and B below.

When inserting this information, designated brokers are required to use a different type of print, such as italics, boldface, capital, etc., in order for their information to be distinguishable from that part of the brochures which were prepared and approved by the Commission.

A. To indicate types of brokerage relationships offered (this is optional and may also be provided on a separate form provided to the consumer):

Language similar to the following could be inserted after the appropriate brokerage relationship description:

(Name under which broker is doing business and type of brokerage service) offers this type of brokerage relationship.

OR

(Name under which broker is doing business and type of brokerage service) does not offer this type of brokerage relationship.

B. A licensee working as an agent or subagent of a client with a customer who is not represented by a licensee must provide a written disclosure to the customer of the tasks the client's agent or subagent may perform with the unrepresented customer (if any). These tasks may be disclosed by listing them on the back of the form with appropriate identification as services performed for an unrepresented customer or provided on a separate sheet.

1. Examples of tasks a seller's or landlord's agent or subagent may perform with an unrepresented buyer or tenant may include, but not be limited to, the following:

a) Tasks for unrepresented buyer by seller's agent:

1. Explain the home buying process. Assess your wants and needs in a property.

2. Conduct previews and showings of multiple properties.

3. Assist in determining financial ability to purchase.

4. Assist in selection of properties best fitting your needs.

5. Provide information on available financing.

6. Provide estimate of total investment and monthly investment required, based on the offer.

7. Provide estimate of closing costs at the time of completing the offer to purchase.

8. Review and explain clauses in the sales contract.

9. Provide background information you wish given to the seller regarding the terms of the offer.

10. Present offers to the seller and counter-offers from the seller.

11. Provide follow-up services, including arranging inspections, appraisal, and delivering documents and copies.

12. Keep in contact with lenders, inspectors, and sellers while awaiting closing and report progress.

b) Tasks for unrepresented tenant by landlord's agent:

1. Explain the leasing process. Assess your wants and needs in a leased space.

2. If requested, conduct previews and showings of locations available in the market place.

3. Assist in determining financial ability to lease.

4. If requested, provide market data for comparable leased space that substantiates the landlord/owner's terms.

5. Provide background information or details you wish given to the landlord/owner regarding the terms of your proposal.

6. Present proposals or letter of intent to the landlord/owner and convey landlord/owner's acceptance or counter-offer back to you.

7. Prepare letter of intent or review proposed lease and explain lease provisions.

8. Coordinate signing of lease and delivering copies to all parties.

2. Examples of tasks a buyer's or tenant's agent or subagent may perform with an unrepresented seller or landlord may include, but not be limited to, the following:

a) Tasks for unrepresented seller by buyer's agent:

1. Explain the home selling process.

2. Provide background information, except that required to be confidential, relating to the buyer's ability to perform under the proposed terms of an offer.

3. Review and explain clauses in the offer.

4. Provide estimate of closing costs based on the proposed terms of an offer.

5. Provide market data that justifies the buyer's offer.

6. Present seller=s counter-offers to the buyer.

7. Provide follow-up services, including coordinating inspections, appraisals, surveys, etc.

8. Assist with utilities changes.

9. Assist with preparation and filing of documents.

10. Provide referral services, if relocating.

b) Tasks for unrepresented landlord by tenant's agent:

1. Explain the leasing process.

2. Provide background information, except that required to be confidential, regarding the tenant's ability to perform under the proposed terms.

3. Review and explain clauses in the proposal.

4. Provide market data that justifies the tenant's proposal.

5. Present landlord/owner=s counter proposals to tenant.

6. Coordinate lease preparation, signing, and delivering copies to all parties.

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Carbon Monoxide Safety Act

76-601. Act, how cited.
Sections 76-601 to 76-607 shall be known and may be cited as the Carbon Monoxide Safety Act.

76-602. Terms, defined.

For purposes of the Carbon Monoxide Safety Act:

(1) Carbon monoxide alarm means a device that detects carbon monoxide and that:

(a) Produces a distinct, audible alarm;

(b) Is listed by a nationally recognized, independent product-safety testing and certification laboratory to conform to the standards for carbon monoxide alarms issued by such laboratory as determined by the State Fire Marshal;

(c) (i) Is battery-powered;

(ii) Plugs into a dwelling's electrical outlet and has a battery backup;

(iii) Is wired into a dwelling's electrical system and has a battery backup; or

(iv) Is connected to an electrical system via an electrical panel; and

(d) May be combined with a smoke detecting device if the combined device complies with applicable law regarding both smoke detecting devices and carbon monoxide alarms and if the carbon monoxide alarm is distinct and descriptively annunciated from a smoke detecting alarm;

(2) Dwelling unit means a single unit providing complete independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking, and sanitation;

(3) Fuel means coal, kerosene, oil, fuel gases, or other petroleum products or hydrocarbon products such as wood that emit carbon monoxide as a byproduct of combustion;

(4) Installed means that a carbon monoxide alarm is installed in a dwelling unit in accordance with the National Fire Protection Association Standard 720 as such standard existed on January 1, 2015, and in accordance with the instructions for installation from the manufacturer, in one of the following ways:

(a) If the alarm is battery-powered, attached to the wall or ceiling of the dwelling unit;

(b) Directly plugged into an electrical outlet without a switch other than a circuit breaker; or

(c) Wired directly into the dwelling's electrical system;

(5) Multifamily dwelling means any improved real property used or intended to be used as a residence and that contains more than one dwelling unit. Multifamily dwelling includes a condominium or cooperative;

(6) Operational means working and in service in accordance with the manufacturer's instructions; and

(7) Single-family dwelling means any improved real property used or intended to be used as a residence and that contains one dwelling unit.

76-603. Carbon monoxide alarm; installation required.

Any multifamily dwelling or single-family dwelling constructed on or after January 1, 2017, that has a fuel-fired heater or appliance, a fireplace, or an attached garage shall have a carbon monoxide alarm installed (1) on each habitable floor of each dwelling unit in a multifamily dwelling and on each habitable floor in a single-family dwelling or (2) in a location specified in any building code adopted by the state or by the political subdivision in which the dwelling is located.

76-604. Seller of single-family dwelling; duties; interior alterations requiring permit; owner; duties.

(1) The seller of a single-family dwelling that is offered for sale or transfer on or after January 1, 2017, and that has a fuel-fired heater or appliance, a fireplace, or an attached garage shall ensure that an operational carbon monoxide alarm is installed on each habitable floor of the dwelling or in a location specified in any building code adopted by the state or by the political subdivision in which the dwelling is located.

(2) If the owner of a single-family dwelling that has a fuel-fired heater or appliance, a fireplace, or an attached garage makes any interior alteration, repair, fuel-fired appliance replacement, or addition on or after January 1, 2017, where a permit is required, the owner shall ensure that an operational carbon monoxide alarm is installed on each habitable floor of the dwelling where the alteration, repair, replacement, or addition occurs or in a location specified in any building code adopted by the state or by the political subdivision in which the dwelling is located. This subsection applies only to interior alterations. This subsection does not apply to exterior alterations which require a building permit.

(3) No person shall remove batteries from, or in any way render inoperable, a carbon monoxide alarm except as part of a process to inspect, maintain, repair, or replace the alarm or replace the batteries in the alarm.

76-605. Seller of multifamily dwelling; duties; interior alterations requiring permit; owner; duties; prohibited acts.

(1) The seller of a dwelling unit of an existing multifamily dwelling shall ensure that an operational carbon monoxide alarm is installed on each habitable floor of the dwelling unit or in a location specified in any building code adopted by the state or by the political subdivision in which the dwelling unit is located when the dwelling unit is offered for sale or transfer on or after January 1, 2017, if the dwelling unit has a fuel-fired heater or appliance, a fireplace, or an attached garage.

(2) The owner of a dwelling unit of a multifamily dwelling shall ensure that an operational carbon monoxide alarm is installed on each habitable floor of the dwelling unit or in a location specified in any building code adopted by the state or by the political subdivision in which the dwelling unit is located if the dwelling unit has a fuel-fired heater or appliance, a fireplace, or an attached garage and if the owner, on or after January 1, 2017, makes any of the following where a permit is required: Any interior alteration, repair, fuel-fired appliance replacement, or addition.

(3) No person shall remove batteries from, or in any way render inoperable, a carbon monoxide alarm except as part of a process to inspect, maintain, repair, or replace the alarm or replace the batteries in the alarm.

76-606. Owner of certain rental property; duties; tenant; duties; prohibited acts.

(1) The owner of a single-family dwelling or a dwelling unit in a multifamily dwelling that is used for rental purposes shall ensure that an operational carbon monoxide alarm is installed on each habitable floor of the dwelling or dwelling unit or in a location specified in any building code adopted by the state or by the political subdivision in which the dwelling or dwelling unit is located if the dwelling or dwelling unit has a fuel-fired heater or appliance, a fireplace, or an attached garage and if the owner, on or after January 1, 2017, makes any of the following where a permit is required: Any interior alteration, repair, fuel-fired appliance replacement, or addition.

(2) The owner of an existing single-family dwelling or existing dwelling unit in a multifamily dwelling that is used for rental purposes and that has a change in tenant occupancy on or after January 1, 2017, shall ensure that an operational carbon monoxide alarm is installed on each habitable floor of the dwelling or dwelling unit or in a location specified in any building code adopted by the state or by the political subdivision in which the dwelling or dwelling unit is located.

(3)(a) The owner of any rental property specified in subsection (1) or (2) of this section shall:

(i) Prior to the commencement of a new tenant occupancy, replace any carbon monoxide alarm that was stolen, removed, found missing, or found not operational after the previous occupancy;

(ii) Ensure that any batteries necessary to make the carbon monoxide alarm operational are provided to the tenant at the time the tenant takes residence in the dwelling unit;

(iii) Replace any carbon monoxide alarm if notified by a tenant as specified in subdivision (4)(b) of this section that any carbon monoxide alarm was stolen, removed, found missing, or found not operational during the tenant's occupancy; and

(iv) Fix any deficiency in a carbon monoxide alarm if notified by a tenant as specified in subdivision (4)(c) of this section.

(b) Except as provided in subdivision (a) of this subsection, the owner of a single-family dwelling or dwelling unit in a multifamily dwelling that is used for rental purposes is not responsible for the maintenance, repair, or replacement of a carbon monoxide alarm or the care and replacement of batteries for the carbon monoxide alarm.

(4) The tenant of any rental property specified in subsection (1) or (2) of this section shall:

(a) Keep, test, and maintain all carbon monoxide alarms in good repair;

(b) Notify the owner of the single-family dwelling or dwelling unit of a multifamily dwelling, or the owner's authorized agent, if any carbon monoxide alarm is stolen, removed, found missing, or found not operational during the tenant's occupancy of the single-family dwelling or dwelling unit in the multifamily dwelling; and

(c) Notify the owner of the single-family dwelling or dwelling unit of a multifamily dwelling, or the owner's authorized agent, of any deficiency in any carbon monoxide alarm that the tenant cannot correct.

(5) No person shall remove batteries from, or in any way render inoperable, a carbon monoxide alarm except as part of a process to inspect, maintain, repair, or replace the alarm or replace the batteries in the alarm.

76-607. Act; how construed.

Nothing in the Carbon Monoxide Safety Act shall be construed to limit a city, village, or county from adopting or enforcing any requirements for the installation and maintenance of carbon monoxide alarms that are more stringent than the requirements set forth in the act.

Seller Property Condition
Discloser Statement

76-2,120. Written disclosure statement required, when; contents; delivery; liability; noncompliance; effect; State Real Estate Commission; rules and regulations.

(1) For purposes of this section:

(a) Ground lease coupled with improvements shall mean a lease for a parcel of land on which one to four residential dwelling units have been constructed;

(b) Purchaser shall mean a person who acquires, attempts to acquire, or succeeds to an interest in land;

(c) Residential real property shall mean real property which is being used primarily for residential purposes on which no fewer than one or more than four dwelling units are located; and

(d) Seller shall mean an owner of real property who sells or attempts to sell, including lease with option to purchase, residential real property, whether an individual, partnership, limited liability company, corporation, or trust. A sale of a residential dwelling which is subject to a ground lease coupled with improvements shall be a sale of residential real property for purposes of this subdivision.

(2) Each seller of residential real property located in Nebraska shall provide the purchaser with a written disclosure statement of the real property's condition. The disclosure statement shall be executed by the seller. The requirements of this section shall also apply to a sale of improvements which contain residential real property when the improvements are sold coupled with a ground lease and to any lease with the option to purchase residential real property.

(3) The disclosure statement shall include language at the beginning which states:

(a) That the statement is being completed and delivered in accordance with Nebraska law;

(b) That Nebraska law requires the seller to complete the statement;

(c) The real property's address and legal description;

(d) That the statement is a disclosure of the real property's condition as known by the seller on the date of disclosure;

(e) That the statement is not a warranty of any kind by the seller or any agent representing a principal in the transaction;

(f) That the statement should not be accepted as a substitute for any inspection or warranty that the purchaser may wish to obtain;

(g) That even though the information provided in the statement is not a warranty, the purchaser may rely on the information in deciding whether and on what terms to purchase the real property;

(h) That any agent representing a principal in the transaction may provide a copy of the statement to any other person in connection with any actual or possible sale of the real property; and

(i) That the information provided in the statement is the representation of the seller and not the representation of any agent and that the information is not intended to be part of any contract between the seller and purchaser.

(4) In addition to the requirements of subsection (3) of this section, the disclosure statement shall disclose the condition of the real property and any improvements on the real property, including:

(a) The condition of all appliances that are included in the sale and whether the appliances are in working condition;

(b) The condition of the electrical system;

(c) The condition of the heating and cooling systems;

(d) The condition of the water system;

(e) The condition of the sewer system;

(f) The condition of all improvements on the real property and any defects that materially affect the value of the real property or improvements;

(g) Any hazardous conditions, including substances, materials, and products on the real property which may be an environmental hazard;

(h) Any title conditions which affect the real property, including encroachments, easements, and zoning restrictions;

(i) The utility connections and whether they are public, private, or community;

(j) The existence of any private transfer fee obligation as defined in section 76-3107; and

(k) Information relating to compliance with the requirements for a carbon monoxide alarm as provided in sections 76-604 and 76-605.

(5) The disclosure statement shall be completed to the best of the seller's belief and knowledge as of the date the disclosure statement is completed and signed by the seller. If any information required by the disclosure statement is unknown to the seller, the seller may indicate that fact on the disclosure statement and the seller shall be in compliance with this section. On or before the effective date of any contract which binds the purchaser to purchase the real property, the seller shall update the information on the disclosure statement whenever the seller has knowledge that information on the disclosure statement is no longer accurate.

(6) This section shall not apply to a transfer:

(a) Pursuant to a court order, a foreclosure sale, or a sale by a trustee under a power of sale in a deed of trust;

(b) By a trustee in bankruptcy;

(c) To a mortgagee by a mortgagor or successor in interest or to a beneficiary of a deed of trust by a trustor or successor in interest;

(d) By a mortgagee, a beneficiary under a deed of trust, or a seller under a land contract who has acquired the real property at a sale conducted pursuant to a power of sale under a deed of trust, at a sale pursuant to a court-ordered foreclosure, or by a deed in lieu of foreclosure;

(e) By a fiduciary in the course of the administration of a decedent's estate, guardianship, conservatorship, or trust except when the fiduciary is also the occupant or was an occupant of one of the dwelling units being sold;

(f) From one or more co-owners to one or more other co-owners;

(g) Made to a spouse or to a person or persons in the lineal line of consanguinity of one or more of the transferors;

(h) Between spouses resulting from a decree of dissolution of marriage or a decree of legal

separation or from a property settlement agreement incidental to such a decree;

(i) Pursuant to a merger, consolidation, sale, or transfer of assets of a corporation pursuant to a plan of merger or consolidation filed with the Secretary of State;

(j) To or from any governmental entity;

(k) Of newly constructed residential real property which has never been occupied; or

(l) From a third-party relocation company if the third-party relocation company has provided the prospective purchaser a disclosure statement from the most immediate seller unless the most immediate seller meets one of the exceptions in this section. If a disclosure statement is required, and if a third-party relocation company fails to supply a disclosure statement from its most immediate seller on or before the effective date of any contract which binds the purchaser to purchase the real property, the third-party relocation company shall be liable to the prospective purchaser to the same extent as a seller under this section.

(7) The disclosure statement and any update to the statement shall be delivered by the seller or the agent of the seller to the purchaser or the agent of the purchaser on or before the effective date of any contract which binds the purchaser to purchase the real property, and the purchaser shall acknowledge in writing receipt of the disclosure statement or update.

(8) The seller shall not be liable under this section for any error, inaccuracy, or omission of any information in a disclosure statement if the error, inaccuracy, or omission was not within the personal knowledge of the seller.

(9) A person representing a principal in the transaction shall not be liable under this section for any error, inaccuracy, or omission of any information in a disclosure statement unless that person has knowledge of the error, inaccuracy, or omission on the part of the seller.

(10) A person licensed as a salesperson or broker pursuant to the Nebraska Real Estate License Act shall not be required to verify the accuracy or completeness of any disclosure statement prepared pursuant to this section, and the only obligation of a buyer's agent pursuant to this section is to assure that a copy of the statement is delivered to the buyer on or before the effective date of any purchase agreement which binds the buyer to purchase the property subject to the disclosure statement. This subsection does not limit the duties and obligations provided in section 76-2418 or in subsection (9) of this section with respect to a buyer's agent.

(11) A transfer of an interest in real property subject to this section may not be invalidated solely because of the failure of any person to comply with this section.

(12) If a conveyance of real property is not made in compliance with this section, the purchaser shall have a cause of action against the seller and may recover the actual damages, court costs, and reasonable attorney's fees. The cause of action created by this section shall be in addition to any other cause of action that the purchaser may have. Any action to recover damages under the cause of action shall be commenced within one year after the purchaser takes possession or the conveyance of the real property, whichever occurs first.

(13) The State Real Estate Commission shall adopt and promulgate rules and regulations to carry out this section. By January 1, 2017, the commission shall adopt and promulgate rules and regulations to amend the disclosure statement prepared pursuant to this section to be in compliance with the requirements of subdivision (4)(k) of this section.

NEBRASKA REAL ESTATE COMMISSION

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SELLER PROPERTY CONDITION DISCLOSURE STATEMENT	76-2,120.01	001	Ch.1-1

Title 302 - NEBRASKA REAL ESTATE COMMISSION

Chapter 1 – SELLER PROPERTY CONDITION DISCLOSURE STATEMENT.

001 The disclosure statement required by Neb. Rev. Stat. Section 76-2,120 shall be in substantially the following form:

NEBRASKA REAL ESTATE COMMISSION
SELLER PROPERTY CONDITION DISCLOSURE STATEMENT
Residential Real Property

THIS DISCLOSURE STATEMENT IS BEING COMPLETED AND DELIVERED IN ACCORDANCE WITH NEBRASKA LAW. NEBRASKA LAW REQUIRES THE SELLER TO COMPLETE THIS STATEMENT (NEB. REV. STAT. §76-2,120).

How long has the seller owned the property? _____ year(s)
Is seller currently occupying the property? (Circle one) YES | NO If yes, how long has the seller occupied the property? _____ year(s)
If no, has the seller ever occupied the property? (Circle one) YES | NO If yes, when? From _____ (year) to _____ (year)

This disclosure statement concerns the real property located at _____
in the city of _____, County of _____, State of Nebraska and legally described as:
_____
_____

This statement is a disclosure of the condition of the real property known by the seller on the date on which this statement is signed. This statement is NOT a warranty of any kind by the seller or any agent representing a principal in the transaction, and *should NOT be accepted as a substitute for any inspection or warranty that the purchaser may wish to obtain*. Even though the information provided in this statement is NOT a warranty, the purchaser may rely on the information contained herein in deciding whether and on what terms to purchase the real property. Any agent representing a principal in the transaction may provide a copy of this statement to any other person in connection with any actual or possible sale of the real property. The information provided in this statement is the representation of the seller and NOT the representation of any agent, and is NOT intended to be part of any contract between the seller and purchaser.

Seller please note: you are required to complete this disclosure statement IN FULL. If any particular item or matter does not apply and there is no provision or space for indicating, insert "N/A" in the appropriate box. If age of items is unknown, write "UNK" on the blank provided. If the property has more than one item as listed below please put the numbered in the appropriate box. For example – if the home has three room air conditioners, one working, one not working, and one not included, put a "1" in each of the "Working", "Not Working", and "None/Not Included" boxes for that item, and a "3" on the line provided next to the item description to indicate total number of item. You may also provide additional explanation of any item in the comments section in PART III.

SELLER STATES THAT, TO THE BEST OF THE SELLER'S KNOWLEDGE AS OF THE DATE THIS DISCLOSURE STATEMENT IS COMPLETED AND SIGNED BY THE SELLER, THE CONDITION OF THE REAL PROPERTY IS:

PART I – If there is more than one of any item in this Part, the statement made applies to each and all of such items unless otherwise noted in the Comments section in PART III of this disclosure statement, or number separately as provided in the instructions above. If an item in this Part is not on the property, or will not be included in the sale, check only the "None/Not included" column for that item.

Section A -Appliances	Working	Not Working	Do Not Know If Working	None / Not Included
1. Refrigerator				
2. Clothes Dryer				
3. Clothes Washer				
4. Dishwasher				
5. Garbage Disposal				
6. Freezer				
7. Oven				
8. Range				
9. Cooktop				
10. Microwave oven				
11. Built-In vacuum system and equipment				
12. Range ventilation systems				
13. Gas grill				
14. Room air conditioner (_____ number)				
15. TV antenna / Satellite dish				
16. Trash compactor				

Section B - Electrical Systems	Working	Not Working	Do Not Know If Working	None / Not Included
1. Electrical service panel capacity _____ AMP Capacity (if known) _____ fuse _____ circuit breakers				
2. Ceiling fan(s) (_____ number)				
3. Garage door opener(s) (_____ number)				
4. Garage door remote(s) (_____ number)				
5. Garage door keypad(s) (_____ number)				
6. Telephone wiring and jacks				
7. Cable TV wiring and jacks				
8. Intercom or sound system wiring				
9. Built-In speakers				
10. Smoke detectors (_____ number)				
11. Fire alarm				
12. Carbon Monoxide Alarm (_____ number)				
13. Room ventilation/exhaust fan (_____ number)				
14. 220 volt service				
15. Security System _____ Owned _____ Leased _____ Central station monitoring				
16. Have you experienced any problems with the electrical system or its components? _____ YES _____ NO	If YES, explain the condition in the comments section in PART III of this disclosure statement.			

Section C - Heating and Cooling Systems	Working	Not Working	Do Not Know If Working	None / Not Included
1. Air purifier				
2. Attic fan				
3. Whole house fan				
4. Central air conditioning _____ year installed (if known)				
5. Heating system _____ year installed (if known) _____ Gas _____ Electric _____ Other (specify _____)				
6. Fireplace / Fireplace Insert				
7. Gas log (fireplace)				
8. Gas starter (fireplace)				
9. Heat pump _____ year installed (if known)				
10. Humidifier				
11. Propane Tank _____ year installed (if known) _____ Rent _____ Own				
12. Wood-burning stove _____ year installed (if known)				

Section D - Water Systems	Working	Not Working	Do Not Know If Working	None / Not Included
1. Hot tub / whirlpool				
2. Plumbing (water supply)				
3. Swimming pool				
4. a. Underground sprinkler system				
b. Back-flow prevention system				
5. Water heater _____ year installed (if known)				
6. Water purifier _____ year installed (if known)				
7. Water softener _____ Rent _____ Own				
8. Well system				

Section E - Sewer Systems	Working	Not Working	Do Not Know If Working	None / Not Included
1. Plumbing (water drainage)				
2. Sump pump (discharges to _____)				
3. Septic System				

PART II - In Sections A, B, C, and D if the answer to any item is "YES", explain the condition in the comments Section in PART III of this disclosure statement.

Section A. Structural Conditions - If there is more than one of any item listed in this Section, the statement made applies to each and all of such items unless otherwise noted in the comment section in PART III of this disclosure statement.

Section A - Structural Conditions	YES	NO	Do Not Know
1. Age of roof (if known) _____ year(s)	N / A	N / A	
2. Does the roof leak?			
3. Has the roof leaked?			
4. Is there presently damage to the roof?			
5. Has there been water intrusion in the basement or crawl space?			
6. Has there been any damage to the real property or any of the structures thereon due to the following occurrences including, but not limited to, wind, hail, fire, flood, wood-destroying insects, or rodents?			
7. Are there any structural problems with the structures on the real property?			
8. Is there presently damage to the chimney?			
9. Are there any windows which presently leak, or do any insulated windows have any broken seals?			

Section A - Structural Conditions	YES	NO	Do Not Know
10. Year property was built _____ (if known)	N / A	N / A	
11. Has the property experienced any moving or settling of the following:	------	------	------
- Foundation			
- Floor			
- Wall			
- Sidewalk			
- Patio			
- Driveway			
- Retaining wall			
12. Any room additions or structural changes?			

Section B. Environmental Conditions - Have any of the following substances, materials, or products been on the real property? If tests have been conducted for any of the following, provide a copy of all test results, if available.

Section B - Environmental Conditions	YES	NO	Do Not Know
1. Asbestos			
2. Contaminated soil or water (including drinking water)			
3. Landfill or buried materials			
4. Lead-based paint			
5. Radon gas			
6. Toxic materials			

Section B - Environmental Conditions	YES	NO	Do Not Know
7. Underground fuel, chemical or other type of storage tank?			
8. Have you been notified by the Noxious Weed Control Authority in the last 3 years of the presence of noxious weeds, as defined by Nebraska law (N.A.C. Title 25, Ch. 10), on the property?			
9. Hazardous substances, materials or products identified by the Environmental Protection Agency or its authorized Nebraska Designee (excluding ordinary household cleaners)			

Section C. Title Conditions - Do any of the following conditions exist with regard to the real property?

Section C - Title Conditions	YES	NO	Do Not Know
1. Any features, such as walls, fences and driveways which are shared?			
2. Any easements, other than normal utility easements?			
3. Any encroachments?			
4. Any zoning violations, non-conforming uses, or violations of "setback" requirements?			
5. Any lot-line disputes?			
6. Have you been notified, or are you aware of, any work planned or to be performed by a utility or municipality close to the real property including, but not limited to sidewalks, streets, sewers, water, power, or gas lines?			
7. Any planned road or street expansions, improvements, or widening adjacent to the real property?			
8. Any condominium, homeowners', or other type of association which has any authority over the real property?			
9. Any private transfer fee obligation upon sale?			

Section C - Title Conditions	YES	NO	Do Not Know
10. Does ownership of the property entitle the owner to use any "common area" facilities such as pools, tennis courts, walkways, or other common use areas?			
11. Is there a common wall or walls?			
b. Is there a party wall agreement?			
12. Any lawsuits regarding this property during the ownership of the seller?			
13. Any notices from any governmental or quasi-governmental agency affecting the real property?			
14. Any unpaid bills or claims of others for labor and/or materials furnished to or for the real property?			
15. Any deed restrictions or other restrictions of record affecting the real property?			
16. Any unsatisfied judgments against the seller?			
17. Any dispute regarding a right of access to the real property?			
18. Any other title conditions which might affect the real property?			

Section D. Other Conditions - Do any of the following conditions exist with regard to the real property?

Section D - Other Conditions	YES	NO	Do Not Know
1. a. Are the dwelling(s) and the improvements connected to a public water system?			
b. Is the system operational?			
2. a. Are the dwelling(s) and the improvements connected to a private, community (non-public), or Sanitary Improvement District (SID) water system?			
b. Is the system operational?			
3. If the dwelling(s) and the improvements are connected to a private, community (non-public) or SID water system is there adequate water supply for regular household use (i.e. showers, laundry, etc.)?			
4. a. Are the dwelling(s) and the improvements connected to a public sewer system?			
b. Is the system operational?			
5. a. Are the dwelling(s) and the improvements connected to a community (non-public) or SID sewer system?			
b. Is the system operational?			
6. a. Are the dwelling(s) and the improvements connected to a septic system?			
b. Is the system operational?			
7. Has the main sewer line from the house ever backed up or exhibited slow drainage?			

Section D - Other Conditions	YES	NO	Do Not Know
8. a. Is the real property in a flood plain?			
b. Is the real property in a floodway?			
9. Is trash removal service provided to the real property? If so, are the trash services _____ public _____ private			
10. Have the structures been mitigated for radon? If yes, when? ____/____/_____			
11. Is the property connected to a natural gas system?			
12. Has a pet lived on the property? Type(s) _____			
13. Are there any diseased or dead trees, or shrubs on the real property?			
14. Are there any flooding, drainage, or grading problems in connection to the real property?			
15. a. Have you made any insurance or manufacturer claims with regard to the real property?			
b. Were all repairs related to the above claims completed?			
16. Are you aware of any problem with the exterior wall-covering of the structure including, but not limited to, siding, synthetic stucco, masonry, or other materials?			

Section E. Cleaning / Servicing Conditions - Have you ever performed or had performed the following? (State most recent year performed)

Section E – Cleaning / Servicing Conditions	YEAR	YES	NO	Do Not Know	None / Not Included
1. Servicing of air conditioner					
2. Cleaning of fireplace, including chimney					
3. Servicing of furnace					
4. Professional inspection of furnace A/C (HVAC) System					
5. Servicing of septic system					

Section E - Cleaning / Servicing Conditions	YEAR	YES	NO	Do Not Know	None / Not Included
6. Cleaning of wood-burning stove, including chimney					
7. Treatment for wood-destroying insects or rodents					
8. Tested well water					
9. Serviced / treated well water					

PART III – Comments. Please reference comments on items responded to above in PART I or II, with Section letter and item number.
Note: Use additional pages if necessary.

If checked here _____ PART III is continued on a separate page(s)

SELLER'S CERTIFICATION

Seller hereby certifies that this disclosure statement, which consists of _____ pages (*including additional comment pages*), has been completed by Seller; that Seller has completed this disclosure statement to the best of Seller's belief and knowledge as the date hereof, which is the date this disclosure statement is completed and signed by the Seller.

Seller's Signature _____ Date _____

Seller's Signature _____ Date _____

ACKNOWLEDGEMENT OF RECEIPT OF DISCLOSURE STATEMENT, UNDERSTANDING AND CERTIFICATION

I/We acknowledge receipt of a photocopy of the above Seller Property Condition Disclosure Statement; understand that such disclosure statement is NOT a warranty of any kind by the seller or any agent representing any principal in the transaction; understand that such disclosure statement should not be accepted as a substitute for any inspection or warranty that I/we may wish to obtain; understand the information provided in this disclosure statement is the representation of the seller and not the representation of any agent, and is not intended to be part of any contract between the seller and purchaser; and certify that disclosure statement was delivered to me/us or my/our agent on or before the effective date of any contract entered into by me/us relating to the real property described in such disclosure statement.

Purchaser's Signature _____ Date _____

Purchaser's Signature _____ Date _____

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Sanitary and Improvement Districts

31-727.03. District; statements; filed; contents; late filing; fees; duties of real estate broker, salesperson, or owner; remedy. (1) On or before December 31 of each year, the clerk of each sanitary and improvement district shall file with the register of deeds or, if none, the county clerk of the county or counties in which the sanitary and improvement district is located a statement updated each December 31 containing the following information:

(a) The names of the members of the current board of trustees of the district;
(b) The names of the current attorney, accountant, and fiscal agent of the district;
(c) The warrant and the bond principal indebtedness of the district as of the preceding June 30. Such statement shall contain an acknowledgment that the warrant and indebtedness are reflective of such date; and
(d) The current tax levy of the district as of December 31.

For any late filing of the statement, the sanitary and improvement district shall be assessed a late fee of ten dollars per day, not to exceed a total of three hundred dollars for each late filing.

(2)The real estate broker or salesperson or, if none, the owner shall distribute the most recent statement filed in accordance with this section to any prospective purchaser of any real estate located within a sanitary and improvement district.

(3) The real estate broker or salesperson or, if none, the owner shall obtain an acknowledgment from any purchaser of any real estate located within a sanitary and improvement district that the purchaser understands: (a) The property is located within a sanitary and improvement district; (b) sanitary and improvement districts are located outside the corporate limits of any municipality; (c) residents of sanitary and improvement districts are not eligible to vote in municipal elections; and (d) owners of property located within sanitary and improvement districts have limited access to services provided by nearby municipalities until and unless the property is annexed by the municipality. Such acknowledgment may be obtained separately from the disclosure required under section 76-2,120.

(4)The statement shall be distributed and the acknowledgment obtained on or before the date on which the purchaser becomes obligated to purchase such real estate. The exclusive remedy for failure to provide such statements sand obtain such acknowledgments hall be an action for damages, and any such failure shall not affect title to the real estate or the validity of the conveyance.

Statute of Frauds Provisions

36-105. Contracts for lease or sale of lands; when void. Every contract for the leasing for a longer period than one year, or for the sale of any lands, shall be void unless the contract or some note or memorandum thereof be in writing and signed by the party by whom the lease or sale is to be made.

36-107. Sale of lands; owner's contract with agent or broker; when void. Every contract for the sale of lands between the owner thereof and any broker or agent employed to sell the same, shall be void, unless the contract is in writing and subscribed by the owner of the land and the broker or agent. Such contract shall describe the land to be sold, and set forth the compensation to be allowed by the owner in case of sale by the broker or agent.

Homesteads

40-104. Homestead; how conveyed or encumbered; assertion of claim of invalidity of conveyance. Except as otherwise proved in this section, the homestead of a married person cannot be conveyed or encumbered unless the instrument by which it is conveyed or encumbered is executed and acknowledged by both spouses. The interest of either or both spouses may be conveyed or encumbered by a conservator acting in accordance with the provisions of the Nebraska Probate Code and may also be conveyed or encumbered by an attorney in fact appointed by and acting on behalf of either spouse under any power of attorney which grants the power to sell and convey real property. Any claim of invalidity of a deed of conveyance of homestead property because of failure to comply with the provisions of this section must be asserted within the time provided in section 76-288 to 76-298.

A purchase agreement or contract for sale of homestead property signed by both spouses does not require acknowledgment to be enforceable.

Sales of Trailers

60-1403.01. License required; restriction on issuance; exception. No person shall engage in the business as or serve in the capacity of, or act as a motor vehicle, trailer, or motorcycle dealer, wrecker or salvage dealer, salesperson, auction dealer, manufacturer, factory branch, factory representative, distributor, distributor branch, or distributor representative in this state without being licensed by the board under the provisions of Chapter 60, Article 14. No salesperson's license shall be issued to any person under the age of sixteen, and no dealer's license shall be issued to any minor. No wrecker or salvage dealer's license shall be issued or renewed unless the applicant has a permanent place of business at which the activity requiring licensing is performed and which conforms to all local laws. A license issued under Chapter 60, Article 14, shall authorize the holder thereof to engage in the business or activities permitted by the license. The provisions of this section shall not apply to a licensed real estate salesperson or broker who negotiates for sale, or sells a trailer for any individual who is the owner of not more than two trailers.

Recognition of Acknowledgments

64-205. Acknowledgment, defined. The words acknowledged before me means:

(1) That the person acknowledging appeared before the person taking the acknowledgment;
(2) That he or she acknowledged he or she executed the instrument;
(3) That, in the case of:
  (i) A natural person, he or she executed the instrument for the purposes therein stated;
  (ii) A corporation, the officer or agent acknowledged he or she held the position or title set forth in the instrument and certificate, he or she signed the instrument on behalf of the corporation by proper authority and the instrument was the act of the corporation for the purpose therein stated;
  (iii) A partnership, the partner or agent acknowledged he or she signed the instrument on behalf of the partnership by proper authority and he or she executed the instrument as the act of the partnership for the purposes therein stated;
  (iv) A limited liability company, the member or agent acknowledged he or she signed the instrument on behalf of the limited liability company by proper authority and he or she executed the instrument as the act of the limited liability company for the purposes therein stated;
  (v) A person acknowledging as principal by an attorney in fact, he or she executed

the instrument by proper authority as the act of the principal for the purposes therein stated;

(vi) A person acknowledging as a public officer, trustee, administrator, guardian, or other representative, he or she signed the instrument by proper authority and he or she executed the instrument in the capacity and for the purposes therein stated; and

(4) That the person taking the acknowledgment either knew or had satisfactory evidence that the person acknowledging was the person named in the instrument or certificate.

Short Forms of Acknowledgment

64-206. Statutory short forms of acknowledgment; use of other forms. The forms of acknowledgment set forth in this section may be used and are sufficient for their respective purposes under any law of this state. The forms shall be known as Statutory Short Forms of Acknowledgment and may be referred to by that name. The authorization of the forms in this section does not preclude the use of other forms.

(1) For an individual acting in his or her own right:
State of _____
County of _____
The foregoing instrument was acknowledged before me this (date) by (name of person acknowledged).
(Signature of Person Taking Acknowledgment)
(Title or Rank)
(Serial Number, if any)

(2) For a corporation:
State of _____
County of _____
The foregoing instrument was acknowledged before me this (date) by (name of officer or agent, title of officer or agent) of (name of corporation acknowledging) a (state or place of incorporation) corporation, on behalf of the corporation.
(Signature of Person Taking Acknowledgment)
(Title or Rank)
(Serial Number, if any)

(3) For a partnership:
State of _____
County of _____
The foregoing instrument was acknowledged before me this (date) by (name of acknowledging partner or agent), partner (or agent) on behalf of (name of partnership), a partnership.
(Signature of Person Taking Acknowledgment)
(Title or Rank)
(Serial Number, if any)

(4) For a limited liability company:
State of _____
County of _____
The foregoing instrument was acknowledged before me this (date) by (name of acknowledging member or agent), member (or agent) on behalf of (name of limited liability company), a limited liability company.
(Signature of Person Taking Acknowledgment)
(Title or Rank)
(Serial Number, if any)

(5) For an individual acting as principal by an attorney in fact:

State of _____
County of _____
The foregoing instrument was acknowledged before me this (date) by (name of attorney in fact) as attorney in fact on behalf of (name of principal).
(Signature of Person Taking Acknowledgment)
(Title or Rank)
(Serial Number, if any)

(6) By any Public Officer, trustee, or personal representative:
State of _____
County of _____
The foregoing instrument was acknowledged before me this (date) by (name and title of position).
(Signature of Person Taking Acknowledgement)
(Title or Rank)
(Serial Number, if any)

Recording of Instruments

76-218. Acknowledgment and recording of instruments; violations; penalty. Every officer within this state authorized to take the acknowledgment or proof of any conveyance, and every county clerk, who shall be guilty of knowingly stating an untruth, or guilty of any malfeasance or fraudulent practice in the execution of the duties prescribed for them by law, in relation to the taking or the certifying of the proof or acknowledgment, or the recording or certifying of any record of any such conveyance, mortgage or instrument in writing, or in relation to the canceling of any mortgage, shall upon conviction be adjudged guilty of a misdemeanor, and be subject to punishment by fine not exceeding five hundred dollars, and imprisonment not exceeding one year, and shall also be liable in damages to the party injured.

Dual Contracts

76-2,106. Terms, defined. As used in sections 76-2,106 to 76-2,108, unless the context otherwise requires:

(1) Dual contracts shall mean two written contracts entered into between identical contracting persons in identical capacities concerning the same parcel of real property, one of which states the true and actual purchase price and one of which states a purchase price in excess of the true and actual purchase price and is used as an inducement to make a loan commitment on such real property in reliance upon the stated inflated value; and

(2) Fraudulent instrument shall mean any paper, document, or other form in writing that is intentionally used as subterfuge or device to induce the making of a loan or the extension of credit as a part of a transaction whereby either the title to real property is transferred or valuable improvements are placed on real property in this state, whether for the benefit of the inducer or another.

76-2,107. Dual contracts; substituting one instrument for another; fraudulent instrument; unlawful. No person, firm or corporation, or any agent or employee of any such firm or corporation shall, with intent to defraud (1) make or issue a dual contract for the purchase of real property, (2) substitute one instrument in writing for another and by such means cause the making of a loan or the extension of credit, with respect to transactions whereby either the title to real property is transferred or valuable improvements are placed on real property in this state, whether for the benefit of the inducer or another, or (3) induce by any fraudulent instrument in writing the making of a loan or the extension of credit as a part of a transaction whereby either the title to real

property is transferred or valuable improvements are placed on real property in this state, whether for the benefit of the inducer or another.

76-2,108. Violations; penalty. Any person violating the provisions of section 76-2,107 shall be guilty of a misdemeanor and shall, upon conviction thereof, be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, or by imprisonment in the county jail for not less than five days nor more than thirty days, or by both such a fine and imprisonment.

Real Estate Closing Agents

76-2,121. Real estate closing agents; terms, defined. For purposes of sections 76-2,121 to 76-2,123:

(1) Federally insured financial institution shall mean an institution in which the monetary deposits are insured by the Federal Deposit Insurance Corporation or National Credit Union Administration;

(2) Good funds shall mean:
   (a) Lawful money of the United States;
   (b) wired funds when unconditionally held by the real estate closing agent or employee;
   (c) cashier's checks, certified checks, bank money orders, or teller's checks issued by a federally insured financial institution and unconditionally held by the real estate closing agent or employee; or
   (d) United States treasury checks, federal reserve bank checks, federal home loan bank checks, State of Nebraska warrants, and warrants of a city of the metropolitan or primary class;

(3) Real estate closing agent shall mean a person who collects and disburses funds on behalf of another in closing a real estate transaction but shall not include a seller or buyer closing a real estate transaction on his or her own behalf or a lender closing a real estate loan transaction; and

(4) Regulating entity shall mean the:
   (a) Department of Insurance;
   (b) Supreme Court;
   (c) State Real Estate Commission;
   (d) Department of Banking and Finance;
   (e) Federal Deposit Insurance Corporation;
   (f) Federal Office of Thrift Supervision;
   (g) Federal Farm Credit Administration; or
   (h) National Credit Union Administration.

76-2,122. Real estate closing agents; requirements; enforcement; violation; penalty.

(1) To act as a real estate closing agent, a person shall be (a) licensed or regulated by one or more regulating entities or (b) employed by a person or entity regulated by one or more regulating entities, unless employing such person to act as a real estate closing agent is otherwise prohibited by statute, rule, or regulation.

(2) A person acting as a real estate closing agent shall:
   (a) Have received good funds which are available for disbursement at the time of closing a real estate transaction except that up to five hundred dollars need not be available for disbursement from good funds;
   (b) Except as provided in Section 81-885.21, deposit all funds received on behalf of another person in a trust account controlled by the real estate closing agent in a federally insured financial institution, except that up to five hundred dollars may be paid by one party directly to another party without first being deposited in a

trust account controlled by the real estate closing agent; and

(c) Except as provided in Section 81-885.21, disburse closing funds only from the real estate closing agent's trust account in a federally insured financial institution in the form of good funds or in the form of a check drawn from the real estate closing agent's trust account.

(3) The following real estate transactions are exempt from this section:

(a) Transactions with a political subdivision which is exercising its power of condemnation or eminent domain;

(b) Lease or rental transactions; and

(c) Real estate transactions in which the closing occurs within one business day following another real estate closing and in which one party is a principal to both transactions, but only to the extent that the funds disbursed in the subsequent transaction are drawn upon funds properly received by a real estate closing agent in the prior transaction which were deposited in that real estate closing agent's trust account in a federally insured financial institution or as otherwise provided in Section 81-885.21.

(4) The Attorney General or any county attorney may act to enjoin the performance of real estate closings which violate this section.

(5) A person acting as a real estate closing agent in violation of this section shall be guilty of a Class V misdemeanor.

76-2,123. Real estate closing agents; regulating entities; rules and regulations. Each state regulating entity shall adopt and promulgate rules and regulations and issue such orders as are necessary or desirable to carry out section 76-2,122. Each regulating entity may inspect, examine, and audit the books and records of real estate closing agents under its jurisdiction who conduct real estate closings. The regulating entity may require reimbursement from the real estate closing agent for the expenses of such inspection, examination, or audit.

Alien Ownership of Land

Const., I-25 Rights of property; no discrimination; aliens. There shall be no discrimination between citizens of the United States in respect to the acquisition, ownership, possession, enjoyment or descent of property. The right of aliens in respect to the acquisition, enjoyment and descent of property may be regulated by law.

76-402 Aliens and foreign corporations; real estate; ownership prohibited. Aliens and corporations not incorporated under the laws of the State of Nebraska are prohibited from acquiring title to or taking or holding any land, or real estate, or any leasehold interest extending for a period for more than five years or any other greater interest less than fee in any land, or real estate in this state by descent, devise, purchase or otherwise, except as provided in sections 76-403 to 76-405.

76-403 Widow or heirs of aliens; right to land. The widow and heirs of aliens, who have prior to March 16, 1889, acquired lands in this state under the laws thereof, may hold such lands by devise or descent for a period of ten years and no longer, and if at the end of such time such lands, so acquired, have not been sold to a bona fide purchaser for value, such lands or other interest therein shall revert and escheat to the State of Nebraska. It shall be the duty of the county attorney in the counties where such lands are situated to enforce forfeitures of all such lands or other interests therein as provided by section 76-408.

76-404 Oil and gas leases permitted. Corporations incorporated under the laws of the United States of America, or under the laws of any state of the United States of America, or any foreign corporation or any alien, doing business in this state, may acquire, own, hold, or operate leases

for oil, gas, or other hydrocarbon substances, for a period as long as ten years and as long thereafter as oil, gas, or other hydrocarbon substances ıall or can be produced in commercial quantities.

76-405 Land acquired by devise or descent; sale within five years required. Any resident alien may acquire title to lands in this state by devise or descent only, provided such alien shall be required to sell and convey said real property within five years from the date of acquiring it, and if he shall fail to dispose of it to a bona fide purchaser for value within that time, it shall revert and escheat to the State of Nebraska.

76-414. Sections; not applicable to real estate within cities and villages or within three miles of cities and villages; not applicable to manufacturing or industrial establishments. The provisions of sections 76-402 to 76-413 shall not apply to any real estate lying within the corporate limits of cities and villages, or within three miles thereof, nor to any manufacturing or industrial establishment referred to in section 76-413.

Private Transfer Fee Obligation Act

76-3101. Act, how cited. Sections 76-3101 to 76-3112 shall be known and may be cited as the Private Transfer Fee Obligation Act.

76-3102. Legislative findings and declarations. The Legislature finds and declares that the public policy of this state favors the marketability of real property and the transferability of interests in real property free of title defects or unreasonable restraints on alienation. The Legislature further finds and declares that private transfer fee obligations violate this public policy by impairing the marketability and transferability of real property and by constituting an unreasonable restraint on alienation regardless of the duration of the obligation to pay a private transfer fee, the amount of a private transfer fee, or the method by which any private transfer fee is created or imposed. The Legislature finds and declares that a private transfer fee obligation should not run with the title to property or otherwise bind subsequent owners of property under any common-law or equitable principle.

76-3103. Definitions, where found. For purposes of the Private Transfer Fee Obligation Act, the definitions in sections 76-3104 to 76-3108 shall be used.

76-3104. Environmental covenant, defined. Environmental covenant means a servitude that imposes activity and use limitations on real property and meets the requirements of section 76-2604.

76-3105. Payee, defined. Payee means the person who claims the right to receive or collect a private transfer fee payable under a private transfer fee obligation, whether or not the person has a pecuniary interest in the private transfer fee obligation.

76-3106. Private transfer fee, defined. Private transfer fee means a fee or charge payable upon the transfer of an interest in real property, or payable for the right to make or accept such transfer, regardless of whether the fee or charge is a fixed amount or is determined as a percentage of the value of the property, the purchase price, or other consideration given for the transfer. Private transfer fee does not include:

(1) Any consideration payable by the grantee to the grantor for the interest in real property being transferred, including any subsequent additional consideration for the property payable by the grantee based upon any subsequent appreciation, development, or sale of the property, if the additional consideration is payable on a one-time basis only and the obligation

to make such payment does not bind successors in title to the property. For purposes of this subdivision, an interest in real property may include a separate mineral estate and its appurtenant surface access rights;

(2) Any commission payable to a licensed real estate broker or salesperson for the transfer of real property pursuant to an agreement between the broker or salesperson and the grantor or the grantee, including any subsequent additional commission for that transfer payable by the grantor or the grantee based upon any subsequent appreciation, development, or sale of the property;

(3) Any interest, charges, fees, or other amounts payable by a borrower to a lender pursuant to a loan secured by a mortgage or trust deed against real property, including any fee payable to the lender for consenting to an assumption of the loan or a transfer of the real property subject to the mortgage or trust deed, any fees or charges payable to the lender for estoppel letters or certificates, and any shared appreciation interest or profit participation or other consideration payable to the lender in connection with the loan;

(4) Any rent, reimbursement, charge, fee, or other amount payable by a lessee to a lessor under a lease, including any fee payable to the lessor for consenting to an assignment, subletting, encumbrance, or transfer of the lease;

(5) Any consideration payable to the holder of an option to purchase an interest in real property or the holder of a right of first refusal or first offer to purchase an interest in real property for waiving, releasing, or not exercising the option or right upon the transfer of the real property to another person;

(6) Any tax, fee, charge, assessment, fine, or other amount payable to or imposed by a governmental authority;

(7) Any fee, charge, assessment, dues, fine, contribution, or other amount payable to a homeowners, condominium, cooperative, mobile home, or property owners association pursuant to a declaration or covenant or bylaw applicable to such association, including fees or charges payable for estoppel letters or certificates issued by the association or its authorized agent;

(8) Any fee, charge, assessment, dues, contribution, or other amount pertaining solely to the purchase or transfer of a club membership relating to real property owned by the member, including any amount determined by reference to the value, purchase price, or other consideration given for the transfer of the real property; or

(9) Any payment required pursuant to an environmental covenant.

76-3107. Private transfer fee obligation, defined. Private transfer fee obligation means an obligation arising under a declaration or covenant recorded against the title to real property, or under any other contractual agreement or promise, whether or not recorded, that requires or purports to require the payment of a private transfer fee upon a subsequent transfer of an interest in the real property.

76-3108. Transfer, defined. Transfer means sale, gift, conveyance, assignment, inheritance, or other transfer of an ownership interest in real property located in this state.

76-3109. Private transfer fee obligation; how treated. A private transfer fee obligation recorded or entered into in this state on or after March 11, 2011, does not run with the title to real property and is not binding on or enforceable at law or in equity against any subsequent owner, purchaser, mortgagee, or trustee of any interest in real property as an equitable servitude or otherwise. Any private transfer fee obligation that is recorded or entered into in this state on or after March 11, 2011, is void and unenforceable. This section shall not be construed to mean that a private transfer fee obligation recorded or entered into in this state before March 11, 2011, is presumed valid and enforceable.

76-3110. Recordation of or agreement imposing a private transfer fee obligation; liability. Any person who records or enters into an agreement imposing a private transfer fee obligation in his or her favor after March 11, 2011, shall be liable for (1) any and all damages resulting from the imposition of the private transfer fee obligation on the transfer of an interest in the real property, including the amount of any transfer fee paid by a party to the transfer, and (2) all attorney's fees, expenses, and costs incurred by a party to the transfer or mortgagee of the real property to recover any private transfer fee paid or in connection with an action to quiet title. If an agent acts on behalf of a principal to record or secure a private transfer fee obligation, liability shall be assessed to the principal rather than the agent.

76-3111. Contract for sale of real property subject to private transfer fee obligation; requirements; failure to disclose; rights of buyer.

(1) Any contract for the sale of real property subject to a private transfer fee obligation shall include a provision disclosing the existence of that obligation, a description of the obligation, and a statement that private transfer fee obligations are subject to certain prohibitions under the Private Transfer Fee Obligation Act. A contract for sale of real property which does not conform to the requirements of this section shall not be enforceable by the seller against the buyer, nor shall the buyer be liable to the seller for damages under such a contract, and the buyer under such a contract shall be entitled to the return of all deposits made in connection with the sale of the real property.

(2) If a private transfer fee obligation is not disclosed under subsection (1) of this section and a buyer subsequently discovers the existence of such private transfer fee obligation after title to the property has passed to the buyer, the buyer shall have the right to recover (a) any and all damages resulting from the failure to disclose the private transfer fee obligation, including the amount of any private transfer fee paid by the buyer, or the difference between (i) the market value of the real property if it were not subject to a private transfer fee obligation and (ii) the market value of the real property as subject to a private transfer fee obligation, and (b) all attorney's fees, expenses, and costs incurred by the buyer in seeking the buyer's remedies under this subsection.

(3) Any provision in a contract for sale of real property that purports to waive the rights of a buyer under this section shall be void.

76-3112. Receiver of fee; record document; contents; amendment; payee failure to comply; effect; affidavit; recording; effect.

(1) For a private transfer fee obligation in existence prior to March 11, 2011, the receiver of the fee shall, within thirty days after March 11, 2011, or before any transfer of real property subject to the private transfer fee, whichever period is shorter, record against the real property subject to the private transfer fee obligation a separate document in the register of deeds office of the county in which the real property is located that meets all of the following requirements:

(a) The title of the document shall be "Notice of Private Transfer Fee Obligation" in at least fourteen-point, boldface type;

(b) The amount, if the private transfer fee is a flat amount, or the percentage of the sales price constituting the cost of the private transfer fee, or such other basis by which the private transfer fee is to be calculated;

(c) The date or circumstances under which the private transfer fee obligation expires, if any;

(d) The purpose for which the funds from the private transfer fee obligation will be used;

(e) The name of the person to whom funds are to be paid and specific contact information regarding where the funds are to be sent;

(f) The acknowledged signature of the payee; and

(g) The legal description of the real property purportedly burdened by the private transfer fee obligation.

(2) The person to whom the private transfer fee is to be paid may file an amendment to the notice of private transfer fee obligation containing new contact information, but such amendment must contain the recording information of the notice of private transfer fee obligation which it amends and the legal description of the property burdened by the private transfer fee obligation.

(3) If the payee fails to comply fully with subsection (1) of this section, the grantor of any real property burdened by the private transfer fee obligation may proceed with the transfer of any interest in the real property to any grantee and in so doing shall be deemed to have acted in good faith and shall not be subject to any obligations under the private transfer fee obligation. In such event, any transfer of the real property thereafter shall be free and clear of the private transfer fee and private transfer fee obligation.

(4) If the payee fails to provide a written statement of the private transfer fee payable within thirty days after the date of a written request for the same sent to the address shown in the notice of private transfer fee obligation, then the grantor, on recording of the affidavit required under subsection (5) of this section, may transfer any interest in the real property to any grantee without payment of the private transfer fee and shall not be subject to any further obligations under the private transfer fee obligation. In such event, any transfer of the real property shall be free and clear of the private transfer fee and private transfer fee obligation.

(5) An affidavit stating the facts enumerated under subsection (6) of this section shall be recorded in the office of the register of deeds in the county in which the real property is situated prior to or simultaneously with a transfer pursuant to subsection (4) of this section of real property unburdened by a private transfer fee obligation. An affidavit filed under this subsection shall state that the affiant has actual knowledge of, and is competent to testify to, the facts in the affidavit and shall include the legal description of the real property burdened by the private transfer fee obligation, the name of the owner of such real property at the time of the signing of such affidavit, a reference by recording information to the instrument of record containing the private transfer fee obligation, and an acknowledgment that the affiant is testifying under penalty of perjury.

(6) When recorded, an affidavit as described in subsection (5) of this section shall constitute prima facie evidence that:

(a) A request for the written statement of the private transfer fee payable in order to obtain a release of the fee imposed by the private transfer fee obligation was sent to the address shown in the notification; and

(b) The entity listed on the notice of private transfer fee obligation failed to provide the written statement of the private transfer fee payable within thirty days after the date of the notice sent to the address shown in the notification.

Smoke Detectors

81-5,142. Smoke detectors; installation required; when.

(1) Every dwelling unit within a dwelling or apartment house constructed or remodeled on or after January 1, 1982, every guest room in a lodging house or hotel constructed or remodeled on or after January 1, 1982, and every dormitory constructed or remodeled on or after January 1, 1982, shall be provided with one or more operating smoke detectors meeting the requirements of the State Fire Marshal's rules and regulations.

(2) Every guest room in a lodging house or hotel constructed prior to January 1, 1982, and every dormitory constructed prior to January 1, 1982, shall be provided with one or more operating smoke detectors meeting the requirements of the State Fire Marshal's rules and regulations on or before January 1, 1984.

(3) Every (a) dwelling unit within a dwelling or apartment house constructed prior to January 1, 1982, (b) mobile home, and (c) modular housing unit constructed pursuant to sections 71-1555 to 71-1567 shall be provided with one or more operating smoke detectors meeting the requirements of the State Fire Marshal's rules and regulations at the time of their remodeling or sale. In the event of a sale, the provision of smoke detectors shall be the sole responsibility of the seller, which responsibility shall not be assigned or imputed to any other party or the agent of any party to the sale.

Appealing Commission Decisions

84-917. Contested case; appeal; procedure.

(1) Any person aggrieved by a final decision in a contested case, whether such decision is affirmative or negative in form, shall be entitled to judicial review under the Administrative Procedure Act. Nothing in this section shall be deemed to prevent resort to other means of review, redress, or relief provided by law.

(2) (a) Proceedings for review shall be instituted by filing a petition in the district court of the county where the action is taken within thirty days after the service of the final decision by the agency. All parties of record shall be made parties to the proceedings for review. If an agency's only role in a contested case is to act as a neutral factfinding body, the agency shall not be a party of record. In all other cases, the agency shall be a party of record. Summons shall be served within thirty days of the filing of the petition in the manner provided for service of a summons in a civil action. If the agency whose decision is appealed from is not a party of record, the petitioner shall serve a copy of the petition and a request for preparation of the official record upon the agency within thirty days of the filing of the petition. The court, in its discretion, may permit other interested persons to intervene.

(b) A petition for review shall set forth:

(i) The name and mailing address of the petitioner;

(ii) The name and mailing address of the agency whose action is at issue;

(iii) Identification of the final decision at issue together with a duplicate copy of the final decision;

(iv) Identification of the parties in the contested case that led to the final decision;

(v) Facts to demonstrate proper venue;

(vi) The petitioner's reasons for believing that relief should be granted; and

(vii) a request for relief, specifying the type and extent of the relief requested.

(3) The filing of the petition or the service of summons upon such agency shall not stay enforcement of a decision. The agency may order a stay. The court may order a stay after notice of the application therefor to such agency and to all parties of record. If the agency has found that its action on an application for stay or other temporary remedies is justified to protect against a substantial threat to the public health, safety, or welfare, the court may not grant relief unless the court finds that:

(a) The applicant is likely to prevail when the court finally disposes of the matter;

(b) Without relief, the applicant will suffer irreparable injuries;

(c) The grant of relief to the applicant will not substantially harm other parties to the proceedings; and

(d) the threat to the public health, safety, or welfare relied on by the agency is not sufficiently serious to justify the agency's action in the circumstances. The court may require the party requesting such stay to give bond in such amount and conditioned as the court may direct.

(4) Within thirty days after service of the petition or within such further time as the court for good cause shown may allow, the agency shall prepare and transmit to the court a certified copy of the official record of the proceedings had before the agency. Such official record shall include:

(a) Notice of all proceedings;

(b) Any pleadings, motions, requests, preliminary or intermediate rulings and orders, and similar correspondence to or from the agency pertaining to the contested case;

(c) The transcribed record of the hearing before the agency, including all exhibits and evidence introduced during such hearing, a statement of matters officially noticed by the agency during the proceeding, and all proffers of proof and objections and rulings thereon; and

(d) The final order appealed from.

The agency shall charge the petitioner with the reasonable direct cost or require the petitioner to pay the cost for preparing the official record for transmittal to the court in all cases except when the petitioner is not required to pay a filing fee. The agency may require payment or bond prior to the transmittal of the record.

(5) (a) When the petition instituting proceedings for review was filed in the district court before July 1, 1989, the review shall be conducted by the court without a jury on the record of the agency, and review may not be obtained of any issue that was not raised before the agency unless such issue involves one of the grounds for reversal or modification enumerated in subdivision (6)(a) of this section. When the petition instituting proceedings for review is filed in the district court on or after July 1, 1989, the review shall be conducted by the court without a jury de novo on the record of the agency.

(b) (i) If the court determines that the interest of justice would be served by the resolution of any other issue not raised before the agency, the court may remand the case to the agency for further proceedings.

(ii) The agency shall affirm, modify, or reverse its findings and decision in the case by reason of the additional proceedings and shall file the decision following

remand with the reviewing court. The agency shall serve a copy of the decision following remand upon all parties to the district court proceedings. The agency decision following remand shall become final unless a petition for further review is filed with the reviewing court within thirty days after the decision following remand being filed with the district court. The party filing the petition for further review shall serve a copy of the petition for further review upon all parties to the district court proceeding in accordance with the rules of pleading in civil actions promulgated by the Supreme Court pursuant to section 25-801.01 within thirty days after the petition for further review is filed. Within thirty days after service of the petition for further review or within such further time as the court for good cause shown may allow, the agency shall prepare and transmit to the court a certified copy of the official record of the additional proceedings had before the agency following remand.

(6) (a) When the petition instituting proceedings for review was filed in the district court before July 1, 1989, the court may affirm the decision of the agency or remand the case for further proceedings, or it may reverse or modify the decision if the substantial rights of the petitioner may have been prejudiced because the agency decision is:

(i) In violation of constitutional provisions;
(ii) In excess of the statutory authority or jurisdiction of the agency;
(iii) Made upon unlawful procedure;
(iv) Affected by other error of law;
(v) Unsupported by competent, material, and substantial evidence in view of the entire record as made on review; or
(vi) Arbitrary or capricious.

(b) When the petition instituting proceedings for review is filed in the district court on or after July 1, 1989, the court may affirm, reverse, or modify the decision of the agency or remand the case for further proceedings.

(7) The review provided by this section shall not be available in any case where other provisions of law prescribe the method of appeal.

84-918. District court decision; appeal.

(1) An aggrieved party may secure a review of any judgment rendered or final order made by the district court under the Administrative Procedure Act by appeal to the Court of Appeals.

(2) When the petition instituting proceedings for review was filed in the district court before July 1, 1989, the appeal shall be taken in the manner provided by law for appeals in civil cases and shall be heard de novo on the record.

(3) When the petition instituting proceedings for review is filed in the district court on or after July 1, 1989, the appeal shall be taken in the manner provided by law for appeals in civil cases. The judgment rendered or final order made by the district court may be reversed, vacated, or modified for errors appearing on the record.

84-919. Act; exclusive means of judicial review. Except as otherwise provided by law, the Administrative Procedure Act establishes the exclusive means of judicial review of a final decision of any agency in a contested case.

Carbon Monoxide Safety Act

76-601. Act, how cited.
Sections 76-601 to 76-607 shall be known and may be cited as the Carbon Monoxide Safety Act.

76-602. Terms, defined.

For purposes of the Carbon Monoxide Safety Act:

(1) Carbon monoxide alarm means a device that detects carbon monoxide and that:

(a) Produces a distinct, audible alarm;

(b) Is listed by a nationally recognized, independent product-safety testing and certification laboratory to conform to the standards for carbon monoxide alarms issued by such laboratory as determined by the State Fire Marshal;

(c) (i) Is battery-powered;

(ii) Plugs into a dwelling's electrical outlet and has a battery backup;

(iii) Is wired into a dwelling's electrical system and has a battery backup; or

(iv) Is connected to an electrical system via an electrical panel; and

(d) May be combined with a smoke detecting device if the combined device complies with applicable law regarding both smoke detecting devices and carbon monoxide alarms and if the carbon monoxide alarm is distinct and descriptively annunciated from a smoke detecting alarm;

(2) Dwelling unit means a single unit providing complete independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking, and sanitation;

(3) Fuel means coal, kerosene, oil, fuel gases, or other petroleum products or hydrocarbon products such as wood that emit carbon monoxide as a byproduct of combustion;

(4) Installed means that a carbon monoxide alarm is installed in a dwelling unit in accordance with the National Fire Protection Association Standard 720 as such standard existed on January 1, 2015, and in accordance with the instructions for installation from the manufacturer, in one of the following ways:

(a) If the alarm is battery-powered, attached to the wall or ceiling of the dwelling unit;

(b) Directly plugged into an electrical outlet without a switch other than a circuit breaker; or

(c) Wired directly into the dwelling's electrical system;

(5) Multifamily dwelling means any improved real property used or intended to be used as a residence and that contains more than one dwelling unit. Multifamily dwelling includes a condominium or cooperative;

(6) Operational means working and in service in accordance with the manufacturer's instructions; and

(7) Single-family dwelling means any improved real property used or intended to be used as a residence and that contains one dwelling unit.

76-603. Carbon monoxide alarm; installation required.

Any multifamily dwelling or single-family dwelling constructed on or after January 1, 2017, that has a fuel-fired heater or appliance, a fireplace, or an attached garage shall have a carbon monoxide alarm installed (1) on each habitable floor of each dwelling unit in a multifamily dwelling and on each habitable floor in a single-family dwelling or (2) in a location specified in any building code adopted by the state or by the political subdivision in which the dwelling is located.

76-604. Seller of single-family dwelling; duties; interior alterations requiring permit; owner; duties.

(1) The seller of a single-family dwelling that is offered for sale or transfer on or after January 1, 2017, and that has a fuel-fired heater or appliance, a fireplace, or an attached garage shall ensure that an operational carbon monoxide alarm is installed on each habitable floor of the dwelling or in a location specified in any building code adopted by the state or by the political subdivision in which the dwelling is located.

(2) If the owner of a single-family dwelling that has a fuel-fired heater or appliance, a fireplace, or an attached garage makes any interior alteration, repair, fuel-fired appliance replacement, or addition on or after January 1, 2017, where a permit is required, the owner shall ensure that an operational carbon monoxide alarm is installed on each habitable floor of the dwelling where the alteration, repair, replacement, or addition occurs or in a location specified in any building code adopted by the state or by the political subdivision in which the dwelling is located. This subsection applies only to interior alterations. This subsection does not apply to exterior alterations which require a building permit.

(3) No person shall remove batteries from, or in any way render inoperable, a carbon monoxide alarm except as part of a process to inspect, maintain, repair, or replace the alarm or replace the batteries in the alarm.

76-605. Seller of multifamily dwelling; duties; interior alterations requiring permit; owner; duties; prohibited acts.

(1) The seller of a dwelling unit of an existing multifamily dwelling shall ensure that an operational carbon monoxide alarm is installed on each habitable floor of the dwelling unit or in a location specified in any building code adopted by the state or by the political subdivision in which the dwelling unit is located when the dwelling unit is offered for sale or transfer on or after January 1, 2017, if the dwelling unit has a fuel-fired heater or appliance, a fireplace, or an attached garage.

(2) The owner of a dwelling unit of a multifamily dwelling shall ensure that an operational carbon monoxide alarm is installed on each habitable floor of the dwelling unit or in a location specified in any building code adopted by the state or by the political subdivision in which the dwelling unit is located if the dwelling unit has a fuel-fired heater or appliance, a fireplace, or an

attached garage and if the owner, on or after January 1, 2017, makes any of the following where a permit is required: Any interior alteration, repair, fuel-fired appliance replacement, or addition.

(3) No person shall remove batteries from, or in any way render inoperable, a carbon monoxide alarm except as part of a process to inspect, maintain, repair, or replace the alarm or replace the batteries in the alarm.

76-606. Owner of certain rental property; duties; tenant; duties; prohibited acts.

(1) The owner of a single-family dwelling or a dwelling unit in a multifamily dwelling that is used for rental purposes shall ensure that an operational carbon monoxide alarm is installed on each habitable floor of the dwelling or dwelling unit or in a location specified in any building code adopted by the state or by the political subdivision in which the dwelling or dwelling unit is located if the dwelling or dwelling unit has a fuel-fired heater or appliance, a fireplace, or an attached garage and if the owner, on or after January 1, 2017, makes any of the following where a permit is required: Any interior alteration, repair, fuel-fired appliance replacement, or addition.

(2) The owner of an existing single-family dwelling or existing dwelling unit in a multifamily dwelling that is used for rental purposes and that has a change in tenant occupancy on or after January 1, 2017, shall ensure that an operational carbon monoxide alarm is installed on each habitable floor of the dwelling or dwelling unit or in a location specified in any building code adopted by the state or by the political subdivision in which the dwelling or dwelling unit is located.

(3)(a) The owner of any rental property specified in subsection (1) or (2) of this section shall:

(i) Prior to the commencement of a new tenant occupancy, replace any carbon monoxide alarm that was stolen, removed, found missing, or found not operational after the previous occupancy;

(ii) Ensure that any batteries necessary to make the carbon monoxide alarm operational are provided to the tenant at the time the tenant takes residence in the dwelling unit;

(iii) Replace any carbon monoxide alarm if notified by a tenant as specified in subdivision (4)(b) of this section that any carbon monoxide alarm was stolen, removed, found missing, or found not operational during the tenant's occupancy; and

(iv) Fix any deficiency in a carbon monoxide alarm if notified by a tenant as specified in subdivision (4)(c) of this section.

(b) Except as provided in subdivision (a) of this subsection, the owner of a single-family dwelling or dwelling unit in a multifamily dwelling that is used for rental purposes is not responsible for the maintenance, repair, or replacement of a carbon monoxide alarm or the care and replacement of batteries for the carbon monoxide alarm.

(4) The tenant of any rental property specified in subsection (1) or (2) of this section shall:

(a) Keep, test, and maintain all carbon monoxide alarms in good repair;

(b) Notify the owner of the single-family dwelling or dwelling unit of a multifamily dwelling, or the owner's authorized agent, if any carbon monoxide alarm is stolen, removed, found

missing, or found not operational during the tenant's occupancy of the single-family dwelling or dwelling unit in the multifamily dwelling; and

(c) Notify the owner of the single-family dwelling or dwelling unit of a multifamily dwelling, or the owner's authorized agent, of any deficiency in any carbon monoxide alarm that the tenant cannot correct.

(5) No person shall remove batteries from, or in any way render inoperable, a carbon monoxide alarm except as part of a process to inspect, maintain, repair, or replace the alarm or replace the batteries in the alarm.

76-607. Act; how construed.

Nothing in the Carbon Monoxide Safety Act shall be construed to limit a city, village, or county from adopting or enforcing any requirements for the installation and maintenance of carbon monoxide alarms that are more stringent than the requirements set forth in the act.

COMMISSION POLICIES AND INTERPRETATIONS

Required Notice pursuant to the Administrative Procedures Act:

"This guidance document is advisory in nature but is binding on an agency until amended by such agency. A guidance document does not include internal procedural documents that only affect the internal operations of the agency and does not impose additional requirements or penalties on regulated parties or include confidential information or rules and regulations made in accordance with the Administrative Procedure Act. If you believe that this guidance document imposes additional requirements or penalties on regulated parties, you may request a review of the document."

The above disclaimer applies to all Policies and Interpretations listed herein.

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1. Trust Account Examination Advance Notice Policy to Cease

The Real Estate Commissions' policy of giving brokers advance notice of trust account examinations practice will cease after notice to brokers through an article in the Commission Comment.

Adopted August 1, 1990

2. Names of Salespeople Used in Names of Companies

The use of licensed salesperson's names in the trade name or corporation name of a real estate company is allowed.

Adopted May 22-23, 1991

3. Out-of-State Appraiser Courses Used Toward Salesperson/Broker Continuing Education Requirement

A clarification and amendment to the Real Estate Commission's policy of honoring the Appraiser Board's determinations regarding Appraiser continuing education. The Nebraska Real Estate Appraiser Board accepts courses approved by other Appraiser Licensing Bodies when taken out-of-state.

The Real Estate Commission will honor the Nebraska Appraiser Board's position in this regard as well, by accepting approved Appraiser continuing education taken out of state for Nebraska Salesperson's and Broker's continuing education credit.

Adopted July 24-25, 1991

4. Commission Staff Members Acting as Private Continuing Education Providers

Because of concerns over the Political Accountability Act, issues relating to potential conflicts of interest and the imperative that the programs be perceived as independent from the Real Estate Commission, it was the consensus of the Members of the Commission that Commission Staff Members should not act as private continuing education providers.

Adopted January 14-15, 1992

5. Records Retention Policy

Non-active records will be retained for fourteen years, unless otherwise required by State Policy.

Adopted February 12, 1992
Amended September 10, 2009

6. Limit on Unused Examination Fees

Unused examination fees are valid for one year from date of receipt. (This is an extension of previous undated Policy making applications for original licensure and applicable fees only valid for one year from date of receipt.)

Adopted March 10, 1992

7. Commission Travel Policy

The Commission has had a long-standing policy with regard to out-of-state travel which is based on the philosophy that Commissioners and Staff need to be informed and up-to-date on real estate regulatory matters. Involvement in National organizations and interaction with other states' real estate regulatory bodies allows for the research and enhancement of educational

opportunities approved for use by licensees, especially in the continuing education area; allows for the negotiation of reciprocity regarding educational offerings, both pre-license and continuing education leading to negotiation of reciprocal licensing agreements; and allows for education of Commissioners and Staff that has allowed the Nebraska Real Estate Commission to be on the leading edge of the real estate regulatory movement and, therefore, to better serve the citizenry of Nebraska.

Authorization for travel must be approved by the Commission. Such authorization for travel of Commission Members and/or Staff is based on the educational value which can be accrued from attendance at the meeting; on the pertinence of the subject, or subjects, to be covered at the meeting such as the recent issue regarding Federal legislation dealing with Appraisers; and on the economic condition of the Commission at the time.

All of these factors are considered in determining if the meeting should be attended at all, and, if so, which person or persons should attend in order to provide maximum benefit to Nebraska.

Upon return from any authorized out-of-state travel, a Report will be given by the Commission Member(s) and/or Staff Member(s) involved in the conference or meeting at the next meeting of the Commission.

This Policy supersedes previous policy.

Adopted March 10, 1992

8. Branch Office Definition of "Temporary Basis"

NAC 299 Chapter 2-011 refers to a "Model Home" utilized as an office on a "temporary basis" as not being considered a branch office. "Temporary basis" will be interpreted as two to three years.

Adopted April 21, 1992

9. Fully Completed and Signed Renewal Policy

Renewal applications and fees will be returned if all requested information is not supplied and/or the renewal form is not signed by the applicant.

Adopted April 21, 1992

10. Direct Deposits to Trust Account Policy

Direct deposits may be made into a Real Estate Trust Account maintained by a broker under the Nebraska Real Estate License Act and Rules and Regulations of the Commission as long as a receipt is sent to the broker with the remitter's name on it so that a paper audit trail exists.

Adopted April 21, 1992

11. Transfer of License Policy

Due to a Rule change effective on September 21, 1992, licensees will no longer be required to carry their pocket card when conducting business. The transfer process will be handled in the following manner:

When all materials required to transfer are mailed under one cover, requesting an immediate transfer, the transfer is effective as of postmark, if no postmark is visible, then the effective date will be the date of the latter letter included, i.e. that of the licensee requesting their previous broker return their wall certificate to the Real Estate Commission or that of the new broker wishing to hire the licensee. If materials are hand carried into the office, the transfer, if an immediate transfer request, is effective as of Commission date stamp.

In the event that transfer materials are incomplete, the transfer will not be effective until all materials are received and date stamped in the Commission Office. Until complete, the licensee will be placed on inactive status and no activities requiring a license may be conducted until the transfer is completed. Business must be suspended until the transfer is complete.

Adopted April 21, 1992

12. Trust Account Records Location Matter

Brokers with branch offices who maintain a centralized bookkeeping system will be allowed to maintain transactions files at the branch offices in which the transaction occurred. Dependent on the examiner's judgment, the broker would be responsible for supplying the files to the examiner at the centralized location with a reasonable, non-audit risk, time-frame or the broker would be responsible for providing photocopies of documents needed from the centralized location which the examiner would need at the other location.

Adopted June 16-17, 1992

13. Return to Work/Light Duty Policy

This policy, as recommended from the Office of Risk Management, is a part of compliance with the Americans with Disabilities Act. (Copy available from Commission Office.)

Adopted June 16-17, 1992

14. Clarification of Third Party Closing Fee Disclosure

In all real estate transactions, the buyer and seller must: 1) authorize, in writing, the use of the third party closing agent; 2) authorize, in writing, the transfer of funds from the broker to the third party closing agent; and 3) agree, in writing, as to who will pay the closing fee, if any, or how the closing fee, if any, will be split between buyer and seller. The actual fee does not need to be disclosed at this time, but must be disclosed as a part of estimating the closing costs.

Adopted June 16-17, 1992
Amended September 15, 1992

15. Commission Smoking Policy

Smoke-free Commission Meetings will be held by the Nebraska Real Estate Commission, with smoking allowed during recesses in designated smoking areas of the building where the Meeting is being held. Adopted October 27, 1993

16. Interpretation of 81-885.24(14) and (15)

"81-885.24(14) Negotiating a sale, exchange, listing, or lease of real estate directly with an owner or lessor if he or she knows that such owner has a written outstanding listing contract in connection with such property granting an exclusive agency or an exclusive right to sell to another broker or negotiating directly with an owner to withdraw from or break such a listing contract for the purpose of substituting, in lieu thereof, a new listing contract;

81-885.24(15) Discussing or soliciting a discussion of, with an owner of a property which is exclusively listed with another broker, the terms upon which the broker would accept a future listing upon the expiration of the present listing unless the owner initiates the discussion;"

Neb. Rev. Stat. 81-885.24(14) sets out two prohibitions. Taking the second one first, it prohibits licensees from negotiating directly with an owner to withdraw from or break an exclusive agency or exclusive right to sell listing contract for the purpose of substituting, in lieu thereof, a new listing contract.

The first part of (14) also prohibits certain activity which, as it relates to "listings", is modified somewhat by (15). Under (15), a licensee can discuss with an owner whose property is exclusively listed with another broker the terms upon which the broker would accept a future listing upon the expiration of the present listing, if the owner initiates the discussion. The Commission has not distinguished between expiration, termination or cancellation previously.

Except for the proviso in (15), licensees cannot, in the first part of Neb. Rev. Stat. Section 81-885.24(14), negotiate a sale, exchange, listing, or lease of real estate directly with an owner or lessor if the licensee knows that such owner has a written outstanding listing contract in connection with the property, which contract grants an exclusive agency or exclusive right to sell to another broker.

Reaffirmed February 28, 1995
from pre-1990 Interpretation

17. Clarification of "Financial Statement" As Used in the Membership Campground Act

Financial statements, as referenced in the Membership Campground Act, shall be prepared in accordance with generally-accepted accounting principles and shall include:

1. A statement signed by an in-house accountant indicating that the financial statements were so prepared and a statement signed by the President of the Corporation certifying that the financial statements fairly represent the condition of the company;
2. A balance sheet reporting admitted assets, liabilities, capital, and surplus;
3. Cash flows;
4. Statement of changes in capital and surplus; and
5. Notes to financial statements.

Adopted September 15, 1992
Amended August 19, 1993
Amended by Rule March 6, 1995

18. Confidentiality of Investigative Records

WHEREAS, it is the public policy of the State of Nebraska to maintain the confidentiality of public records pursuant to NEB. REV. STAT. §84-712.05, including, under subsection (4) work product of an attorney and public body and attorney-client communications and, under subsection (5), investigative records, including investigations and citizen complaints or inquiries;

THEREFORE, be it resolved that it shall be the policy of the Commission to:

1) Assert the attorney-client privilege over all records of the Commission, its staff and agents whenever applicable under NEB. REV. STAT. §27-503.
2) Assert the work product privilege over all agency and counsel records whenever applicable under Nebraska Court Rule 26(b) (3).
3) Assert the confidentiality of Commission records whenever applicable under NEB. REV. STAT. §84-712.05.

BE IT FURTHER RESOLVED, that the Director, Deputy Directors, and staff of the Commission are instructed and authorized to assert any one or all of these protections whenever in their opinion or on the advice of counsel, the respective protection reasonably appears to be applicable.

BE IT FURTHER RESOLVED, that the Commission retains the authority to adjudicate, on a case by case basis, the applicability of any protection under the law or to waive any applicable protection.

Adopted April 23, 1996

19. Brokerage Relationships Pamphlets And the Common Law Agent

Question:
If a licensee is acting as a common law agent, does the Agency Relationships Act require that licensee to provide a Brokerage Relationships pamphlet to a customer during or following the first substantial contact as soon as practicable?

Answer:
First, let's define common law agents. Common law agents are those licensees who act on behalf of a person in a transaction and who perform duties and responsibilities which exceed those of a limited agent, as set out in the act. Examples of common law agents are licensees in management, e.g. farm and ranch, commercial, residential, or apartment, who enter into lease agreements with tenants on behalf of an owner/landlord with whom their designated broker has a written agency agreement.

In a review of the Agency Relationships statutes, specifically Neb. Rev. Stat. §76-2416, it has been determined that those licensees operating under a common law agency agreement <u>are not</u> required to provide a customer, who is in most instances a prospective tenant, the Brokerage Relationships pamphlet. The above cited section removes the common law agent from the duties and responsibilities of the provisions of the Act which would include the provision of the pamphlet to customers/tenants or prospective tenants.

With regard to landlords - when offering services to a landlord, the Brokerage Relationships pamphlet must be completed appropriately and signed because the licensee has not yet entered into the common law agency agreement and, therefore, is still required under the Act to provide the pamphlet and make the other required disclosures as set out in Neb. Rev. Stat. §76-2421.

In essence, managers of properties who enter into lease agreements on their owners' behalf, whether they manage farms, ranches, apartments, single-family residences, commercial space, etc., do not have to provide the Brokerage Relationships pamphlet to prospective tenants.

Adopted November 13, 1996

20. Interpretation of 299 N.A.C. 5-003.10 and 5-003.11 and Neb. Rev. Stat. §76-2418(3)(a)

RESOLVED, It is the interpretation of the Nebraska Real Estate Commission that Title 299 N.A.C. §§5-003.10 and 5-003.11 require a limited agent to make a written disclosure to his or her client of the categories of costs and estimated costs the client will be expected to pay at closing but do not require a limited agent to make such written disclosures to a customer. Said interpretation based on Neb. Rev. Stat. §76-2418(3)(a).

Adopted March 19, 1997

21. Commission Procedures for Implementation Of License Suspension Act

Suspension

The procedures described in the following paragraphs are the same as those required of a licensee whose license is suspended after a disciplinary hearing.

Upon notification by any of the certifying authorities of non-compliance by a broker, associate broker or salesperson licensee, a notice will be sent by certified mail, informing said licensee that, effective ten working days after the date of the certification to the Commission, his or her license is suspended and what to provide for reinstatement. Additional information, as applicable to the licensee, will also be included as indicated in the following:

When the licensee is an employing broker, said notice will include notice to return his or her wall license and pocket card, along with the wall licenses and pocket cards of all affiliated licensees by the suspension date. Information will also be included with regard to affiliated licensees transferring to another broker or to inactive, as well as information regarding the installation of a new designated or employing broker. Information will also be included regarding affiliated licensees returning to the broker upon compliance, i.e. if went inactive - no fees, just documents; if transferred to new broker or another broker - transfer fees and documents needed.

When the licensee is an individual broker with no employees, the same notice will be sent as above except it will only ask for his or her wall certificate and pocket card.

When the licensee is an associate broker and/or salesperson whose license is under a broker, he or she will be informed of the suspension and to return his or her pocket card by the suspension date. At the same time, the employing broker will be requested to return the wall certificate of the licensee by the suspension date.

When the licensee's license is on inactive status, notification of the suspension date will be sent certified mail, indicating the license cannot be activated until compliance is achieved and what to provide for reinstatement.

Reinstatement

The Commission will not impose any special reinstatement charges authorized by LB752. It will only impose charges required of any standard reinstatement. The procedures described below are the least restrictive reinstatement or renewal procedure applicable to license suspension.

In all cases of suspension under the Act, the non-compliant licensee will be informed that, during suspension, if a renewal of license occurs, he or she will be expected to renew, even though on suspension, if he or she wishes to retain the entitlement to a license.

The licensee will also be informed that if he or she returns to the same position as that held prior to the suspension, there will be no additional fees assessed, however, required documents, as applicable, will be needed. However, if he or she, when compliance is achieved, decides to change companies or status, a transfer fee, as applicable at the time, will be required along with any documents required.

In all cases of suspension under the Act, any continuing education needed to renew will still be required. If the licensee chooses not to acquire the continuing education or to waive it, but renews the license, the license will be transferred to renewed inactive and a fee will be required to transfer to active upon compliance, along with any required documents.

Errors and Omissions Insurance will need to be retained prior to being able to renew during a suspension if license was active when the suspension commenced, unless the licensee chooses to renew inactive during the suspension period. If a licensee suspended under the Act cancels his or her Errors and Omissions Insurance while under suspension, he or she will be considered inactive from the date of cancellation and upon coming into compliance. In both cases, the licensee will be required to pay transfer fees, provide required documents and acquire errors and omissions insurance before activation.

Adopted August 19, 1997

22. Resolution of the State Real Estate Commission of the State of Nebraska – Respondent Costs for Hearing

IT APPEARING before the State Real Estate Commission of the State of Nebraska that it would be in the best interest of the Commission if a policy is adopted outlining the specific costs the party or parties against whom a final decision is rendered shall pay pursuant to Title 305, N.A.C., Chapter 4-007.05, and Neb. Rev. Stat. 84-914(1) (Reissue 1994).

BE IT HEREIN RESOLVED that the costs the party or parties against whom a final decision is rendered shall pay, pursuant to Title 305, N.A.C., Chapter 4-007.05 and Neb. Rev. Stat. §84-914(1) (Reissue 1994), any and all charges for an appearance by the court reporter and any and all witness fees, including mileage and the cost of serving any witness.

BE IT FURTHER RESOLVED that the Commission shall determine the time frame for payment of the costs on a case-by-case basis, however, in all cases the failure to pay the costs pursuant to the payment schedule shall result in the automatic suspension of the licensee's real estate license, if the licensee was the party against whom a final decision is rendered.

EFFECTIVE JANUARY 1, 1998.

Adopted October 30, 1997

23. Resolution Authorizing Hearing Officers

BE IT RESOLVED THAT, in accordance with Neb. Rev. Stat. §84-913.01 and Title 305 NAC Chapters 4-001.02G and 4-005, the State Real Estate Commission authorizes the appointment of a hearing officer to conduct any prehearing conferences, hearings on non-dispositive motions including discovery issues, and other matters preliminary to an evidentiary hearing, in the following circumstances: a) when any party requests a prehearing conference; b) when a non-dispositive motion is filed, or when any other prehearing matters must be resolved; and, c) when any motion to compel, prevent or limit discovery is filed.

BE IT FURTHER RESOLVED THAT, in the event the Chairperson of the Commission is unavailable to sign the Order Appointing Hearing Officer, any member of the Commission is authorized to sign the Order in accordance with the provisions of this Resolution.

BE IT FURTHER RESOLVED THAT nothing in this Resolution shall prevent the Chairperson from appointing any qualified person as a hearing officer for any reason provided by law.

Adopted January 21, 1998

24. Procedural Guidelines for Brokers: USDA Wire Transfer Program

Since there are delays between broker notification of the process date of payments and the actual wire transfer deposit date in the bank where a broker's trust account is located and, since some banks have indicated they will not notify the broker of the deposit on the day of transfer, the Commission provides the following guidelines to determine date of deposit and general guidance regarding posting and check issuance.

1. Upon the written notification from the Regional Office of the Department of Agriculture, the broker should contact the bank on a regular basis to determine actual deposit date of funds.

2. Whether the broker must initiate this query or the Bank notifies the broker of the actual deposit date, the broker would post, on the actual date of deposit in the bank, the trust funds received to the General Ledger and individual sub-ledgers to accurately reflect the status of the trust account.

3. The Broker would be allowed to issue checks on the trust account based only on actual trust funds available as identified in the bookkeeping system. The broker could not issue checks prior to the actual date of deposit if a negative balance would occur nor could checks be issued, prior to actual deposit, based on the anticipated deposit of the funds.

Adopted March 18, 1998

25. Policy Establishing December Licensing Examinations

Until altered by vote of the Real Estate Commission, the Real Estate Commission orders, under Title 299 NAC 1-005, that real estate salesperson and broker examinations also be administered on the customary days in the month of December except that such examinations shall not be administered from December 24 through December 31.

Adopted April 22, 1998

26. Guidelines for Storage of Trust Account Records on Alternative Media

The Nebraska Real Estate Commission was asked if the records relating to a real estate transaction, which are required to be maintained by real estate brokers under 299 NAC 3-001 for five years following the consummation of the transaction, could be stored in a medium other than the original paper format or, in the case of computerized bookkeeping systems, on computer.

After due consideration, the Nebraska Real Estate Commission establishes the following guidelines for storage of the trust account and transaction records on alternative media, e.g. compact disk, optical disk, microfilm, etc.:

1. The records in their original medium or media (paper and/or computer) must be maintained in the original medium until such time that the Real Estate Commission has conducted a trust account examination of the records and all trust account examination issues have been resolved.

2. The examined records may then be transferred to a non-rewritable alternative storage medium for the remaining required record retention time.

3. The non-rewritable alternative storage medium must allow access to the records in a manner which makes the records readily available on demand for the remaining record retention period required in 299 NAC 3-001.

4. Once the original records are transferred to the appropriate alternative medium, the Real Estate Commission will no longer require the retention of the records in the original medium or media.

Adopted April 22, 1998

27. Policy on Follow-Up Trust Account Examinations

When a Trust Account Examiner issues the designated broker a deficiency for failing to maintain a proper bookkeeping system, for situations such as failing to maintain a General Ledger and/or individual Sub-ledgers, the Deputy Director for Enforcement will automatically request a Trust Account Examiner to perform a follow-up trust account examination. Dependent upon the amount of activity within the designated broker's trust account, the follow-up trust account examination will normally be conducted within 15 days following receipt of the next monthly bank statement by the designated broker. The designated broker may, on their own initiative, supply the Commission with photocopies of the correctly-posted General Ledger and/or individual Sub-ledgers prior to the follow-up trust account examination. The Deputy Director for Enforcement will determine whether doing so eliminates the necessity for an immediate follow-up trust account examination.

Adopted March 24, 1999

28. Policy on Attorney Exemption to the Nebraska Real Estate License Act and its Effect On the Agency Relationships Statutes

The Nebraska Real Estate License Act provides that the requirements of the Act and the requirement to obtain a license shall not apply to a licensed attorney when the attorney is performing his or her duties as such attorney at law. The Commission interprets this exemption to mean that the attorney is exempt from the Act if the attorney is acting as legal counsel for a party to a transaction. If the attorney is acting as a broker or salesperson in a transaction, the attorney is not exempt from the Act. For example, actively listing or selling real property would cause the attorney's activities to be governed by the Act. An attorney acting as legal counsel to a buyer, tenant, seller, or landlord in a transaction would not be considered a designated broker under the Agency Relationships Statutes and, therefore, disclosure must be made to clients of an attorney, unless said attorney is acting as a designated broker.

Adopted July 25, 2000

29. Deadline for Agenda Items Policy

No new Agenda Items for a scheduled meeting of the Nebraska Real Estate Commission shall be added to the Agenda within three business days prior to the opening of the meeting; provided, emergency items may be added at any time by a vote of the Commission, and staff may add Stipulation and Consent Orders and Information Matters to the Agenda up to twenty-four hours prior to the opening of the meeting, in accordance with the Nebraska Public Meetings statutes.

Adopted May 22-23, 2001

30. Guidelines for Continuing Education Activities

Continuing education providers must follow the procedures for approval of providers, activities, and instructors outlined in the Nebraska Real Estate License Act and Title 299 NAC Chapter 7. The following subject matter is generally considered acceptable for continuing education activities, but providers are encouraged to create new activities to meet the changing demands of the real estate market. Addressing listed subject matter in an activity does not guarantee approval by the Nebraska Real Estate Commission.

Approvable subject matter includes, but is not limited to, the following:

1. Agency
2. Auctions of real estate
3. Broker price opinions and comparative market analyses
4. Commercial real estate sales and leasing
5. Compliance with federal and state real estate laws
6. Computers - utilization to serve the consumer
7. Condominiums and cooperatives
8. Contracts used in real estate transactions
9. Counseling the real estate client
10. Diversity, i.e. respecting cultural differences
11. Environmental concerns, i.e. radon, lead-based paint, etc.
12. Ethical practices in real estate
13. Fair Housing/ADA
14. Farm and ranch real estate sales and leasing
15. Housing and Urban Development programs
16. Land use planning and zoning, i.e. site assessments, feasibility studies, etc.
17. Landlord/Tenant Act

18. Legal issues in real estate e-commerce
19. Legislative changes that affect real estate (not pending legislation)
20. Property inspections, i.e. wood-destroying insects, furnace/AC, whole house, etc.
21. Property management
22. Real estate accounting and taxation, including exchanges of real property
23. Real estate development, construction, and energy conservation methods
24. Real estate finance
25. Real estate investment
26. Real estate mathematics
27. Real estate relocation
28. Real estate securities and syndications
29. Risk reduction
30. Title Issues
31. Trust accounts
32. Water and waste management

Adopted November 15, 2001

31. Use of Unlicensed Persons by Licensees

Licensees, both brokers and salespersons, often use unlicensed persons, either employed or contracted, to perform various tasks related to a real estate transaction which do not require a license. Such persons, for example, are used as personal assistants, clerical support staff, closing secretaries, etc.

The Nebraska Real Estate License Act prohibits unlicensed persons from negotiating, listing, or selling real property. It is, therefore, important for employing brokers and other licensees using such persons to carefully restrict the activities of such persons so that allegations of wrongdoing under the License Act or Rules can be avoided.

Licensees should not share commissions with unlicensed persons acting as assistants, clerical staff, closing secretaries, etc. The temptation for such unlicensed persons, in such situations, to go beyond what they can do and negotiate or take part in other prohibited activities is greatly increased when their compensation is based on the successful completion of the sale.

In order to provide guidance to licensees with regard to which activities related to a real estate transaction unlicensed persons can and cannot perform, the Commission establishes the following Policy:

Activities which can be performed by unlicensed persons who, for example, act as personal assistants, clerical support staff, closing secretaries, etc., include, but are not necessarily limited to:

1. Answer the phone and forward calls to licensees.
2. Transmit listings and changes to a multiple listing service.
3. Follow up on loan commitments after a contract has been negotiated.
4. Assemble documents for closings.
5. Secure documents, i.e. public information, from courthouse, sewer district, water district, etc.
6. Have keys made for company listings.
7. Write and prepare ads, flyers and promotional information and place such advertising.
8. Record and deposit earnest money and other trust funds.
9. Type contract forms under direction of licensee.

10. Monitor licenses and personnel file
11. Compute commission checks.
12. Place and remove signs on property.
13. Order items of routine repair as directed by licensee and/or supervising broker.
14. Act as courier service to deliver documents, pick up keys, etc.
15. Schedule appointments.
16. Measure property, if measurements are verified by the licensee.
17. Hand out objective written information on a listing, other than at functions such as open houses, kiosks, and home show booths or fairs.

Activities which cannot be performed by unlicensed persons who, for example, act as personal assistants, clerical support staff, closing secretaries, etc., include, but are not necessarily limited to:

1. Host open houses, kiosks, home show booths or fairs, or hand out materials at such functions.
2. Show property.
3. Answer any questions on listings, title, financing, closing, etc.
4. Discuss or explain a contract, agreement, listing, or other real estate document with anyone outside the firm.
5. Be paid on the basis of real estate activity, such as a percentage of commission, or any amount based on listings, sales, etc.
6. Negotiate or agree to any commission, commission split or referral fee on behalf of a licensee.

Employing brokers, whether they are employing unlicensed persons or whether licensees under their supervision are using unlicensed persons as personal assistants or the like, are responsible for assuring that such unlicensed persons are not involved in activities which require a license and/or activities which violate this policy. Brokers should establish guidelines for the use of unlicensed persons and procedures for monitoring their activities. It is the responsibility of the employing broker to assure that unlicensed persons, either directly employed or contracted, or employed or contracted by licensees under his or her supervision, are not acting improperly.

This policy does not include unlicensed persons who are acting under the exemption related to management of property as set forth in 81-885.04(4).

Adopted February 12, 1992
Amended November 15, 2001

32. Guidelines for Original Applicants with Criminal Convictions

If an individual who files an application for a Nebraska Real Estate license, or a potential applicant who is seeking to file an application, has been convicted of forgery, embezzlement, obtaining money under false pretenses, larceny, extortion, conspiracy to defraud, or any other similar offense or offenses or has been convicted of a felony or a crime involving moral turpitude, then he or she must appear before the Commission before being allowed to sit for the examination. If an applicant has a pattern of any other criminal conviction(s), other than minor traffic violation(s), Commission staff may exercise the discretion to require the applicant to appear before the Commission before the applicant may sit for the examination.

An applicant who has filed an application and is required to appear before the Commission may choose either a formal or an informal appearance before the Commission. Informal appearances will require that the applicant's self-reported criminal history be made available to the

Commission.

Individuals who have not yet formally applied for license, but are simply potential applicants, may be granted a request for an informal appearance before the Commission only if recommended by Commission staff. Such individuals shall be required to self-report any criminal history and complete a criminal background check through the Nebraska State Patrol in the same manner as a license applicant, and such material must be available to the Commission at the time of the informal appearance.

Commission staff may also submit, or request the applicant or potential applicant to submit, such other materials as may be relevant at the informal special appearance.

If an application for license, or an issuance of license, is denied by staff or denied by the Commission following an informal appearance, then in either case the applicant is entitled to request a formal hearing as allowed by statute and regulation. Any individual approved by the Commission to sit for an examination after an appearance does not have to reappear before the Commission regarding the same issue(s) when applying for subsequent licensure, unless specifically required to do so by the Commission as a part of it original decision. Each application shall be reviewed on a case-by-case basis; however, the Commission adopts the following as guidelines for denying a license:

1. Unless extraordinary circumstances are present in a specific situation, the application to sit for the examination or issuance of a license will be denied if the applicant has been convicted of a felony violent crime(s) felony financial crime(s), or crimes involving moral turpitude.

2. Unless extraordinary circumstances are present in a specific situation, the application to sit for examination or issuance of a license will be denied if the applicant has not completed his or her sentence, his or her probation, or made restitution, if any was ordered. The Commission recommends the applicant authorize his or her probation or parole officer(s) to discuss applicant's performance during the period of supervision with Commission staff.

For purposes of this section the requirement of driving with an ignition interlock device, absent criminal supervision on probation, parole, or other similar supervised release or diversion programs, shall not be considered to be part of an applicant's sentence required to be completed before an applicant can be allowed to sit for the exam absent extraordinary circumstances. The required use of an ignition interlock device may be considered an aggravating or extenuating circumstance of the crime when reviewing the applicant as provided in 3.c. below.

3. Other information the Commission considers relevant and will consider in granting approval to sit for the examination or issuance of license includes, but may not be limited to, the following:

a. The applicant's truthfulness, demeanor, acceptance of responsibility, evidence of rehabilitation, and age at the time of the crime.
b. The nature of the crime(s), the relationship between the crime(s) and licensed activity, and the effect on the applicant's worthiness to hold a real estate license.
c. Any aggravating or extenuating circumstances of the crime(s).The time since the conviction and/or end of the sentence.
d. Whether the applicant successfully completed the terms of the sentence, including the timeliness of making restitution.
e. Whether the applicant's civil rights have been restored.

4. If the approval to sit for the examination and/or issuance of a license is granted, the Commission may require the applicant to notify any anticipated employing broker of the criminal conviction(s) and the circumstances of the conviction(s) and said broker shall confirm said notification in writing to the Commission prior to the license being placed with said broker.

5. If the approval to sit for the examination and/or issuance of a license is granted, the Commission may require the applicant to notify Commission staff of any criminal charge, except those charges where there is no possible sentence of jail time, for a period of time. The time period, if any, is to be determined on a case-by case basis. The timeframe for any notification to Commission staff of any new criminal charge, as required by this section, shall be specifically stated in writing to the applicant.

Adopted January 24, 2002
Amended December 10, 2003
Amended September 27, 2012
Amended October 15, 2015
Amended September 28, 2017

33. Guideline for Original Applicants with History of Disciplinary Action in Another Regulatory Jurisdiction

If an applicant for an examination or issuance of a Nebraska Real Estate license has had disciplinary action, other than a censure, taken against his or her license, within the last five years, in another regulatory jurisdiction, said applicant shall appear before the Commission prior to the application being granted. If, however, the applicant has had disciplinary action, but is now in good standing with the regulatory jurisdiction, said applicant need not appear before the Commission. If the applicant is to appear before the Commission, the applicant is allowed to choose whether the appearance is formal or informal. Informal appearances may be made by or through a written submission of materials or other methods as determined by Commission staff. If approval to sit for the examination or for issuance of a license is denied by staff or following an informal special appearance, applicants are entitled, by law, to file a Petition for Review. An individual who the Commission has approved to sit for the examination after an appearance before it does not have to reappear before the Commission regarding the same issue(s) when applying for subsequent licensure, unless specifically required to do so by the Commission as a part of its original decision. Each application shall be reviewed on a case-by-case basis, however, the Commission adopts the following as guidelines for denying the license:

1. Disciplinary action by another regulatory jurisdiction may cause denial to sit for the examination or issuance of a Nebraska license.
2. Unless extraordinary circumstances are present in a specific situation, approval to sit for the examination or issuance of a Nebraska license will be denied if a disciplinary action is pending or the penalty is not yet completed in another regulatory jurisdiction.

Adopted January 24, 2002
Amended December 10, 2003

34. Documentation Required of Foreign High School Graduates to Determine High School Equivalency

Applicants with foreign high school education must meet the same academic requirements as applicants who have received their high school education in the United States. To be used as a

basis for issuance of a real estate salesperson or broker license, documentation must be submitted indicating that the foreign high school degree is at least the equivalent of a high school degree granted in the United States.

The high school degree must be determined equivalent by one of the following documents:

1) A transcript from a United States college or university that indicates that the individual's high school education was sufficient to allow the individual to be admitted into a post-secondary education program.

OR

2) Document-by-Document Evaluation Report verifying the equivalence of the foreign high school graduate's education to that of an American high school education. The Document Evaluation must be conducted through an education credential evaluation service that holds membership in the National Association of Credential Evaluation Services (NACES).

Adopted November 18, 2004

35. New Commissioner Orientation

Before participating in or voting at Nebraska Real Estate Commission Meetings newly appointed Commissioners, regardless of experience or training, shall participate in and complete a Commissioner Orientation Session.

The Commissioner Orientation Session shall include but not be limited to:

1. Nebraska Real Estate License Law
2. Nebraska Real Estate Commission Statutory Authority and Jurisdiction
3. Meeting Conduct and Procedures
4. Complaint Procedures
6. Nebraska Open Meetings Act
7. Accountability and Disclosure Act and Conflicts of Interest
8. Association of Real Estate License Law Officials (ARELLO)
9. Expense Reimbursement Policies and Procedures
10. Education and Licensing
11. Presentation of a sample meeting agenda and items covered

This Policy shall not apply to previously appointed Commissioners as of the date of initial adoption.

Adopted October 15, 2009

36. Guidelines for Review of Lawsuit Information

Nebraska Real Estate Commission Salesperson and Broker initial license and renewal applications require the reporting of the licensees' involvement as a party to any lawsuit. In reviewing lawsuit information the Commission shall use the following criteria for evaluating the information provided:

1. Single or isolated instances of bankruptcies or debt collection actions shall not be considered grounds for possible disciplinary action against a licensee.

2. Lawsuits unrelated to real estate matters, the financial dealings of the licensee, or the general character honesty and integrity of the licensee for honesty and fair dealings shall not be

considered grounds for possible disciplinary action against a licensee.

3. A repeated or consistent pattern of bankruptcies or debt collection actions may be considered grounds for further investigation and possible disciplinary action against a licensee.

4. Lawsuits relating to real estate matters, the financial dealings of the licensee, or the general character and integrity of the licensee for honesty and fair dealings may be considered grounds for further investigation and possible disciplinary action against a licensee.

5. Lawsuits which may be related to the endangerment of individual welfare or public safety by a licensee may be considered grounds for further investigation and possible disciplinary action against a licensee.

Adopted June 24, 2010

37. Guidelines for Compensation of Salespersons and Associate Brokers Doing Business as a Professional Corporation or a Professional LLC

Neb. Rev. Stat. 81-885.24(18) specifically provides that it is an unfair trade practice subject to disciplinary action to provide any form of compensation to any unlicensed person performing the services of a broker, associate broker or salesperson.

For purposes of interpretation of 81-885.24(18) it shall not be an unfair trade practice for a broker to provide compensation to:

1. An individual holding a Nebraska broker's or salesperson license when all services of a broker, associate broker or salesperson for which the compensation is being rendered were provided.

2. A professional corporation in good standing with the Secretary of State's office, provided that the shareholders, officers (with the exception of the secretary and the assistant secretary) directors, and any employees or agents of the professional corporation that perform the services of a broker, associate broker, or salesperson hold an active broker or salesperson's license from the Nebraska Real Estate Commission at the time all services for which the compensation is being rendered were provided.

3. A professional limited liability company in good standing with the Secretary of State's office, provided that all members, managers and any employees or agents of the limited liability company that perform the services of a broker, associate broker, or salesperson hold an active broker or salesperson's license from the Nebraska Real Estate Commission at the time all services for which the compensation is being rendered were provided.

Adopted August 19, 2010

38. First Substantial Contact

Chapter 76. Real Property

Article 24, Agency Relationships

Section 76-2421 (1) contains two phrases (in ***bold italics*** below) that the Nebraska Real Estate Commission believes need some clarification to guide the conduct of real estate licensees in their

practice with clients and customers, to assist designated brokers in their supervision of their affiliated licensees, and to help real estate trainers formulate and implement practical, meaningful agency disclosure training.

Section 76-2421 (1) requires that "At the ***earliest practicable opportunity*** during or following ***first substantial contact*** [emphasis added] with a seller, landlord, buyer, or tenant . . . the licensee who is offering brokerage services to that person or who is providing brokerage services for that property shall" provide that person, whether a client or customer, with a written copy of the current brokerage disclosure pamphlet and disclose in writing to that person the types of brokerage services offered or which party the licensee is representing.

Although, as has been said in Commission Comment before (see Winter 2000 issue), "earliest practicable opportunity" is somewhat subjective and "depends on the circumstances of each situation," the Commission interprets **"earliest practicable opportunity"** to mean that the required brokerage disclosure pamphlet should be presented and signed and the disclosure of the types of brokerage services offered or of which party the licensee is representing should be made BEFORE the licensee provides **"specific assistance"** to that client or customer. IF the written disclosure is not made before the specific assistance is provided, it must be made immediately thereafter.

Specific assistance means eliciting or accepting compromising information about a potential or actual client's or customer's real estate needs. Compromising information is information that would reduce, impair or erode that party's bargaining power in an arm's length negotiation. Compromising information may include but is not necessarily limited to:

- The person's motivations or motivating factors.
  That a buyer or tenant is willing to pay more than the offered purchase price or lease rate.
- That a seller or landlord is willing to accept less than the asking sale price or lease rate.
- That a client or customer will agree to financing terms other than those offered.

Specific assistance shall also mean showing a specific property or properties to a specific buyer by pre-arrangement. Specific assistance MAY be provided at an open house if compromising information is elicited or accepted from the buyer at the open house, but specific assistance to a buyer WILL be deemed to be provided when there is a pre-arranged showing of a particular property or properties to that buyer.

Specific assistance may be offered anywhere and not necessarily at a formal showing or appointment, so it is important that the required disclosures be made BEFORE any compromising information is elicited or accepted, even if the setting is an open house or a public place. It is not the venue, but rather the content of the interchange that determines if specific assistance has been provided.

However it is possible to enumerate some things that are not generally considered to be specific assistance within the meaning of this policy interpretation. In the absence of the items listed above, specific assistance will not be considered to include:

- Preliminary conversations about the market, general real estate values and general financing terms;
- Conveying publically available information about the property's or properties' general factual features including price, location, style, amenities, etc.

- Eliciting or accepting general, non-compromising information about a buyer's or tenant's real estate needs or desires, such as the person's general preferences for location, price range, features, etc.

Two useful criteria can be assessed in determining whether specific assistance has been provided:

- The direction information is flowing should be considered. It can generally be held that the licensee eliciting or accepting personal, compromising information **from** the person constitutes specific assistance, but the licensee conveying general information **to** the person about the market, financing or a specific property or properties is not offering specific assistance.
- The nature of the information being conveyed should be considered. Generally, if the information being elicited or accepted is compromising (i.e. information a rational person would not share with the other principal in an arm's length negotiation because that information could reduce, erode or impair that person's bargaining power), then specific assistance is being provided, but if the licensee is eliciting or accepting general information that is not compromising to the person's bargaining power or position, then the licensee is not providing specific assistance.

The point at which the licensee first provides specific assistance will be deemed to be **"first substantial contact"** under this section.

On a related matter, the Commission will deem an electronic copy of the current brokerage disclosure language that has been appropriately checked and completed by the licensee and which has been emailed to the person to whom disclosure is being made to be in compliance with Section 76-2421 (1) (a), provided that the recipient client or customer sends the licensee an email response acknowledging receipt of the disclosure language.

Adopted January 17, 2013

39. Use of Unlicensed Employees of Owners of Real Estate

Section 81-885.02 of the Nebraska Real Estate License Act (the "Act") prohibits unlicensed persons from, among other acts, negotiating or attempting to negotiate the listing or sale of any real estate or engaging in other activities requiring a license as defined by the Act (81-885.01 (2) & (6) . It is, therefore, important for owners of real estate to carefully restrict the activities of their unlicensed Employees so that allegations of wrongdoing under the License Act or the Rules can be avoided.

The following section of the Act supports the Commission's Policy and Interpretation:

81.885.04 (1) of the Nebraska Real Estate License Act contains an exception from the Act for:

> (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 the vocation of selling or leasing any real estate or the improvements thereon.

The Act provides exemptions for the regular Employees of the owner of real estate in general with respect to property owned by the Employees' employer when such acts are incidental to the sale of the real estate and are performed in the regular course of the sale of the property except that the acts requiring a real estate license shall not be performed in connection with the vocation of selling or leasing any real estate.

The Commission interprets this language to mean that the Employee of the owner of property is exempt from the Act only to the extent that he or she may perform acts incidental to the sale of the real estate and provided that such acts are not a regular, recurring aspect of the Employee's vocation (i.e. daily activities and responsibilities).

For the purpose of this Policy and Interpretation:

- "Employee" shall mean an unlicensed person working in a salaried or hourly job for which income taxes and social security taxes are withheld and paid for by the employer.

Pursuant to this Policy and Interpretation, activities which can be performed by unlicensed Employees of Owners include, but are not necessarily limited to:

- Providing access for members of the public to the owner's property.
- Handing out written information on the property and other of the owner's properties at the property itself, as well as at home shows, fairs, etc.
- Securing the contact information of the visitors to the property.
- Scheduling appointments.
- Assisting with buyer selections of property options such as materials, fixtures, hard and soft surfaces, etc.
- Placing and removing signs on the property.
- Other activities consistent with activities permitted to unlicensed persons under the Commission's policy on the "Use of Unlicensed Persons by Licensees" as amended November 15, 2001.

Pursuant to this Policy and Interpretation, activities which can be performed by unlicensed Employees of owners of property on an occasional basis and not as part of the Employee's regular, recurring duties or as a vocation include:

- Hosting model homes or open houses or showing the property.
- Performing any other activities requiring a license which are within the Employee's knowledge and competence except as provided in the excluded activities below

Activities which cannot be performed by the unlicensed Employees of owners of property include but are not necessarily limited to:

- Negotiating or writing any purchase agreement, purchase agreement addendum, estimated closing statement or other document which is or becomes part of the transaction. This does not include assisting with selections of property options (see above) or calculating the cost of said selections or writing change orders for same.
- Negotiating or agreeing to any commission, commission split or referral fee on behalf of the owner.

In compliance with 81-885.02, the owner's Employee can receive no separate compensation for activities performed consistent with this NREC Policy and Interpretation other than his or her normal hourly wage or salary compensation as an Employee of the Owner. There can be no additional compensation in the form of a percentage of commission, bonus (either percentage or flat), referral fee or other compensation or thing of value that is calculated on the sale price of the property or is contingent upon the sale of the property as a result of Employee's activities permitted under this Policy and Interpretation.

It is the responsibility of the Owner to assure that his/her/its unlicensed Employees are under his or her supervision, and are not acting improperly. If the Owner's business entails the regular sale or lease of owner's real estate, Owners should establish guidelines for the use of their unlicensed Employees and procedures for monitoring their activities.

This policy does not include unlicensed persons who are acting under the exemption related to management of property as set out in 81-885.04(4).

Adopted September 26, 2014

40. Nebraska Real Estate Commission Policy and Interpretation, Coming Soon Listings

The Nebraska Real Estate Commission is receiving an increasing number of calls and inquiries regarding the rules for advertising a property represented as "coming soon," where there is a listing for the property but it is not yet being publicly marketed or shown.

There are no specific statutes or regulations on the use of "coming soon" advertisements, but the general rules of advertising apply:

> "Advertising shall include all forms of identification, representation, promotion, and solicitation disseminated in any manner and by any means of communication to the public for any purpose related to licensed real estate activity. All advertising shall be under the direct supervision of the broker, and in the name the broker is conducting business as recorded with the Commission." *(NAC Title 299, Ch. 2, Sec. 003)*

Also applicable are the unfair trade practices statutes (Neb. Rev. Stat. §81-885.24)

> "(2) Intentionally using advertising which is misleading or inaccurate in any material particular or in any way misrepresents any property, terms, values, policies, or services of the business conducted:"
>
> and
>
> "(11) Placing a sign on any property offering it for sale or rent without the written consent of the owner or his or her authorized agent;"
>
> "(12) Offering real estate for sale or lease without the knowledge or consent of the owner or his or her authorized agent or on terms other than those authorized by his or her authorized Agent;"

The Nebraska Real Estate Commission interprets these statutes and regulations to allow "coming

soon" advertising if the following criteria are met:

1. The advertising broker has an active listing agreement in place (so it is not potentially false or misleading advertising.)

2. The advertising is done in the name under which the broker does business and the broker's supervision.

3. The advertising is done with the knowledge and written consent of the property owner or his or her authorized agent.

4. The listing is in fact "coming soon" and not currently being shown or marketed to a limited group only.

Furthermore, if an offer is received when a property is on coming soon status the seller should be informed that there is a pending offer or offers, and asked if they want to remove the property from coming soon status and make it an active listing at which time the agent should inform the offeror to resubmit their offer when the property is no longer coming soon and is in fact on the market.

While permissible, the use of "coming soon" advertising has potential to give rise to violations of the act.

The proper use of "coming soon" advertising would be a situation where a listing agreement has been entered into but the property or owner is not yet ready for showings, perhaps due to needed clean up or repairs, or personal matters or events that keep the owner from wanting to show the property immediately.

The improper use would be using the "coming soon" advertising to limit the showing of the property to preferred buyers, or the exclusion of certain buyers, this could lead to various violations of the license act, which would include but not be limited to:

1. A violation of Neb. Rev. Stat. §81-884.24(2) "intentionally using advertising which is misleading or inaccurate" if the property is represented as "coming soon" and is in fact being marketed to a limited pool of buyers.

2. A violation of Neb. Rev. Stat. §76-2417(c) "promote the interests of the client with the utmost good faith" if the coming soon listing is used to secure a transaction which places the interest of the licensee over that of the client.

3. A violation of §76-2417(c)(i) "seeking a price which is acceptable to the client" if the licensee only offers or exposes the property to a limited number of potential buyers through a coming soon listing.

4. A violation of the Federal Fair Housing Act if the coming soon listing is used to limit or exclude certain people or classes of people from the marketing of the property based on race, color, national origin, religion, sex, familial status or handicap.

Adopted September 17, 2015
Amended September 28, 2017

THIS IS A LEGALLY BINDING AGREEMENT.
IF NOT UNDERSTOOD, SEEK LEGAL ADVICE.

This contract form has been prepared by the Nebraska Real Estate Commission. It is intended to include provisions common to most transactions. Its use is not mandatory and it will not be suitable for contracts having or requiring unusual provisions.

RESIDENTIAL PURCHASE AGREEMENT

_____ _____, _____
(Broker's Name or Firm and Address)
_____, Nebraska

The undersigned, as Buyer, agrees to purchase the following Property:
Address:
_____
Legal Description: _____
_____ including all fixtures and equipment permanently attached to the Property provided Seller has a marketable title in fee simple. The only personal property included is as follows:
_____
_____
_____
_____
_____

Seller agrees to furnish a title insurance policy insuring marketability and Buyer shall be furnished a current title insurance commitment by Seller at least 5 days before closing. The cost of title insurance issued for this sale, if any, shall be equally divided between Buyer and Seller. Buyer has option of selecting, or approving as selected by Seller, the title insurance company. However, if Buyer and Seller agree, Seller may furnish an abstract of title certified to date in lieu of title insurance. If any defects in title are found in the abstract Buyer agrees to furnish a copy of a written title opinion from Buyer's attorney showing the defects. Buyer agrees that should a valid title defect exist, Seller has a reasonable time to correct said defect. If the title defects are not cured within a reasonable time period, the Buyer may declare this Agreement null and void, and the deposit shall be refunded. Seller agrees to convey to Buyer by warranty deed or _____ free and clear of all liens, encumbrances, special assessments levied or assessed, except _____ and subject to all easements and restrictions or covenants now of record . Seller agrees to pay any assessments for items such as paving, curbing, sidewalk or utilities previously constructed, now under construction, or ordered to be constructed by public authority but not yet assessed. The documentary stamp tax shall be paid by the Seller.

Buyer agrees to pay $_____ DOLLARS, on the following terms: an earnest money deposit of $_____ at this time as shown by the receipt herein. If paid by check, it will be cashed. The earnest money deposit will be transferred to the listing broker on acceptance, if the selling broker is other than the listing broker. All monies shall be deposited in a trust account, to be held until the time of closing or until transferred to an escrow agent by agreement of Buyer and Seller; balance to be paid as shown in Paragraph(s) #_____ following:

#1 All Cash: Balance of $_____ shall be paid in cash, or by certified or cashier's check at time of delivery of deed, no financing being required.

#2 Conditional Upon Loan: Balance of $_____ shall be paid in cash, or by certified or cashier's check at time of delivery of deed, contingent upon Buyer's ability to obtain a loan, to be secured by first mortgage or deed of trust, on above described Property in the amount of $_____. The loan shall be VA ___, FHA ___, CONVENTIONAL ___, P.M.I. ___, or _____, with terms providing for initial interest not exceeding _____% per annum, plus mortgage insurance, if required, amortized over not less than _____ years, with initial monthly principal and interest payment of not more than $_____ plus taxes and insurance. Loan origination or service fees shall be paid by Buyer. Seller shall pay a fee of not more than _____% of Buyer's loan as stated above to lender, but this amount shall not exceed the total percentage charges made by the lender, and shall not include any costs incurred by the lender and charged to Buyer in connection with the loan. Buyer agrees to make application for the loan within _____ days of acceptance of this offer, sign all papers, pay all costs, except as provided herein, and to establish escrow reserves for taxes and insurance if required by Lender. If the loan is not approved within _____ days from date of acceptance, this offer shall be null and void, and the deposit shall be returned to Buyer. However, if processing of the application has not been completed by the lending agency within the above time, such time limit shall be automatically extended until the lending agency has, in the normal course of its business, advised either approval or rejection.

#3 Assume Existing Loan: Buyer agrees to assume and pay the existing mortgage or deed of trust note balance in favor of _____ in the approximate amount of $_____ and pay the balance in cash, or by certified or cashier's check at the time of delivery of deed. It is understood that the note terms provide a current interest rate of _____ _% per annum and payments of approximately $_____ per _____. The payment includes _____ _____. Interest on the existing loan and any mortgage insurance premium shall be prorated to date of closing. Buyer agrees to reimburse Seller for the amount in the escrow reserve account which is to assigned to Buyer. Seller agrees that loan and escrow reserves will be current at time of closing. Buyer agrees to pay assumption fees, if any. Buyer ___ does or ___ does not agree to obtain a release of liability of Seller before closing.

#4 Seller Financing: Balance to be evidenced by _____ with Seller. Buyer to pay an additional cash payment, certified or cashier's check of $_____ at time of execution of the instruments, and closing. The remainder of $_____ shall be paid in monthly payments of $_____, or more, which monthly payments shall include interest at the rate of _____% per annum computed monthly on the unpaid portion of the principal. The debt shall be amortized over _____ years with a balloon payment on _____, _____. All other terms and conditions of the instruments shall be as mutually agreed upon. The instruments shall be prepared within _____ days after acceptance of this offer. Buyer's ___, Seller's ___ attorney shall prepare the instruments and cost of preparation shall be paid by _____. Buyer's ___, Seller's ___ attorney shall review and approve all said instruments within _____ days of receipt.

#5 Other Provisions:_____
_____
_____
_____
_____
_____
_____
_____
_____
_____

Tax Proration: The following clause which is checked shall determine the method of tax proration (Check one):

___ **Taxes, Provision A**: ALL consolidated real estate taxes which become delinquent in the year in which closing takes place shall be treated as though all are current taxes, and those taxes shall be prorated as of date of ___ possession, ___ closing, or _____. Real estate taxes for prior years shall be paid by Seller.

___ **Taxes, Provision B**: ALL consolidated real estate taxes for the year in which closing takes place shall be prorated, based on current assessment and tax rate, as of date of ___ possession, ___ closing, or _____. Real estate taxes for prior years shall be paid by Seller.

The closing of the sale shall be on the _____ day of _____, _____, or _____ days after loan approval, whichever shall last occur. Possession of Property to be _____, _____, but not before closing.

Buyer requests a termite and wood destroying insect inspection of the building(s) at Buyer's expense (except should Buyer obtain a VA loan, the expense shall be paid by Seller). Should evidence of termites or wood destroying insects be found, the building(s) shall be treated at Seller's expense. Buyer agrees to accept the treated property. If visible evidence of previously treated infestation which is now inactive is found, treatment shall not be required. Should damage from such insects be found, the damage shall be corrected at Seller's expense. However, if the cost required for repairs exceeds 1% of the purchase price, and Seller does not elect to pay the cost in excess of such amount, Buyer shall have the option of declaring this Agreement null and void and be entitled to full return of the earnest money.

This offer is based upon Buyer's personal inspection or investigation of the Property. Buyer agrees to accept the Property in its present condition, except as provided here.

Seller agrees to maintain the heating, air conditioning, water heater, sewer, plumbing, electrical system and any built-in appliances in their present condition until delivery of possession. Seller represents that there are no latent defects in the Property of which the Seller is aware. Seller agrees to install smoke detectors as required by law.

This agreement shall in no manner be construed to convey the Property or to give any right of possession. Risk of loss or damage to the Property, prior to closing date, shall be the responsibility of Seller. If, prior to closing, the structures on the Property are materially damaged by fire, explosion or any other cause, Buyer shall have the right to rescind this agreement, and the earnest money shall be refunded.

If Buyer fails to consummate this purchase according to the terms of this agreement, Seller may, at Seller's option retain the earnest money as liquidated damages for such failure, or utilize such other legal remedies as are available to Seller by reason of such failure.

Buyer understands that this Property is located within Sanitary Improvement District (S.I.D.)#_____.

Buyer and Seller acknowledge and understand that the closing of the sale may be handled by an escrow agent and that the listing broker is authorized to transfer the earnest deposit or any other funds received to the escrow agent. After the transfer, broker shall have no further responsibility or liability to Buyer or Seller to account for the funds. Escrow agent's charges shall be equally divided between Buyer and Seller. If Buyer's loan is a government-regulated loan which prohibits Buyer from paying such charges, then they shall be paid by Seller.

This offer is null and void if not accepted by Seller on or before _____, _____, at _____ o'clock _____ m.

Buyer acknowledges receipt of a copy of this offer, which has not yet been signed by Seller.

BUYER _____ DATE _____

BUYER _____ DATE _____

ADDRESS _____ ZIP _____ PHONE _____

NAMES FOR DEED: _____

RECEIVED FROM: _____

the sum of _____ ($) DOLLARS (by_____) to apply to the purchase price of the Property on terms and conditions as stated. In the event this offer is not accepted by the Seller of the Property within the time specified, or in the event there are any defects in the title which cannot be cured as specified above, the Deposit shall be refunded.

_____ BROKER

BY _____

_____ _____

OFFICE ADDRESS PHONE # AFFILIATED LICENSEE

HOME PHONE _____

ACCEPTANCE

_____, _____

Seller accepts the foregoing proposition on the terms stated and agrees to convey title to the Property, deliver possession, and perform all the terms and conditions set forth.

_____

_____

_____

_____

_____

_____

SELLER _____

SELLER _____

STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing purchase agreement was acknowledged before me on _____, _____,
by _____

_____
Notary Public

Commission expires _____
(seal)

RECEIPTS FOR FULLY EXECUTED PURCHASE AGREEMENT

Buyer acknowledges receipt of executed copy of this agreement and the SID statement by NEB. REV. STAT.. § 31-727.03. if applicable.

_____ Date_____
(Buyer)

_____ Date_____
(Buyer)

Seller acknowledges receipt of executed copy of this agreement.

_____ Date_____
(Seller)

_____ Date_____
(Seller)

AMENDMENT TO UNIFORM PURCHASE AGREEMENT

Dated _____, _____ on

Property located at_____

VETERANS ADMINISTRATION (VA) ESCAPE CLAUSE

"It is expressly agreed that notwithstanding any other provisions of this contract, the purchaser shall not incur any penalty in forfeiture of earnest money deposit or otherwise be obligated to complete the purchase of the property described herein, if the contract purchase price or cost exceeds the reasonable value of the property established by the VA. The purchaser shall however have the privilege and option of proceeding with the consummation of this contract without regard to the amount of reasonable value established by the VA."

Seller _____ (Date)

Buyer _____ (Date)

Seller _____ (Date)

Buyer _____ (Date)

FEDERAL HOUSING ADMINISTRATION (FHA) ESCAPE CLAUSE

"It is expressly agreed that notwithstanding any other provisions of this contract, the purchaser shall not be obligated to complete the purchase of the property described herein or to incur any penalty by forfeiture of earnest money deposits or otherwise unless the mortgagee has delivered to the purchaser a written statement issued by the Federal Housing Commissioner or a Direct Endorsement lender setting forth the appraised value of the property (excluding closing costs) of not less than $_____ which statement the mortgagee hereby agrees to deliver to the purchaser promptly after such appraised value statement is made available to the mortgagee. The purchaser shall, however, have the privilege and option of proceeding with consummation of the contract without regard to the amount of the appraised valuation. The appraised valuation is arrived at to determine the maximum mortgage the Department of Housing and Urban Development will insure. HUD does not warrant the value nor the condition of the property. The purchaser should satisfy himself/herself that the price and condition of the property are acceptable."

NOTE: The dollar amount to be inserted in the amendatory clause is the sales price as stated on the contract. This amount plus closing costs must be sufficient to support the requested mortgage.

Seller _____ (Date)

Buyer _____ (Date)

Seller _____ (Date)

Buyer _____ (Date)

BUYER PLEASE NOTE

At closing Buyer is required to have cash or certified or cashier's check for the balance of Buyer's payments.

SELLER PLEASE NOTE

Upon termination of Seller's insurance at closing, Seller should insure all personal property remaining on the premises prior to delivery of possession.

THIS IS A LEGALLY BINDING AGREEMENT.
IF NOT UNDERSTOOD, SEEK LEGAL ADVICE.

This contract form has been prepared by the Nebraska Real Estate Commission. It is intended to include provisions common to most transactions. It's use is not mandatory and it will not be suitable for contracts having or requiring unusual provisions.

Commission rates and contract terms are not regulated by law and are subject to negotiation between the Real Estate Broker and the Seller.

EXCLUSIVE RIGHT-TO-SELL LISTING CONTRACT

_____ (Seller)
[Name(s) of Owner(s)]
contracts with _____ (Broker)
(Broker's Name or Firm and Address)
for the purposes and under the terms set forth below with my specific Seller's Limited Agent to be _____ and such other affiliated licensees of Broker as may be assigned by Broker in writing, if needed as exclusive Seller's Limited Agents. The affiliated licensee(s) named in this paragraph and the Seller's Limited Agents who may be appointed by the Broker are collectively referred to in this Listing Contract as Seller's Limited Agents. All responsibilities and duties of Broker shall also be the responsibilities and duties of the Seller's Limited Agent:

1. Purpose of Agency. The purpose of this sole and exclusive right-to-sell agency contract ("Listing Contract") is to engage the efforts of Broker to accomplish the Sale of the Real Property legally described as:

_____
_____
also known as _____
(Street Address) (City) (State)
together with any items of Personal Property to be conveyed pursuant to Paragraph 5 (collectively referred to as the "Property").

2. Effect of this Listing Contract. By contracting with Broker, Seller agrees to conduct all negotiations for the Sale of the Property through Seller's Limited Agent and to refer to Seller's Limited Agent all inquiries received in any form from any source during the term of this Contract.

3. The Listing Period. This Contract shall begin _____, _____, and shall continue through _____, _____. (This is referred to as the "Listing Period.")

4. Price and Terms. The Offering Price for the Property shall be $_____ on the following Terms:_____
_____

5. Price to Include. The Price shall include all attached fixtures, except
_____
_____. The following Personal Property is also included
_____.

6. Title. Seller represents to Broker that title to the Property is solely in Seller's name. Seller shall deliver to Broker, upon request, copies of all relevant title materials. Seller represents that there are no known encroachments affecting this Property, except (If none, state "None"):
_____
_____

Seller agrees to convey marketable title by warranty deed or _____.

If the Property has been or will be assessed for local improvements installed, under construction or ordered by public authority at the time of signing a Purchase Agreement, Seller will be responsible for payment of same.

Broker may terminate this Listing Contract upon written notice to Seller that title is not satisfactory to Broker.

7. Evidence of Title. Seller agrees to convey a marketable title to Buyer, evidenced by a policy of title insurance or an abstract certified to date.

8. Possession. Possession of the Property shall be delivered to Buyer on _____.

9. Material Defects and Indemnification. Seller represents to the Broker solely for the purposes of this Listing Contract that he or she has completed or will promptly complete the Seller Property Condition Disclosure Statement fully and correctly to the best of the Seller's knowledge. Seller further states that all oral representations made to Seller's Limited Agent are accurate. Seller's Limited Agent shall not receive any offers to purchase until the Seller Property Condition Disclosure Statement is complete.

Seller agrees to indemnify and hold harmless Broker (Listing Company) and any subagents, from any claim that may be made against the Listing Company or subagents by reason of the Seller having breached the terms of this paragraph. In addition, Seller agrees to pay attorney fees and associated costs reasonably incurred by Broker to enforce this indemnity. Seller agrees that any defects of a material nature (including, but not limited to, structural defects, soil conditions, violations of health, zoning or building laws, and nonconforming uses or zoning variances) actually known by Seller's Limited Agent must be disclosed by Seller's Limited Agent to any prospective Buyer.

10. Compensation of Broker. In consideration of services to be performed by Seller's Limited Agent, Seller agrees to pay Broker a commission of _____, payable upon the happening of any of the following:

(a) If during the term of the listing, Seller, Broker or any other person:

(1) sells the Property; or

(2) finds a Buyer who is ready, willing and able to purchase the Property at the above price and terms or for any other price and terms to which Seller agrees to accept; or

(3) finds a Buyer who is granted an option to purchase or enters into a lease with option to purchase and the option is subsequently exercised; or

(b) If this agreement is revoked or violated by Seller; or

(c) If Broker is prevented in closing the Sale of this Property by existing claims, liens, judgements, or suits pending against this Property, or Seller thereof; or

(d) If Broker is unfairly hindered by Seller in the showing of or attempting to sell this Property. Or,

(e) If within _____ days after the expiration of this Listing Contract, Seller sells this Property to any person found during the term of this listing, or due to Broker's efforts or advertising, under this Listing Contract, unless this Property is listed with another Broker.

11. Limitation on Broker's Compensation. Broker may accept compensation when Broker or affiliated licensee (other than Seller's Limited Agent), is serving as a Buyer's Agent. In all other cases, Broker shall not accept compensation from the Buyer, the Buyer's agent, or any entity participating in or providing services for the Sale without written agreement of Seller.

12. Cooperating with Other Brokers. Broker may accept the assistance and cooperation of other brokers who will be acting as subagents of the seller or as agents for a Buyer. If Broker participates in a local multiple listing service Broker shall submit the Property to such listing service. Seller authorizes Broker to compensate from the amount described in paragraph 10: ( ) seller's subagent; ( ) buyer's agent; ( ) agents acting for both the buyer and the seller-dual agents.

13. Forfeiture of Earnest Money. In the event of forfeiture of the earnest money made by a prospective Buyer, the monies received, after expenses incurred by Broker, shall be divided between Broker and Seller, one-half thereof to Broker, but not to exceed the commission agreed upon herein, and the balance to Seller.

14. Cost of Services. Broker shall bear all expenses incurred by Broker, if any, to market the Property and to compensate cooperating brokers, if any. Broker will not obtain or order any products or services to be paid by Seller unless Seller agrees. Broker shall not be obligated to advance funds for the benefit of Seller.

15. Maintenance of the Property. Seller agrees to maintain until delivery of possession, the heating, air conditioning, water heater, sewer, plumbing and electrical systems and any built-in appliances in good and reasonable working condition. Seller further agrees to hold Broker harmless from any and all causes of action, loss, damage, or expense Broker may be subjected to arising in connection with this section. Seller also agrees that Broker shall not be responsible for maintenance of the Property.

16. Nondiscrimination. The undersigned Seller and Broker acknowledge, by their respective signature hereon, that the law prohibits discrimination for or against any person because of race, color, religion, sex, handicap, familial status, or national origin.

17. Escrow Closing. Seller agrees that the closing of any sale made by Broker may be handled by an Escrow Agent and authorizes Broker to transfer all earnest monies, downpayments and other trust funds to the Escrow Agent along with documents and other items received by Broker related to the sale. The cost of the Escrow Closing shall be paid by Seller or as negotiated with the Buyer in the Purchase Agreement.

18. Smoke Detectors. Seller agrees to install at Seller's expense any smoke detectors required by law.

19. "For Sale" Sign Permitted. Seller gives permission to Broker to place a "For Sale" and a "Sold" sign on the Property and to use a "Lock Box."

20. Duties and Responsibilities of Seller's Limited Agent. Seller's Limited Agent shall have the following duties and obligations:

a. To perform the terms of this agreement;
b. To exercise reasonable skill and care for Seller;
c. To promote the interest of Seller with the utmost good faith, loyalty and fidelity including:
    1. Seeking the price and terms which are acceptable to Seller except that Seller's Limited Agent shall not be obligated to seek additional offers to purchase the property while the property is subject to a contract for sale;
    2. Presenting all written offers to and from Seller in a timely manner regardless of whether the property is subject to a contract for sale;
    3. Disclosing in writing to Seller all adverse material facts actually known by Seller's Limited Agent; and
    4. Advising Seller to obtain expert advice as to material matters of that which Seller's Limited Agent knows but the specifics of which are beyond the expertise of Seller's Limited Agent;
d. To account in a timely manner for all money and property received;
e. To comply with the requirements of agency relationships as defined in Neb. Rev. Stat. §§ 76-2401 through 76-2430, the Nebraska Real Estate License Act, and any rules or regulations promulgated pursuant to such sections or act; and
f. To comply with any applicable federal, state, and local laws, rules, regulations, and ordinances, including fair housing and civil rights statutes and regulations.

21. Confidential Information. Seller's Limited Agent shall not disclose any confidential information about Seller, without Seller's written permission, unless disclosure is required by statute, rule, or regulation, or failure to disclose the information would constitute fraudulent misrepresentation. Seller's Limited Agent is required to disclose adverse material facts to any prospective buyer. Adverse material facts may include any environmental hazards affecting the property which are required by law to be disclosed, physical condition of the property, any material defects in the property, any material defects in the title to the property, or any material limitation on Seller's ability to perform under the terms of the contract.

22. Modification of this Listing Contract. No modification of this Listing Contract shall be valid, unless made in writing and signed by the parties.

23. Release of Information. Seller authorizes Broker to obtain any information relating to utility expenses and all pertinent information regarding the present mortgage(s) or Deed(s) of Trust on this Property including existing balance, interest rate, monthly payment, balance in escrow account and pay off amount. Seller authorizes the dissemination of sales information including selling price and terms after closing of the transaction.

24. Entire Agreement. This Listing Contract constitutes the entire Contract between the parties and any prior negotiations or agreements, whether oral or written, are not valid unless set forth is this Contract.

25. Copies of Agreement. This Listing Contract is executed in multiple copies and Seller acknowledges receipt of a copy signed by the Broker or Broker's affiliated licensee.

Signed this _____ day of _____, _____.

_____
(Name of Broker or Firm)

_____
(Address) (Phone No.)

By _____
(Affiliated Licensee's Signature) (Date)

_____
(Name of Seller(s) - Type or Print)

_____
(Seller Signature)

_____
(Seller Signature)

_____
(Seller(s) Address)

_____
(City) (State) (Zip)

_____
(Residence) Seller Phone (Business)

OPTIONAL LIMITED DUAL AGENCY LANGUAGE

If Broker is also offering Limited Dual Agency, the following paragraphs can be included in the Listing Agreement. If used, remember to renumber the remaining paragraphs.

22. Duties and Responsibilities of Seller's Limited Agent as a Limited Dual Agent. Seller's Limited Agent has disclosed to Seller that Broker permits Seller's Limited Agent to act as an agent for sellers of property or for buyers of property, and with the informed written consent of both the seller and buyer of a particular property, to act as a Limited Dual Agent for both. Seller's Limited Agent agrees to promptly notify Seller whenever a Seller's Limited Agent is also representing a buyer when that buyer becomes interested in acquiring Seller's property. Seller consents to Seller's Limited Agent also serving as an agent of the Buyer for Seller's property and acknowledges that Seller's Limited Agent will then be a Limited Dual Agent of both Seller and Buyer, serving both Seller and Buyer as clients. As a Limited Dual Agent, Seller's Agent will owe to the Buyer the following duties and obligations as a Buyer's Agent:

a. To perform the terms of the written agreement made with the buyer;
b. To exercise reasonable skill and care for the Buyer;
c. To promote the interests of the Buyer with utmost good faith, loyalty, and fidelity, including:
    1. Seeking a price and terms which are acceptable to the Buyer, except that the licensee shall not be obligated to seek other properties while the Buyer is a party to a contract to purchase property;
    2. Presenting all written offers to and from the Buyer in a timely manner regardless of whether the Buyer is already a party to a contract to purchase property;
    3. Disclosing in writing to the Buyer adverse material facts actually known by the Buyer's Limited Agent;
    4. Advising the Buyer to obtain expert advice as to material matters about which the licensee knows but the specifics of which are beyond the expertise of the Buyer's Limited Agent;
d. To account in a timely manner for all money and property received;
e. To comply with all requirements of Neb. Rev. Stat. §§ 76-2401 to 76-2430, the Nebraska Real Estate License Act, and any rules and regulations promulgated pursuant to such sections or act; and
f. To comply with any applicable federal, state, and local laws, rules, regulations, and ordinances, including fair housing and civil rights statutes or regulations.

As a Limited Dual Agent, Seller's Limited Agent also continues to owe Seller the duties and obligations as a Seller's Limited Agent set out in paragraph 20, and the Seller's Limited Agent also continues to owe to Buyer the duties and obligations as a Buyer's Limited Agent described above, except that a Limited Dual Agent can disclose to one client any information the Limited Dual Agent has gained from the other client which is relevant to the transaction or client, provided that Limited Dual Agent can not disclose, without the informed written consent of the client to whom the information pertains:

a. that Seller is willing to accept less than the asking price for the property;
b. that Buyer is willing to pay more than the purchase price offered for the property;
c. what the motivating factors are for any client buying or selling the property;
d. that either client will agree to financing terms other than those offered by that client;
e. any other confidential information about the client unless the disclosure is required by statute, rule, or regulation or failure to disclose the information would constitute fraudulent misrepresentation.

In the event that Seller's Limited Agent becomes a Limited Dual Agent, Seller's Limited Agent will prepare and present to Seller an Informed Written Consent at or before the time an offer to or from the Buyer is first presented. The Informed Written Consent will identify the Buyer and disclose the compensation agreement between Seller's Limited Agent and Buyer, if any. Seller's Limited Agent will be allowed to continue in the transaction as a Limited Dual Agent only if the Informed Written Consent is signed by both Seller and Buyer.