

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 3-003.

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 3-003.

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~~ at or before the time either party ~~becomes~~ 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 3-003.

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 3-003.

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 3-003. 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 3-003. 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 3-003. 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 3-003. 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.~~

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

003.232 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.

003.243 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.

003.254 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.

003.265 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.

003.276 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.

003.287 Failure by an agent of a seller or landlord to submit a written offer for purchase or lease in a timely manner. The obligation to present offers in a timely manner is still applicable if there is a pending or accepted offer on a property that has not yet closed.

003.298 Failure by an agent, when marketing an equitable interest in real property, to obtain a written agency disclosure addendum signed by the owner or owners of the real property acknowledging the disclosure of the intent to market the equitable interest by the agent or principal seeking to profit from the sale or assignment of the equitable interest.

Title 299
Chapter 5

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

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