

CHAPTER 5-003.18 - FAILURE TO REDUCE AN OFFER TO WRITING

VIOLATION	COMPLAINT	DATE OF ORDER	PENALTY
Title 299 NAC 5-003.18 by refusing to reduce an offer to writing because the verbal offer had been previously rejected.	95-026 - Robert R. Kennedy and Mary A. Kennedy vs. Arthur Hysell	October 24, 1995	Stipulation and Consent Order. License censured.
Section 76-2422 (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 76-2417 and the terms of compensation and shall specify whether an offer of subagency may be made to any other designated broker; Title 299 Chapter 5-003.18 Failure to reduce an offer to writing where a prospective purchaser requests such offer be submitted; and Neb. Rev. Stat. § 81-885.24 (29) Demonstrating negligence to act as a broker, specifically, Fox failed to obtain a signed Listing Agreement from the seller when listing the property; Fox failed to reduce the Polaks' offer to writing when the Polaks requested their offer be submitted; and Fox failed to contact the Polaks after advising them he would if an Offer was received from any other buyer.	2006-055 - Henry A. and Maxine M. Polak vs Michael Steven Fox	February 7, 2007	Stipulation and Consent Order. License censured; plus nine (9) hours of additional continuing education with three (3) hours in the area of license law, three (3) hours in the area of agency, and three (3) hours in the area of ethics to be completed by August 6, 2007.
Violated Neb. Rev. Stat. § 76-2418(1)(b) and (c) licensee representing a buyer, as a buyer's agent, agent shall be a limited agent with the following duties and obligations, (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 (ii) presenting all written offers to and from the client in a timely manner, in that she failed to exercise reasonable skill and care for the Warneke buyers with regard to the transaction in question and failed to promote the interests of the Warneke buyers, by failing to present the Warnkes' \$33,500.00 offer of December 10, 2008 to the Listing Agent for the Seller; 76-2421(1) At the earliest practicable opportunity during or following the first substantial contact with a buyer, who has not entered into a written agreement for brokerage services with a designated	2009-056 Commission vs. Brenda L. Whalen	February 17, 2011	Stipulation and Consent Order. License suspended for one (1) year, with the first sixty (60) days served on suspension and the ten (10) month remainder stayed and served on probation; plus an additional nine (9) hours of continuing education in the areas of agency law, ethics and contracts to be completed by June 17, 2011. Whalen shall pay a civil fine in the amount of \$1,000.00 on or before March 18, 2011.

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<p>broker, the licensee who is offering brokerage services to that person 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, in that she offered brokerage services, as an affiliated licensee, to the Warneke buyers and failed, at the earliest practicable opportunity following the first substantial contact with the Warneke buyers, to provide them with a written copy of the current brokerage disclosure pamphlet approved by the Commission and failed to disclose in writing to the Warneke buyers the type of brokerage relationship Whalen was offering to the Warneke buyers; 81-885.24(16) Unfair trade practice for real estate licensee to “violate any provision of sections 76-2401 to 76-2430”; 81-885.24(26) Unfair trade practice for a licensee to violate any rule or regulation adopted and promulgated by the commission in the interest of the public and consistent with the Nebraska’s Real Estate License Act; 81-885.24(29) Failure to reduce an offer to writing where a prospective purchaser requests such offer to be submitted when the licensee is the prospective purchaser’s limited buyer’s agent, in that she failed to reduce to writing the various offers, alleged more particularly above, to purchase the subject property, submitted to her by the Warnkes and by Glissman in November and December of 2008; 299 NAC 5.003.18 Actions demonstrating negligence, incompetency, or unworthiness.</p>	<p>2009-056 Commission vs. Brenda L. Whalen</p>		
<p>Violated title 299 Chapter 5 Section 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, Petersen failed to reduce a buyer’s offers to writing while acting as a limited Seller’s Agent for the property; Violated Neb. Rev. Stat. § 81-885.24(26) Violating any rule or regulation adopted by the Commission in the interest of the public and consistent with the Nebraska Real Estate License Act, Petersen violated</p>	<p>2012-023 – Commission vs. Robin A. Petersen</p>	<p>October 2, 2012</p>	<p>Stipulation and Consent Order Entered October 2, 2012. License censured; Plus a civil fine of \$500.00 to be paid by November 1, 2012; plus complete nine (9) hours of additional continuing education, three (3) hours each in the areas of “Agency”, “Contracts” and “License Law” by March 31, 2013.</p>

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<p>Title 299 Chapter 5 Section 003.18; Violated Neb. Rev. Stat. § 76-2421(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; Petersen failed to complete an agency disclosure with the buyers on first substantial contact; Violated Neb. Rev. Stat. § 81-885.24(29) Demonstrating negligence and unworthiness to act as a broker, associate broker, or salesperson; Petersen violated Title 299 Chapter 5 Section 003.18; Neb. Rev. Stat. § 76-2421(1) (a) and (b); and 81-885.24(26)</p>	<p>2012-023 – Commission vs. Robin A. Petersen</p>		
<p>Violated Neb. Rev. Stat. § 76-2422(4) Before engaging in any of the activities enumerated in subdivision (2) of section 81-885.01, a designated broker intending to act as a dual agent shall obtain the written consent of the seller and buyer or landlord and tenant permitting the designated broker to serve as a dual agent. The consent shall include a licensee's duties and responsibilities specified in section 76-2419. The requirements of this subsection are met as to a seller or landlord if the written agreement entered into with the seller or landlord complies with this subsection. The requirements of this subsection are met as to a buyer or tenant if a consent or buyer's or tenant's agency agreement is signed by a potential buyer or tenant which complies with this subsection. The consent of the buyer or tenant does not need to refer to a specific property and may refer generally to all properties for which the buyer's or tenant's agent may also be acting as a seller's or landlord's agent and would be a dual agent. If a licensee is acting as a dual agent with regard to a specific property, the seller and buyer or landlord and tenant shall</p>	<p>2014-013 – Commission vs. Jane Hartman Heimboch</p>	<p>June 25, 2014</p>	<p>Stipulation and Consent Order entered June 25, 2014. License revoked.</p>

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<p>confirm in writing the dual-agency status and the party or parties responsible for paying any compensation prior to or at the time a contract to purchase a property or a lease or letter of intent to lease is entered into for the specific property, by failing to disclose in writing brokerage services, to have clients sign an Agency Disclosure and to note the refusal of an individual to sign an Agency Disclosure; Neb. Rev. Stat. § 81-885.01(2) Broker means any person who, for any form of compensation or consideration or with the intent or expectation of receiving the same from another, negotiates or attempts to negotiate the listing, sale, purchase, exchange, rent, lease, or option for any real estate or improvements thereon, or assists in procuring prospects or holds himself or herself out as a referral agent for the purpose of securing prospects for the listing, sale, purchase, exchange, renting, leasing, or optioning of any real estate or collects rents or attempts to collect rents, gives a broker's price opinion or comparative market analysis, or holds himself or herself out as engaged in any of the foregoing. Broker also includes any person: (a) Employed, by or on behalf of the owner or owners of lots or other parcels of real estate, for any form of compensation or consideration to sell such real estate or any part thereof in lots or parcels or make other disposition thereof; (b) who auctions, offers, attempts, or agrees to auction real estate; or (c) who buys or offers to buy or sell or otherwise deals in options to buy real estate, by failing to disclose in writing brokerage services, to have clients sign an Agency Disclosure and to note the refusal of an individual to sign an Agency Disclosure; Neb. Rev. stat. § 81-885.24(16) Violating any provision of sections 76-2401 to 76-2430; by failing to disclose in writing brokerage services, to have clients sign an Agency Disclosure and to note the refusal of an individual to sign an Agency Disclosure; Neb. Rev. State § 76-2421(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</p>	<p>2014-013 – Commission vs. Jane Hartman Heimboch</p>		

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<p>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, by failing to disclose in writing brokerage services, to have clients sign an Agency Disclosure and to note that an individual refused to sign an Agency Disclosure; Neb. Rev. State § 81-885.24(3) Failing to account for and remit any money coming into his or her possession belonging to others by failing to timely deposit or remit earnest monies, failed to keep separate earnest money from clients and to account for money belonging to others with respect to irrigation payments or utility charges; Neb. Rev. Stat. § 81-885.24(4) Commingling the money or other property of his or her principals with his or her own, by failing to timely deposit or remit earnest monies, also failed to keep separate earnest money from clients and to account for money belonging to others with respect to irrigation payments or utility charges; Neb. Rev. Stat. § 81-885.24(24) Failing by an associate broker or salesperson to place, as soon after receipt as practicable, in the custody of his or her employing broker any deposit money or other money or funds entrusted to him or her by any person dealing with him or her as the representative of his or her licensed broker, by failing to timely deposit or remit earnest monies, to keep separate earnest money from clients and to account for money belonging to others with respect to irrigation payments or utility charges; Neb. Rev. Stat. § 81-885.24(26) Violating any rule or regulation adopted and promulgated by the commission in the interest of the public and consistent with the Nebraska Real Estate License Act; by failing to timely deposit or remit earnest monies, to keep separate earnest money from clients and to account for money belonging to others with respect to irrigation payments or utility charges; Neb. Rev. Stat. § 81-885.24(29) Demonstrating negligence, incompetency, or unworthiness to act as a broker, associate broker, or salesperson, whether of the same or of a different character as otherwise specified in this section, by failing to</p>	<p>2014-013 – Commission vs. Jane Hartman Heimboch</p>		

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<p>timely deposit or remit earnest monies, to keep separate earnest money from clients, to account for money belonging to others with respect to irrigation payments or utility charges, to deliver a written copy of offers and/or purchase agreements and to protect interests of her clients. Heimboach also failed to truthfully and timely inform her clients of the status of transactions concerning their properties and to competently complete paperwork; 299 NAC 3-005 Earnest money deposits and other deposits relating to the sale of real estate shall be kept in a separately identified trust account and all other trust funds may be deposited in another separately identified trust account, by failing to timely deposit or remit earnest monies, to keep separate and/or commingling earnest money received from clients, to account for money belonging to others with respect to irrigation payments or utility charges, to deliver a written copy of offers and/or purchase agreements and failed to protect the interests of her clients; 299 NAC 5-003.14 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, by failing to timely deposit or remit earnest monies, to keep separate earnest money from clients and to account for money belonging to others with respect to irrigation payments or utility charges; 299 NAC 5-003.15 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, by failing to timely deposit or remit earnest monies, to keep separate earnest money from clients, and to account for money belonging to others with respect to irrigation payments or utility charges; Neb. Rev. Stat. § 81-885.24(20) Failing to deliver within a reasonable time a completed and dated copy of any purchase agreement or offer to buy or sell real estate to the purchaser and to the seller, by failing to deliver a written copy of the offer and/ or purchase agreements; 299 NAC 5-003.18 Failure to reduce an offer to writing where a prospective purchaser requests</p>	<p>2014-013 – Commission vs. Jane Hartman Heimboach</p>		

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<p>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, by failing to deliver a written copy of offers and/or purchase agreements; Neb. Rev. Stat. § 81-885.24(22) Making any substantial misrepresentations, by advising clients of offers without the necessary documents and also disclosing personal information about possible clients.</p>	<p>2014-013 – Commission vs. Jane Hartman Heimboch</p>		
<p>Stracke violated Neb. Rev. Stat. § 299-5-003.18 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, she failed to prepare a written purchase agreement in a timely manner when a purchase price had been agreed upon; violated Neb. Rev. Stat. § 81-885.24(26) Violating any rule or regulation adopted and promulgated by the commission in the interest of the public and consistent with the Nebraska Real Estate License Act, when she failed to prepare a written purchase agreement in a timely manner when a purchase price had been agreed upon; violated Neb. Rev. Stat. § 81-885.24(29) Demonstrating negligence, incompetency, or unworthiness to act as a broker, associate broker, or salesperson, whether of the same or of a different character as otherwise specified in this section, when she failed to prepare a written purchase agreement in a timely manner when a purchase price had been agreed upon.</p>	<p>2020-024 – Commission vs. Stacey J. Stracke</p>	<p>September 18, 2020</p>	<p>Stipulation and Consent Order entered September 18, 2020. License was placed on probation for a period of eighteen (18) months. Probation begins October 17, 2020 and continues thru April 17, 2022; plus take an additional six (6) hours of education, with three (3) hours each in the areas of Agency and Contracts due March 18, 2021; plus pay a civil fine of \$2,000.00 due October 17, 2020.</p>