1996 Renewal Time Approaches

In September, all persons holding a Real Estate Broker or Salesperson license will receive a renewal notice along with a partially completed renewal form for use in renewing their license for 1996. In order to receive this mailing without delay, please refer to the address on the back of your issue of this "Commission Comment". This is the address which will be used to mail your renewal materials. If this is incorrect or will be changing before early September, please submit your change of address, in writing, to the Real Estate Commission as soon as possible. The Post Office must also have the names of all persons receiving mail at that address.

Renewal Application materials for salespersons and brokers, along with the proper fees and, if needed, proof of continuing education and errors and omissions insurance, must be received in the Office of the Nebraska Real Estate Commission, 1200 'N' Street, Suite 402, P.O. Box 94667, Lincoln, NE 68509, by no later than 5:00 P.M. (CST) Thursday, November 30, 1995.

NO RENEWALS WILL BE ACCEPTED UNLESS THEY ARE ON THE COMPUTER PREPARED FORMS WHICH HAVE BEEN SUPPLIED, AND ARE FILLED OUT COMPLETELY AND SIGNED BY THE LICENSEE.

Any salesperson or broker who fails to file an application for the renewal of a license and pay the renewal fee by the November 30 date, as provided in the Nebraska Real Estate License Act, may file a late renewal application with all required information included and must pay, in addition to the renewal fee, the sum of twenty-five dollars for each month, or fraction thereof, beginning with the first day of December; Provided that such late application is filed before July 1 of the ensuing year, i.e. by 5:00 P.M. (CDT) June 30, 1996.

Every individual licensee is responsible for the renewal of his or her own license. However, some firms have a practice of holding renewals until they have collected all the renewals of the licensees with the firm and then submitting them to the Commission all together. There are two general approaches to this "bundling" practice. One, all renewals for the firm are collected, with individual checks attached to each renewal, and then all renewals for the firm are sent, under one cover, to our Office. Two, all renewals for the firm are collected with the firm writing one check to cover the total amount needed to renew all licensees in the "bundle" and then they are sent, under one cover, to our Office. Both practices can cause situations to occur where late penalty fees can accrue, if the "bundled" renewals are not sent considerably early, to allow for the review and processing to take place prior to November 30.

In the first scenario, the licensee may have turned his/her renewal and check into the firm a month or more in advance. The "bundle" arrives at the Commission Office a day or two before the deadline. In processing, it is found that questions have not been answered; the form is unsigned; proof of continuing education or errors and omissions insurance is needed; and/or an individual licensee’s check is not correct. The individual licensee will owe a late penalty fee if the correction cannot be made prior to November 30 at 5:00 P.M.

In the second scenario, the licensee had turned his/her check and form into the firm a month or more in advance and the "bundle" arrives at our Office on or close to the deadline. Again, the review process finds that an individual applica-

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Tentative Commission Meeting Schedule

September 19-20 Omaha
October 24-25 TBA
December 6-7 TBA
From the DIRECTOR'S DESK

LICENSE MANUAL MAILED

All current licensees should have received the new Nebraska License Manual sometime during the first or second week of August. It was mailed to each licensee at the mailing address on record with our office. The Manual will also be provided to each new licensee at the same time as their license is issued. Second or subsequent copies for licensees and copies for non-licensees are available for $10.00 each. Anyone interested in purchasing a copy should send a $10.00 check (Please do not send cash!) made payable to the Nebraska Real Estate Commission with a written request for the Nebraska License Manual.

All licensees and those purchasing the Manual, will be sent updates, when applicable, so that your Manual can be kept current as the Statutes, Rules and Regulations, etc. are changed.

The Manual should be a useful reference tool and, after becoming familiar with it's contents, become a quick and easy reference to use in answering questions.

RENEWAL TIME APPROACHES

Please take time to review the article dealing with the renewal of your license for 1996. We will be mailing the renewal documents in September. When you receive them, please review them carefully and make sure all information requested is provided & correct, the amount of your check is correct and that you meet the deadlines set out.

I would encourage you to renew early so that, if by chance something is wrong with the renewal it can be returned to you and you will be able to return it to the Commission without having to pay a late penalty fee or worse, be without a license on January 1, 1996.

Uncertainty About Unrepresented

There seems to be either some uncertainty or confusion with regard to providing the list of tasks to a customer. The Agency Relationships Statute requires, in Sections 76-2421(3) & (4), that a licensee acting as an agent or subagent of a client give an unrepresented customer, i.e. person not represented by a

(Continued on page 3)
licensee, a list of tasks the agent intends to perform with the customer. These sections also require a statement be given to the unrepresented customer indicating who the licensee represents, i.e. their client. Guidelines from the Commission indicated that brokers may place the tasks in the "Brokerage Relationships" pamphlet. If you did not, then these must be given to an unrepresented customer as a separate written document.

**Resident and Non-Resident Fees Equalized**

For many years, the original and renewal license fees for non-resident licensees have been double that of resident licensees. With this renewal cycle the fees will become equal. Those non-resident licensees who renew for 1996 will be charged the same renewal fee as resident licensees, i.e. $75.00 for salespersons and $100.00 for brokers. For any original license issued to a non-resident on or after January 1, 1996, the license fee will also be $75.00 for salespersons and $100.00 for brokers. These new fees are effective with 1996 licenses. Any licenses issued to non-residents between now and December 31, 1995 will be $150.00 for salespersons and $200.00 for brokers.

Les Tyrrell, Director Nebraska Real Estate Commission

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**Offering Brokerage Services Under The Limited Agency Law**

Licensees can spend a significant amount of time trying to recruit new clients. Whether you are trying to obtain a listing or you want to represent a buyer, you are offering a brokerage service. Under the definitions of broker, associate broker, and salesperson in the Real Estate License Act, your recruitment activities require a license and the new Limited Agency Law applies to your activities.

The practical question is what disclosures must you make under the Limited Agency Law when you are offering brokerage services. Section 76-2421 requires, at the earliest practicable opportunity during or following the first substantial contact with a seller or buyer, that you 1) provide the person a copy of the Commission disclosure pamphlet and 2) disclose in writing the brokerage relationship you are offering or the party you are representing. When you are trying to sell your services, in most instances, you are not representing any party at that time. Therefore, you only need provide them with the brochure and explain the services you are offering them.

You do not need to tell a seller that you are a buyer’s agent, in most cases. This interpretation is a change from the interpretation in the Summer 1995 Commission Comment which said that a licensee offering to perform a CMA for a seller, for example, must identify themselves as a buyer’s agent.

This new interpretation does not apply to the licensee who already has a client with an interest in the particular property which is not listed. For example, if you have a buyer agency relationship with a buyer interested in an identified home, and you approach that seller in an attempt to also get a listing, you would have to disclose the buyer agency relationship, propose to list the property as a dual agent, and obtain all...
1996 Group Errors & Omissions Insurance

Insurance Policy Update

After a competitive bid process, the Real Estate Commission has again selected the Williams Underwriting Group, Inc. as the program administrator for the group professional liability policy underwritten by St. Paul Fire and Marine Insurance Company.

While there are many consistencies with the previous group policy, effective January 1, 1996, the group program will include the following improvements:

1. Annual premium - $71.00/license ($4.00 savings/license)

2. Deletion of 25% limitation on appraisal activities. If you are a licensed/certified appraiser and also hold a real estate license, the policy will cover your appraisal activities per the terms and conditions of the policy.

Other Mandatory Program State Conformity Endorsement

For an additional fee an “Other Mandatory Program State Conformity Endorsement” may be purchased, individually. Such an endorsement allows that any part of this policy applicable to wrongful acts committed in any other mandatory program state that conflicts with that mandatory program state’s law is automatically changed to conform to that state’s law.

Any Nebraska resident licensee who has paid the additional premium charged for this endorsement conducting their duties in the other mandatory program state is automatically granted insurance coverage equivalent to that provided by the other mandatory program state’s real estate licensee professional liability insurance.

Some states with mandatory insurance programs consider the Nebraska group policy sufficient to meet their requirements even without this endorsement. Therefore, before you apply for this endorsement, you should contact the state group plan verification is made directly from Williams Underwriting Group, Inc. to the Commission. When enrolled in an equivalent insurance plan, it is the responsibility of the individual licensee to provide verification of such coverage to the Commission as discussed above, that you can correctly identify on your renewal form the option you have exercised as either the state group plan or an equivalent plan. Please be aware that for 1996 the only source and insurance carrier of the commission-offered state group errors and omissions insurance policy is through Williams Underwriting Group, Inc. with St. Paul Fire and Marine as the insurance carrier.

Optional Supplemental Coverage Available

As in the past, St. Paul will offer supplemental (excess) coverage to Firms in the following amounts:

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<th>Deductible</th>
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<td>$250,000/$750,000</td>
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</tr>
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<td>$500,000/$1,500,000</td>
<td>$2,500</td>
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<tr>
<td>$1,000,000/$3,000,000</td>
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</tr>
</tbody>
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The Supplemental coverage is excess over the $100,000/$300,000 mandated primary coverage. The deductible only applies if the primary coverage does not respond to the claim presented and is not otherwise excluded under the Supplemental coverage. This coverage is subject to a separate application and underwriting requirements of St. Paul Fire and Marine Insurance Company.

Meeting The License Requirements

Nebraska Statute allows that errors and omissions insurance may be obtained through other qualified Insurance Carriers providing equivalent policies. Complete information regarding this option is available from the Real Estate Commission office and is made a part of the annual real estate license renewal mailing. Verification of current errors and omissions insurance coverage must be kept on file at the Real Estate Commission office. When enrolled in the
Radon: An Introduction for Agents and Brokers
M.Sindy Felin, Environmental Law Institute*
and
Susie Shimek, United States Environmental Protection Agency**

(Editor's Note: This article was written by M.Sindy Felin of the Environmental Law Institute and Susie Shimek of the United States Environmental Protection Agency. The Environmental Law Institute is an international, not-for-profit, research, training and education organization in Washington, D.C. For information about the Institute, please call 202-328-5150. For more information about the Environmental Protection Agency's Radon Program, call 1-800-SOS-RADON.)

Home buyers are often concerned about the possibility of finding elevated levels of radon in homes they are interested in purchasing. The following information will assist brokers and agents in helping home buyers and sellers understand, and deal rationally, with radon.

What is radon?

Radon is a colorless and odorless radioactive gas that is emitted from soil by the decay of uranium and radium, both naturally and commonly occurring elements in the earth. Radon is found in all parts of the country and enters houses and buildings through the ground. Under certain conditions, it can build up to high levels that may be harmful to breathe.

How is radon harmful?

Radon can cause lung cancer. When inhaled, it releases a dose of energy that can damage sensitive lung tissue by disrupting cellular DNA. Non-smokers exposed to radon can have their risk of contracting lung cancer increase significantly, while smokers have a greatly increased risk of lung cancer if exposed to radon. In all, it is estimated that approximately 15,000 lung cancer deaths in the United States each year could be attributable to radon exposure.

How are risks from radon exposure measured?

In the best of all possible worlds, we would be able to measure exposure to radon in homes and correlate it to lung cancer risk of residents. Unfortunately, precise measurements of long term personal exposure to radon are not yet scientifically feasible or practical for a number of reasons. First, people move often and spend different amounts of time in their homes. Second, the amount of radon in a home can fluctuate. It is therefore not yet possible to estimate radon risk from studies of home owners.

Currently, the estimated health risk that radon poses for the general population is based on studies of miners exposed to radon. Scientists have carefully analyzed this miner data to account for differences between mines and homes so that estimations of risk take these differences into account. Based on the overall results of these analyses, public health and medical organizations such as the Centers for Disease Control and Prevention (CDC), the American Medical Association (AMA), and the Environmental Protection Agency (EPA) recommend that every home be tested for radon. EPA has taken the lead in raising public awareness concerning radon by establishing a voluntary program to warn people about its hazards.

How can rad levels be measured in homes?

The processes of detecting and mitigating indoor radon is very straightforward. Testing the home consists of exposing a testing kit to the air for a specified length of time and then having a certified laboratory analyze the results. Radon levels are measured in picocuries per liter of air, or pCi/L. The level at which the EPA recommends mitigation of homes is 4 pCi/L. Methods of reducing radon levels include sealing off common radon entry points such as cracks in basement floors, floor drains, sump pumps, and hollow-block walls, reversing the direction of the flow of radon by pressurizing the home, and ventilating the soil surrounding the home to prevent the entry of radon.

Because radon is widespread and high levels are relatively easy to correct, EPA and many other organizations have implemented an extensive educational campaign to bring awareness of the issue to the public and encourage all homes to be tested and, if necessary, fixed. Another route of public awareness is legislation. Numerous states have passed radon-related laws. Many are meant to ensure proper certification of professionals who test and correct for radon. Others stipulate when the existence of radon must be made known to home buyers involved in real estate transactions.

How should radon be addressed in home purchase and sales transactions?

The home purchase transaction is not the ideal time to test for radon, but many people choose to test during it. Although it is easier to test beforehand, radon testing during transactions is relatively hassle free, and is getting more and more common. With the help of many stakeholder groups such as the National Association of Realtors, EPA has written and published a special booklet designed to help deal with radon in real estate transactions. It is called the Home Buyers and Sellers' Guide to Radon, and is available from many federal, state and local agencies. You can also get information about how to obtain this booklet by calling the national radon hotline at 1-800-SOS-RADON.

What should agents and brokers know about radon?

To properly advise their customers and clients, it is important for agents and brokers to know the "radon basics" outlined in this article and the Home Buyers and Sellers' Guide. They should also know where to find the radon experts in their community. These experts can be

(Continued on page 6)
Let's Talk Trust Accounts

Reminder to Brokers...

Brokers are reminded that a copy of their agency policy must be on file in the office. The Trust Account Examiner will be requesting to see a copy of it at the time of the trust account examination.

Brokers are also reminded that since July 1, 1995, all written agreements for brokerage services with sellers and landlords must be in writing. Agreements for brokerage services with buyers and tenants may be in writing, but are not required to be. Whenever a written agreement is required, i.e. sellers and landlords agreements or, in the case of buyer or tenant agency used, a copy of the written agreement must be maintained by the broker.

In Neb. Rev. Stat. 76-2422, what is required to be in each agreement is set forth. (See Nebraska License Manual, "Agency Relates" section, pages AR-8 & 9.) The trust account examiners will be reviewing files to assure that written agreements, where required, are on file and being maintained in accordance with statute and rule and regulation.

“Estimated” buyer and seller closing cost statements must be signed by the respective buyer or seller. A copy of the estimated buyer closing cost statement must be maintained by the selling broker in the transaction file. A copy of the estimated seller closing cost statement must be maintained by the listing broker in the transaction file. Refer to the newly distributed Nebraska Real Estate License Manual, Title 299 Section, pages 299/Ch.5-2 & 299/Ch.5-3, Chapter 5 Section 003.10 and 003.11.

In residential property management situations, in order for the property owner to hold the security deposits, all parties having an interest in the funds must so agree in writing. This written authorization may be covered in the management agreement and lease agreement or by a separate addendum to each agreement. In the absence of any written authorization, security deposits, in residential situations, are always held by the broker in the trust account. Refer to the “Real Estate Trust Account Manual,” p.35.

In commercial property management situations only, the security deposit may be used to pay the operating expenses of the property owner, as long as the property owner and tenant do not stipulate that the security deposit is to be held in the broker’s trust account. Refer to the “Real Estate Trust Account Manual”, page 35.

In residential property management situations only, the security deposit, when maintained by the broker, cannot be used to pay the operating expenses of the property owner, unless, the property owner and tenant have given written authorization to the contrary. The security deposit, when held by the broker, should be separately identified in the bookkeeping system, to insure that the security deposit, or any part thereof, is not used to pay the expenses of the property owner. Refer to the “Real Estate Trust Account Manual,” page 35 and page 42.

Correction: In the Summer 1995 edition of the “Commission Comment” in the “Let’s Talk Trust Accounts” section, Item 8 under Transaction Files states Buyer “Final” Closing Statement (listing company only). Item 8 should read Buyer “Final” Closing Statement (listing company and selling company).

(Continued from page 5)

located in local health departments, state health or environmental organizations, not-for-profit organizations such as the American Lung Association, and businesses that specialize in providing radon testing or mitigation services and participate in the EPA’s radon contractor proficiency or radon measurement proficiency programs. A more complete list of these radon experts can be obtained from your state radon office or EPA’s Regional offices. Additional valuable information is available from state radon hot lines and the national radon hotline.

The bottom line is that radon may be a cause for concern, but is never a reason to panic. It is a “fixable” problem that, in almost all cases, will not threaten or slow a home sale.

*Ms. Sindy Felin is a research associate at the Environmental Law Institute, International, not-for-profit, research, training and education organization in Washington, D.C. The Institute participates with a number of other not-for-profit organizations and EPA as a radon cooperative partner to help encourage radon awareness. Ms. Felin received her B.A. degree from Wesleyan University. At the Environmental Law Institute, she is actively involved in a number of projects, including the examination and analysis of indoor air legislation and regulation.

**Suze Shimek is a program analyst at the United States Environmental Protection Agency in Washington, D.C. At EPA she specializes in indoor air quality communication and outreach, with an emphasis on radon issues. She has extensive experience working with professional groups such as real estate agents and brokers, public health officials and school administrators, and has organized seminars and workshops and lectured frequently concerning radon and the indoor environment.

The views expressed in this article are those of the authors, and may not necessarily represent the views of the Environmental Law Institute or the Environmental Protection Agency.
required consents. It should be noted that if a licensee has a buyer agency relationship and that buyer becomes interested in a particular property that is not listed, the licensee could approach that seller disclosing they are a buyer’s agent and complete the sale working with the seller as an unrepresented customer.

The written acknowledgment on the Commission’s disclosure form does not have a preprinted wording for a person “offering” a brokerage service. The Commission will be rewriting the disclosure form. Until new forms are available, you can cross through the printed wording, write in that you are offering the service, and have the seller or buyer initial the change. For example, if you are offering to list a property the form could be changed as follows: “_____ has informed me that they are providing offering to provide brokerage services to me as a (check the box for “Client, as my agent”). AND is acting offering to act as a limited: (check the box for ‘Seller’s Agent’).”

Should this contact, where services are being offered, result in a listing contract would another disclosure document need to be filled out? Since the listing contract clearly identifies the resulting brokerage relationship and indicates the duties to be provided to the seller, another disclosure document would not be necessary. The “Brokerage Relationships” acknowledgment form coupled with the listing contract establishing and acknowledging the agency relationship would be adequate to document the agency relationship disclosure process.

Disciplinary Actions Taken by The Real Estate Commission
(Does Not Include Cases on Appeal)

Real Estate Commission vs. Lynne Scott Prout, Broker. Stipulation and Consent Order of Censure. (Violated Section 81-885.24(29) by demonstrating negligence in applying a seal to plans without the engineer’s knowledge.) May 30, 1995

Real Estate Commission vs. Harold D. Goings, Broker. Stipulation and Consent Order of Censure with stipulation to place license on inactive status as of July 3, 1995 until rights are restored through pardon, at which time the license will be reinstated so long as pardon is granted within three years. License will be revoked on July 3, 1998 if such evidence is not provided. (Violated Section 81-885.12(3) and (4) by making a false statement of material fact as an applicant for a real estate broker’s license, Section 81-885.24(22) by making any substantial misrepresentation when applying for Respondent’s real estate broker’s license, and Section 81-885.24(28) by being convicted of, and not reporting on his application, a felony.) July 3, 1995

Arthur and Berdene Wagner vs. Terry Geistlinger, salesperson. License suspended 30 days. (Violated 81-885.24(29) by failing to transmit Complainant’s offer in a timely manner and by failing to return earnest deposit in a timely manner, thereby demonstrating negligence in acting as a salesperson.) April 5, 1994. Decision appealed. District Court dismissed appeal. August 2, 1995

License Required To Prospect For Listings By Telephone

The Commission has learned of efforts by out-of-state companies to contract with Nebraska licensees to prospect for listings by telephoning property owners on behalf of the Nebraska licensee to determine the owner’s interest in selling their home. Telephone contact with property owners to identify potential listings requires a Nebraska real estate license. The definition of those who must have a Nebraska license includes a person who “for a fee, a commission, or any other valuable consideration ... assists in procuring prospects or holds himself or herself out as a referral agent for the purpose of securing prospects for the listing ... of any real estate.” Before entering into a contract to pay for such services, licensees should assure themselves that the people making the telephone calls have appropriate Nebraska licenses.

If you are contacted by anyone who offers, for a fee or commission, to prospect for you by telephone, the Commission would appreciate being notified of their name, address, and telephone number.
Future Real Estate Examinations

The following is the schedule of the dates on which the real estate licensing examinations are administered in Nebraska, and the deadline dates for filing of broker and salesperson original applications, retake applications, proof of education and examination cancellation requests for the applicable Examination Date.

Examinations for both salesperson and broker applicants are administered eleven times a year as set out on this schedule. The examination is administered in Lincoln, North Platte and Omaha on each Examination Date and in Scottsbluff on only the January, May and September Examination Dates. All applicants for a particular examination will receive notice of the time and place of the examination approximately one week prior to that Examination Date.

Applications, proof of education, and cancellation requests are due on the date of the deadline!

The Examination Date and the deadlines are subject to change by order of the Nebraska Real Estate Commission. Affected applicants will be notified of any changes in a timely manner.

Applications and other pertinent information regarding the real estate licensing and examination process may be obtained from the Nebraska Real Estate Commission, P.O. Box 94667, Lincoln NE 68509-4667. Telephone Number: (402) 471-2004. TDD users may use the Nebraska Relay System at (800) 833-7352.

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Real Estate Examination Schedule 1995

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Nebraska Real Estate Commission
PO Box 94667
Lincoln, NE 68509-4667

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