

## Top ~~Ten~~ Thirteen Ways to Avoid Getting a Complaint Filed Against You—Greg Lemon, Director, Nebraska Real Estate Commission

*Director's Note--I believe this is the most popular or most utilized article I ever wrote for the Commission Comment, it has been nearly 14 years since it was first published, but it seemed like an appropriate time for a reboot. I have tweaked a couple things, but this is essentially the same article we published in 2010.*

This article started out as a top ten list, but as I and others worked on the list it kept getting bigger. This is not a detailed legal article on how to comply with specific license and agency laws, but general guidelines that I hope will be easy to remember and incorporate into your real estate practice. We will get about 70 sworn complaints filed this year with the Commission, as well as hundreds of calls from consumers and licensees with concerns or potential complaints. If the rules below were followed those numbers would go down dramatically.

### 1. Don't make misrepresentations.

a. Never withhold or deliberately misconvey information even if that information may make the transaction less likely to be completed, always remember you are looking out for your client's best interests.

b. Get your facts straight, don't say the house is not in a flood plain, for example, unless you have checked and verified this with official sources, don't say the roof doesn't leak based on an assumption or limited knowledge. Don't be afraid to say I don't know, or I will check and get back to you, or you will need to consult an attorney or other professional, or that there may need to be an inspection done to answer that question.

2. Communicate, Communicate, Communicate. Many of our complaint calls start out with "my agent won't call me back". Remember, many of your clients are entering into the biggest monetary transaction of their lives, haven't done a real estate transaction before, or haven't done one for many years. While the Commission does not have, and has no interest in, establishing rules on how fast you respond to a phone call, text, or e-mail, you do have a fiduciary duty to your client and it will be very hard to fulfill if you are not communicating with them.

3. Reduce all offers, contracts, amendments, addendums, etc. to writing, signed by the appropriate parties. The Statute of Frauds provides that all real estate contracts must be in writing. Agency law requires you to present all written offers in a timely manner. There is a reason for these laws, oral agreements are much harder to prove, much easier to dispute and may not be enforceable.

4. Provide the Commission's agency disclosure pamphlet at or as soon as practicable after the first substantial contact. This is kind of like a secondary offense, like driving without a seatbelt or texting while driving, because you are not likely to get a complaint filed against you if this the only problem. But if a complaint is filed, we review the transaction and if we find that this has not been done in a timely manner it can and likely will be added to any other charges in the complaint, or may even be considered stand alone grounds to go forward with the complaint even if the original grounds for the complaint are dismissed.

5. Always handle the money right. Hound your buyer about writing the escrow check if they didn't include it with the offer, deposit the escrow funds in the appropriate account in a timely manner, record the disposition of any and all escrow funds appropriately.

6. Be timely. Don't "sit on" documents, escrow checks, offers, etc. relating to the transaction that your client may want or need. Knowing a better offer may be in its way is not a reason to withhold an offer which is on the table.

7. Seek Advice. When faced with an unusual situation or something you don't know the answer to talk to your supervising broker, call the Nebraska Real Estate Commission, when necessary seek the advice of an attorney. When in doubt seek advice before you act.

8. Disclose, Disclose, Disclose. Disclose adverse material facts (in writing please!). Disclose that you are a licensee if you are buying selling property on your own behalf. Disclose dual agency when it occurs. Disclose all lawsuits, pending criminal charges and convictions on your renewal form.

9. Do your listing agreement right. Have all aspects of the agreement clearly spelled out in writing, include the precise expiration date, include the specific terms of compensation. If you are planning on or need to extend the listing get the extension in writing before the listing expires. Have all parties that have an interest in the property sign the listing agreement.

10. Pay attention to detail. Know the terms of any contract you have pending or listing agreements you have, if you don't know go to the appropriate source document and verify, don't assume.

11. Don't allow unauthorized access to the property—Don't allow the buyer or tenant to repair, replace, paint, live in, move in, have a party at, store things, etc. on the property prior to the closing of the transaction or commencement of the lease without express written authority signed by the seller.

12. Keep all your paperwork with the Commission current and correct. Get your renewal in on time, keep your E & O insurance current, meet your continuing education requirements on time. Keep any business entities you use in your real estate business (Professional Corporation, Corporation, LLC, etc.) properly registered and in good standing with the Secretary of State. Don't start working for broker B until your transfer from broker A is complete and confirmed with the Commission.

**\*\*\*13. Remember your Fiduciary duty to your client.** You are representing them, their interests are to be placed above yours in your transactions and dealings with them. Place yourself in their shoes, "if I were buying this house I would certainly want to know \_\_\_\_\_", whether the blank is information about the property, or the buying or selling process, or anything else relevant to the transaction. If you always remember your fiduciary duty the other items on this list should fall into place pretty easily.\*\*\*