

## LEGISLATIVE BILL 883

Approved by the Governor March 15, 1994

Introduced by Abboud, 12

AN ACT relating to real estate licensees; to state intent; to define terms; to provide for fiduciary obligations of a licensee to a client; to provide for single agents, subagents, dual agents, and other relationships between a licensee and a client; to require and prohibit disclosure of certain information; to require policies and provide procedures; to require rules and regulations; to provide operative dates; and to provide severability.

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

Section 1. 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.

Sec. 2. For purposes of sections 1 to 30 of this act, the definitions found in sections 3 to 15 of this act shall be used.

Sec. 3. Adverse material fact shall mean a fact not reasonably ascertainable or known to a party which significantly affects the desirability or value of the property to that party or which 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.

Sec. 4. 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.

Sec. 5. Brokerage relationship shall mean the relationship created between a designated broker and a client pursuant to sections 1 to 30 of this act 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 sections 1 to 30 of this act.

Sec. 6. 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.

Sec. 7. Client shall mean a seller, landlord, buyer, or tenant who has entered into a brokerage relationship with a licensee pursuant to sections 1 to 30 of this act.

Sec. 8. Commission shall mean the State Real Estate Commission.

Sec. 9. 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.

Sec. 10. Designated broker shall have the same meaning as in section 81-885.01.

Sec. 11. 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.

Sec. 12. Licensee shall mean a designated broker, an associate broker, and a salesperson all as defined in section 81-885.01.

Sec. 13. Limited agent shall mean a licensee whose duties and obligations to a client are those set forth in sections 17 to 19 of this act.

Sec. 14. 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.

Sec. 15. 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 17 or 18 of this act as does the client's primary designated broker.

Sec. 16. (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 20 to 22 of this act. 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 22 of this act.

(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 22 of this act;

(b) The designated broker enters into a subagency agreement with another designated broker pursuant to subsection (5) of section 22 of this act;

(c) The designated broker enters into a written dual agency agreement with the parties to be represented pursuant to subsection (4) of section 22 of this act; or

(d) The designated broker enters into a written agency agreement pursuant to subsection (6) of section 22 of this act.

(3) Sections 1 to 30 of this act 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 22 of this act.

(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 1 to 30 of this act in establishing the relationships for each transaction.

Sec. 17. (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) 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 1 to 30 of this act, 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 customer, except that a licensee shall disclose in writing to any customer all adverse material facts actually known by the licensee. The adverse material facts may include 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 customer 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.

Sec. 18. (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) 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 1 to 30 of this act, 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 customer, except that the licensee shall disclose in writing to any customer all adverse material facts actually known by the licensee. The adverse material facts may include 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.

Sec. 19. (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 22 of this act.

(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 17 and 18 of this act 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.

(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.

Sec. 20. (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 16 of this act.

Sec. 21. (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, 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 intends to 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 intends to 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 acknowledgment 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) Disclosures made in accordance with sections 1 to 30 of this act shall be sufficient to disclose brokerage relationships to the public.

Sec. 22. (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.

(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. The agreement shall include a licensee's duties and responsibilities specified in section 17 of this act and the terms of compensation and shall specify whether an offer of subagency may be made to any other designated broker.

(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 18 of this act and the terms of compensation and shall specify 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 agreement of the seller and buyer or landlord and tenant permitting the designated broker to serve as a dual agent in the proposed transaction. The agreement shall include a licensee's duties and responsibilities specified in section 19 of this act and the terms of compensation.

(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 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 17 and 18 of this act 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.

Sec. 23. (1)(a) The relationships set forth in sections 1 to 30 of this act 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 1 to 30 of this act, 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.

Sec. 24. (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.

Sec. 25. Violation of any provision of sections 1 to 30 of this act 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.

Sec. 26. (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. This section shall not limit the liability of a designated broker for a misrepresentation by an affiliated licensee under his or her supervision.

(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.

Sec. 27. 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 1 to 30 of this act governing dual agents.

Sec. 28. (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 17 to 19 of this act as the designated broker except as provided in section 27 of this act.

(2) All affiliated licensees have the same protections from vicarious liability as their designated broker.

Sec. 29. Sections 1 to 30 of this act 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 22 of this act. Sections 1 to 30 of this act shall be construed broadly to accomplish their purposes.

Sec. 30. The commission shall adopt and promulgate rules and regulations to carry out sections 1 to 30 of this act.

Sec. 31. Sections 1 to 29 of this act shall become operative on July 1, 1995. The other sections of this act shall become operative on their effective date.

Sec. 32. If any section in this act or any part of any section shall be declared invalid or unconstitutional, such declaration shall not affect the validity or constitutionality of the remaining portions thereof.