

LEGISLATIVE BILL 68

Approved by the Governor April 21, 1973

Introduced by Duis, 39

AN ACT to adopt the Nebraska Real Estate License Act of 1973; to provide severability; and to repeal sections 81-862 to 81-884.02 and 81-885 to 81-887, Reissue Revised Statutes of Nebraska, 1943.

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

Section 1. As used in this act, unless the context otherwise requires:

(1) Real estate shall mean and include 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 shall mean any person who for a fee, commission, or any other valuable consideration, or with the intent or expectation of receiving the same from another, negotiates or attempts to negotiate the listing, sale, purchase, exchange, rent, or lease or option for any real estate or improvements thereon, or assists in procuring prospects or holds himself 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, or holds himself out as engaged in any of the foregoing. Broker shall also include any person: (a) Employed by or on behalf of the owner or owners of lots or other parcels or real estate at a salary, fee, commission, or any other valuable consideration to sell such real estate or any part thereof in lots or parcels or make other disposition thereof; (b) who engages in the business of charging an advance fee in connection with any contract whereby he undertakes primarily to promote the sale of real estate either through its listing in a publication issued primarily for such purpose, or for referral of information concerning such real estate to brokers, or both; (c) who appraises, offers, attempts, or agrees to appraise real estate; (d) who auctions, offers, attempts, or agrees to auction real estate; or (e) who buys or offers to buy or sell or otherwise deals in options to buy real estate;

(3) Associate broker shall mean 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) Salesman shall mean 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, except as provided in subdivision (2) (c) of this section;

(5) Person shall mean and include individuals, corporations, and partnerships, except limited partnerships, foreign or domestic;

(6) Subdivision or subdivided land shall mean any real estate offered for sale and which has been registered under the Interstate Land Sales Full Disclosure Act, 82 Stat. 590 and following, 15 U.S.C. 1701 and following, 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;

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

(8) Purchaser shall mean a person who acquires or attempts to acquire or succeeds to an interest in land; and

(9) Commission shall mean the State Real Estate Commission.

Sec. 2. After the effective date of this act, it shall be unlawful for any person, directly or indirectly, to engage in or conduct, or to advertise or hold himself out as engaging in or conducting the business, or acting in the capacity, of a real estate broker, associate broker, or real estate salesman within this state without first obtaining a license as such broker, associate broker, or salesman, as provided in this act, unless he is exempted from obtaining a license under section 4 of this act.

Sec. 3. Any person who, directly or indirectly for another, with the intention or upon the promise of receiving any valuable consideration, offers, attempts or agrees to perform, or performs any single act described in subdivision (2) of section 1 of this act, whether as a

part of a transaction, or as an entire transaction, shall be deemed a broker, associate broker, or salesman within the meaning of this act. The commission of a single such act by a person required to be licensed under this act and not so licensed shall constitute a violation of this act.

Sec. 4. Except as to the requirements with respect to the subdivision of land, the provisions of this act shall not apply to:

(1) Any person, partnership, or corporation who as owner or lessor shall perform any of the acts described in subdivision (2) of section 1 of this act with reference to property owned or leased by them, or to the regular employees thereof, with respect to the property so owned or leased, where 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; Provided, that such regular employees shall not perform any of the acts described in subdivision (2) of section 1 of this act 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 duty as such attorney at law;

(3) Any person acting as receiver, trustee in bankruptcy, administrator, executor, 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 employment;

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

(6) Any officer or employee of the state government or any political subdivision thereof performing his official duties for real estate tax purposes; or

(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.

Sec. 5. This 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 1 of this act 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.

Sec. 6. 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 provisions of this act, to other than licensed brokers, licensed associate brokers, or licensed salesmen unless such person, partnership, or corporation was duly licensed under this act as broker, associate broker, or salesman prior to the time of offering to perform any such act or service or procuring any promise to contract for the payment of compensation for any such contemplated act or service.

Sec. 7. (1) There is hereby created the State Real Estate Commission which shall consist of the Secretary of State, who shall be chairman of the commission, and five members appointed by the Governor. Four of the members of such 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 four congressional districts as the districts were constituted on January 1, 1961. The remaining member shall be appointed at large and shall be representative of the public.

(2) The present members of the commission shall continue to serve for the terms for which they were respectively appointed. Within thirty days after the effective date of this act, the Governor shall appoint the at-large member for a term of six years from the effective date of this act. At the expiration of the term of any member of the commission, the Governor shall appoint a successor for a term of six years. 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 chairman, 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 his official duties at scheduled meetings the sum of fifty dollars and his actual and necessary expenses incurred in the performance of his 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 discretion or upon the direction of the chairman 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 provisions of this act, fix the salaries of such employees, and make such other expenditures as are necessary to properly carry out the provisions of this act. The office of the commission shall be maintained in Lincoln and all files, records, and property of the commission shall remain therein. 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 rules and regulations relating to the administration of but not inconsistent with the provisions of this 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.

Sec. 8. 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.

Sec. 9. The Attorney General shall render to the State Real Estate Commission opinions on all questions of law relating to the interpretation of this 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 any of the provisions of this 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.

Sec. 10. The commission shall have the full power to regulate the issuance of licenses and to revoke or suspend licenses issued under the provisions of this act and to censure licensees.

Sec. 11. Any person, desiring to act as a real estate broker or real estate salesman, must file an application for a license with the commission. The application shall be in such form and detail as the commission shall prescribe, setting forth the following:

(1) The name and address of the applicant or the name under which he intends to conduct business and, if the applicant is a partnership, the name and residence address of each member thereof and the name under which the partnership business is to be conducted, and, if the applicant is a corporation, the name and address of each of its principal officers;

(2) 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

(3) Such other information as the commission shall require.

Sec. 12. (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 salesman 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 a corporation or partnership unless any stockholder or partner 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, and the commission may in its discretion deny a license to any person who has engaged in the real estate business without a license.

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

(4) Grounds for suspension or revocation of a license, as provided for by this act, or the previous revocation of a real estate license shall also be grounds for refusal to grant a license.

Sec. 13. (1) No broker's or salesman's license shall be issued to any person who has not attained the age of nineteen years. No broker's or salesman'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 broker's license shall either (a) have first served actively for two years as a licensed salesman and shall furnish evidence of completion of sixty class hours in a course of study approved by the commission or in lieu thereof a correspondence course approved by the commission; Provided, that subdivision (b) of this subsection shall not apply to any person holding a salesman's license on the effective date of this act, but who in place thereof shall have served actively for one year as a licensed real estate salesman, or (b) furnish a certificate that he has passed a course of at least fifteen credit hours in subjects related to real estate at an accredited university or college, or one hundred eighty class hours in a course of study approved by the commission. The applicant for a license must pass a written examination covering generally the matters confronting real estate brokers and salesmen. 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. The commission may prepare and distribute to licensees

under this act informational material deemed of assistance in the conduct of their business.

Sec. 14. (1) To pay the expense of the maintenance and operation of the office of the commission and the enforcement of this act, it shall at the time an application is submitted collect from an applicant for each broker's or salesman's examination a fee of twenty-five dollars and an investigation fee of twenty-five dollars. If the applicant fails to pass the original examination, the applicant may take the examination one more time within a year for a fee of five dollars. If the applicant fails the second examination, then the third and all subsequent examinations may be taken upon the payment of twenty-five dollars for each examination. Prior to the issuance of an original license, each applicant who has passed the examination, as required by section 13 of this act, shall pay a license fee in advance as follows: For a broker's license, thirty dollars, and for a salesman's license, fifteen dollars. After the original issuance of a license, an annual fee of thirty dollars for each broker and fifteen dollars for each salesman shall be due and payable on or before the first day of January of each year. Application for renewal of any license shall be made before December 1 prior to the ensuing year. Failure to remit annual fees when due shall automatically cancel such license, 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 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, shall be cause for revocation or denial of license. The license of a real estate salesman, except those licensed on the effective date of this act, shall not be renewed on January 1 following the second anniversary of its original issuance date unless the salesman shall furnish evidence of completion of thirty class hours in a course of study approved by the commission or in lieu thereof, a correspondence course approved by the commission.

(2) Any real estate salesman who is temporarily unemployed or without an employing broker may renew his license by making application therefor before December 1 prior to the ensuing year by submitting the renewal fee together with the completed renewal application on which he has noted his present inactive status. Any salesman 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 shall secure a new employing broker. On or after January 1, 1977, 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.

Sec. 15. All fees collected under this 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 this act. The 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.

Sec. 16. After the effective date of this act, no original broker's license shall be granted to a corporation or partnership unless the corporation or partnership designates a qualifying broker who is an officer of the corporation or a member of the partnership and who shall have more than a nominal interest in or be an active participant in the management of the corporation or partnership, and every member or officer of the corporation or partnership, who actively participates in the real estate brokerage business of the corporation or partnership, shall obtain a license as a real estate broker and every employee, who acts as a salesman for such partnership or corporation, shall hold a license as an associate broker or a real estate salesman.

Sec. 17. (1) (a) A nonresident of this state, who is actively engaged in the real estate business and who maintains a place of business in his resident state, and who has been duly licensed in such other state to conduct such business in that state, such state having entered into a reciprocal agreement with the commission in regard to the issuance of reciprocal licenses, may in the discretion of the commission be issued a nonresident broker's license.

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

(c) Should such nonresident licensee become a resident of the State of Nebraska or should he desire to

maintain a place of business in this state, or be employed by a broker maintaining a place of business in this state, he must secure a regular resident license in compliance with the statutes and rules governing original resident applicants. If another state requires a resident of this state to maintain a place of business in such other state in order to transact business in such state, a resident of such other state shall maintain a place of business in this state and need not secure a regular resident license to maintain such place of business in this state in order to transact business in this state. A nonresident of this state shall meet the same rules and requirements of his resident state in order to obtain a reciprocal license in this state.

(2) Prior to the issuance of license to a nonresident broker he shall file with the commission a designation in writing that appoints the director of the commission to act as his licensee agent, upon whom all judicial and other process or legal notices directed to such licensee may be served. Service upon the agent so designated shall be equivalent to personal service upon the licensee. Copies of such appointment, certified by the director of the commission, shall be deemed sufficient evidence thereof and shall be admitted in evidence with the same force and effect as the original thereof might be admitted. In such written designation, the licensee shall agree that any lawful process against the licensee which is served upon such agent shall be of the same legal force and validity as if served upon the licensee, and that the authority shall continue in force so long as any liability remains outstanding in this state. Upon the receipt of any such process or notice the director shall forthwith mail a copy of the same by certified mail to the last-known business address of the licensee.

(3) Prior to the issuance of any license to any nonresident, he must file with the commission a duly certified copy of the license issued to him for the conducting of such business in any other state, and pay to the commission the same license fee as provided in section 14 of this act for the obtaining of a broker's or salesman's license in this state.

(4) Nonresident licenses granted under reciprocal agreements as provided in this section shall remain in force, unless suspended or revoked by the commission for just cause or for failure to pay the annual renewal fee, only as long as a reciprocal agreement is in effect between this state and the resident state of the nonresident licensee.

Sec. 18. (1) If the commission, after an application in proper form has been filed with it, accompanied by the proper fee, shall refuse to accept the application, the commission shall give notice of the fact to the applicant within fifteen days after its 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 thirty 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 fifteen days prior to the date set for the hearing, the commission shall notify the applicant and other persons protesting, and shall set forth in the notice the reasons why the commission 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, as well as all other witnesses whose testimony is relied upon to substantiate any protest or denial of the application. He shall be entitled to present such evidence, written and oral, as he may see fit and as may be pertinent to the inquiry.

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

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

Sec. 19. The commission shall prescribe the form of license. Each license shall have placed thereon the seal of the commission. The license of each salesman

and associate broker shall be delivered or mailed to the broker by whom the salesman or associate broker is employed, and shall be kept in the custody and control of such broker. It shall be the duty of each broker to display his own license and those of his associate brokers and salesmen conspicuously in his place of business. The commission shall annually prepare and deliver a pocket card certifying that the person, whose name appears thereon, is a licensed real estate broker or a licensed real estate associate broker or salesman, as the case may be, stating the period of time for which fees have been paid and including, on salesman's and associate broker's cards only, the name and address of the broker employing such salesman or associate broker. If a broker maintains more than one place of business within the state, a branch office license shall be issued to such broker for each branch office so maintained by him upon the payment of an annual fee of thirty dollars and the branch office license shall be displayed conspicuously in each branch office. The manager of a branch office must be an officer of the corporation, a partner, or an associate broker.

Sec. 20. (1) Should the broker change his place of business, he shall forthwith notify the commission in writing of such change and thereupon a new pocket card shall be granted to the broker and to his associate brokers and salesmen.

(2) When a salesman 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 and the employee shall immediately forward his pocket card to the commission.

(3) When a salesman or associate broker transfers from one employing broker to another, or when an associate broker changes his status from associate broker to that of broker, or when a broker changes his status to that of associate broker, a transfer fee of five dollars shall be paid to the commission.

Sec. 21. (1) Each broker shall maintain a separate bank checking account in this state which shall be designated a trust account in which all downpayments, earnest money deposits, or other trust funds received by him, his associate brokers, or his salesman on behalf of his principal or any other person shall be deposited unless all parties having an interest in the funds have agreed otherwise in writing.

(2) Each broker shall notify the commission of the name of the bank or banks 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 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) A broker shall not be entitled to any part of the earnest money or other money paid to him in connection with any real estate transaction as part or all of his commission or fee until the transaction has been consummated or terminated.

Sec. 22. 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 21 of this act or if any broker, or the officers of any corporation licensed as a real estate broker, shall refuse to submit his 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 by the court.

Sec. 23. The Attorney General may appoint special counsel to prosecute the action as provided for in section 22 of this act, 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.

Sec. 24. 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, salesman, or subdivider and shall have power to censure the licensee or certificate holder or to revoke or suspend any license or certificate, issued under this act, 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 race, color, national origin, or ethnic group 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 possession belonging to others;

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

(5) Failing to maintain and deposit in a separate noninterest bearing checking 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 undisclosed commission, 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 a commission or other valuable consideration by an associate broker or salesman from anyone other than his employing broker without the consent of his 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 authorized agent;

(12) Offering real estate for sale or lease without the knowledge and consent of the owner or his authorized agent or on terms other than those authorized by the owner or his 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, or lease of real estate directly with an owner or lessor if he knows that such owner has a written outstanding contract in connection with such property granting an exclusive agency or an exclusive right to sell to another broker;

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

(16) 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;

(17) Paying a commission or compensation to any person for performing the services of a broker, associate broker, or salesman who has not first secured his license under this act or is a nonresident who is licensed in his state of residence;

(18) 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;

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

(20) 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 files;

(21) Making any substantial misrepresentations;

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

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

(24) 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;

(25) Violating any rule or regulation promulgated by the commission in the interest of the public and consistent with the provisions of this act;

(26) Failing by a subdivider, after the original certificate has been issued, to comply with all of the requirements of this act; or

(27) Demonstrating unworthiness or incompetency to act as a broker, associate broker, or salesman, whether of the same or of a different character as hereinbefore specified.

Sec. 25. (1) Before the commission shall censure a licensee or before revoking or suspending a license, it shall give the holder of the license a hearing on the matter and shall, at least twenty days prior to the date set for the hearing, notify the license holder in writing. Such notice shall contain an exact



statement of the charges against him and the date and place of hearing.

(2) The license holder shall have full authority to be heard in person or by counsel before the commission in reference to such charges. Such notice may be served by delivering it personally to the license holder or by sending it by either registered or certified mail to the last-known business address of such license holder. If the license holder is an associate broker or a salesman, the commission shall also notify the broker employing him by mailing a copy of such notice to the broker's last-known business address.

Sec. 26. Within fifteen days from the time of service of the complaint and notice the licensee shall file his sworn answer thereto, which shall contain all defenses which he intends to assert and no motions or other pleadings shall be authorized.

Sec. 27. 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 chairman or any member of the commission may administer oaths, examine the witnesses, and take any evidence he deems pertinent to the determination of the charges. Any witness subpoenaed shall be entitled to the same fees and mileage as prescribed by law in judicial proceedings in the district courts of this state in civil actions, 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 may desire at such hearing. Depositions may also be taken and used as in civil cases in the district courts.

Sec. 28. (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 27 of this act; 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 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 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.

Sec. 29. After such hearing, the commission shall state in writing, officially signed by the chairman and attested to by the director, its findings and determination and its order in the matter. If the commission shall determine that the license holder has been guilty of any violation of the provisions of this act, his license shall be revoked or suspended forthwith, or the commission may enter an order censoring the license holder.

Sec. 30. Within ten days after an order of the commission has become final, the applicant for a license or a license holder may obtain judicial review thereof by serving upon the director a written notice of appeal and a demand in writing for certified transcript of all the papers on file in his office affecting or relating to such order, together with a transcript of the evidence and the payment of the fee therefor, and he shall, within thirty days from the entry of such order, file a petition for review in the district court for the county where the cause of action or some part thereof arose, together with a bond to the State of Nebraska in the sum of two hundred dollars, with sufficient surety to be approved by the

clerk of the district court to which such appeal is taken and conditioned that the applicant for a license or license holder shall pay all costs taxed against him which may accrue to the commission by reason of taking such appeal. In lieu of such bond, a cash deposit of two hundred dollars may be made with the clerk for the same purpose. The petition for review need not be verified but shall state the grounds upon which such review is sought. The commission shall be deemed to be a party to any such review proceedings. The petition for review shall be served upon the director by leaving with him a copy of the petition and the commission shall file its answer within ten days from the date of service of the petition for review.

Sec. 31. In any judicial proceeding under this act, the court shall consider the matter de novo upon the record. The court may on its own motion order additional evidence to be taken before it. In addition, any party to such review may offer additional evidence before the court if such party shall have served written notice of such offer on the other parties at least ten days prior to the hearing. Such notice shall set out the nature of the evidence which he so desires to offer and the names of the witness whom he intends to call. In such event the other parties may without advance notice offer evidence in rebuttal. Such proceedings shall be heard in a summary manner.

Sec. 32. In the event of the revocation or suspension of the license issued to any member of a partnership or to any officer of a corporation, the license issued to such partnership or corporation shall be revoked by the commission unless, within a time fixed by the commission, the connection with a partnership of the member whose license has been revoked shall be severed and his interest in the partnership and his share in its activities brought to an end, or the offending officer of a corporation shall be discharged and shall have no further participation in its activities.

Sec. 33. It shall be unlawful for any person, partnership, or corporation to sell or offer for sale any real estate in a subdivision except by a broker and his employees duly licensed and residing in this state.

Sec. 34. Prior to the time when such subdivision real estate is offered for sale, such person, partnership, 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, or corporation;

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

(3) 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;

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

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

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

(7) 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;

(8) 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 interest in the real estate to the interest of a purchaser of the real estate;

(9) 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 provision entitling the purchaser, if he has not seen the land, to an unconditional right of refund of all payments made under the contract after inspecting the land 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 a provision granting to the purchaser an unconditional right to rescind the contract for a period of fourteen days if he has not inspected the land;

(10) 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

(11) 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.

Sec. 35. (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 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) If the subdivision is located out of this state, then prior to the approval of any such application the applicant therefor shall file with the commission a designation in writing that appoints the director of the commission to act as the applicant's agent upon whom all judicial and other process or legal notices directed to such applicant may be served. Service upon the agent so designated shall be equivalent to personal service upon the applicant. Copies of such appointment, certified by the director of the commission, shall be deemed sufficient evidence thereof and shall be admitted in evidence with the same force and effect as the original thereof might be admitted. In such written designation, the applicant shall agree that any lawful process against the applicant which is served upon such agent shall be of the same legal force and validity as if served upon the applicant and that the authority shall continue in force so long as any liability remains outstanding in this state.

Sec. 36. 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.

Sec. 37. 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.

Sec. 38. No broker or salesman 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.

Sec. 39. The director, with the consent of the commission, shall have the power to issue a cease and desist order upon determination that sections 33 to 38 of this act have been or are about to be violated.

Sec. 40. Failure on the part of any person, partnership, or corporation to comply with the provisions of sections 33 to 39 of this act shall render any contract entered into in this state void and unenforceable and any money paid under such contract to the certificate holder, together with interest at the rate of six per cent 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.

Sec. 41. Sections 33 to 40 of this act shall not apply to the sale or lease of lots in a subdivision for industrial or commercial properties.

Sec. 42. Sections 33 to 40 of this act 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.

Sec. 43. 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 this act, the Attorney General may maintain an action in the name of the State of Nebraska, in the district court of the county wherein such violation or threatened violation occurred, to abate and temporarily and permanently enjoin such acts and practices and to enforce compliance with this act. The plaintiff shall not be required to give any bond nor shall any court costs be adjudged against the plaintiff.

Sec. 44. The commission by and through its director may prefer a complaint for violation of this act.

Sec. 45. Any person, partnership, or corporation acting as a broker or salesman, without having first obtained the required license, shall be guilty of a misdemeanor and shall, upon conviction thereof, be punished by a fine of not less than five hundred dollars nor more than one thousand dollars or any natural person so convicted to be punished by imprisonment in the county jail for not less than ten days nor more than six months, or by both such fine and imprisonment.

Sec. 46. Any real estate license or subdivision certificate issued prior to the effective date of this act shall, for purposes of renewal, be considered to have been originally issued under the provisions of this act.

Sec. 47. This act shall be known and may be cited as the Nebraska Real Estate License Act of 1973.

Sec. 48. If any section in this act or any part of any section shall be declared invalid or unconstitutional, such declaration of invalidity shall not affect the validity of the remaining portions thereof.

Sec. 49. That sections 81-862 to 81-884.02 and 81-885 to 81-887, Reissue Revised Statutes of Nebraska, 1943, are repealed.