There are two pieces of legislation pending before the Legislature that affect statutes administered by the Commission.

**LB 918**

The first bill, which was drafted by the Commission and introduced by Senator Jon Bruning, is LB 918. LB 918 proposes to amend the Nebraska Time Share Act by clarifying provisions of the Act which have caused confusion over the years. The bill proposes to do the following:

Section 76-1702 of the Nebraska Time-Share Act would be amended to provide that the definition of “offering” means any offer to sell, solicitation, inducement, or advertisement by “any means of communication,” and not just by radio, television, newspaper, magazine, or mail, and to repeal provisions which provide that any offering of a time-share interval which is not located in this state shall not be an offering if the offer states that the time-share program is in compliance with the law of the jurisdiction in which the time-share interval is located. The issue of whether an offering requires registration is covered in new language proposed in Section 76-1738.

Sections 76-1713 and 76-1716 of the Nebraska Time-Share Act would be amended to provide that a contract for purchase of a time-share interval may be canceled within three “business” days, rather than three calendar days, after receipt of the public-offering statement by the purchaser.

Section 76-1715 of the Nebraska Time-Share Act requires that a deposit made in connection with the purchase or reservation of a time-share interval from a developer shall be placed in escrow. LB 918 would amend this section to allow that the escrow account may be held in another state where the time-share project is located if the account is designated solely for that purpose and is insured; if the escrow agent is subject to the personal jurisdiction and venue of the district court in Nebraska located in the county of the purchaser’s residence or principal office; and if the Real Estate Commission is authorized to examine the account. It also provides that in lieu of placing deposits in an escrow account, the Real Estate Commission may accept from the developer a $50,000 surety bond to cover any default by the developer.

Section 76-1718 of the Nebraska Time-Share Act would be amended to provide that a developer is not required to prepare and distribute a public-offering statement if the developer has registered and there has been issued a public offering statement under the “act of the state where the time-share project is located” and not just under any state act.

Under LB 918, section 76-1727 of the Nebraska Time-Share Act would provide that a developer shall not offer or dispose of a time-share interval if the developer has not designated a duly licensed Nebraska real estate broker residing in this state who accepts responsibility for the developer’s actions in this state.

Under LB 918, section 76-1732 of the Nebraska Time-Share Act would provide that an exchange agent shall file a statement with the Real Estate Commission containing exchange-of-occupancy rights information also required to be disclosed in public-offering statements, unless such statement is filed by the developer.

Section 76-1734 of the Nebraska Time-Share Act would be amended to provide that a developer’s application for registration may contain a current audited consolidated financial statement of the parent company in lieu of the required certified, audited financial statement of the developer, which includes the financial condition of the developer and is accompanied by a statement from the developer’s parent organization that guarantees the developer’s performance on any obligation under the act, and to provide requirements for a registration certificate holder to furnish the State Real Estate Commission with an annual report of purchases and reservations made to any

(Continued to page 4)
FROM THE DIRECTOR'S DESK

Loan Originator Inquiry and Response

In December, I received the following information and question:

Let

We have come across a mortgage lender in Utah doing business in Nebraska via the Internet. They are currently soliciting agents in other states to become employees and then the agent can receive referral fees and origination fees for sending business their way. Could you visit the site and take a look at what they are doing and let us know if there could be any violation of Nebraska license law if an agent did this? The site address is [loan originator's website address]

Let me know.

Several licensees contacted our office regarding this program, also.

While responding to those who had inquired, a letter was also sent to the Chief Executive Officer of the Program. Following is the letter sent to the Chief Executive Officer:

Dear [Chief Executive Officer]:

In response to an inquiry, I reviewed the information contained on the [loan originator's] website as of December 8, 1999. Subsequently, I received your mailing regarding [loan originator] and have reviewed that as well. In answer to your invitation to comment, this letter describes how Nebraska real estate licensees will be affected should they decide to contract with [loan originators] as a loan originator. I would appreciate your cooperation in passing this information along to any Nebraska licensees who may contract with [loan originator].

Neb. Rev. Stat. § 81.885.24 (b) provides that it is a violation for a licensee to receive an undisclosed commission, rebate, or direct profit on a transaction, the licensee should disclose the interest and the profit in writing to the principals in the transaction. 299 NAC 5-003.05 provides the disclosure must be in writing and signed by the principal. The Rule also sets forth the timing requirements for the disclosure. The licensee receiving any portion of the origination fee should make the disclosure required.

There is also a concern regarding the “Borrowers Referral Program” which appears as Number 3 on the “Top Ten Reasons” page of the [loan originator’s] website. This could possibly violate Neb. Rev. Stat. § 81.885.24 (18). This section prohibits the licensee from paying compensation to an unlicensed person for performing the services of a broker, an associate broker, or a salesperson, i.e., referring a prospect. Thus, if the licensee is compensating the previous borrower for referrals and the referred person lists, buys, exchanges, rents, leases, or options real property as a result of the referral, there may be a violation of statute. It is unclear whether it is a violation if a third party, i.e., [loan originator], is doing the compensating to the previous borrower on behalf of the licensee. An argument could be made that a potential violation has occurred if the third party is acting an agent of the licensee, the compensation benefits the licensee, and the licensee is benefiting from the referral compensation. However, strict reading of the statute limits the payments to those from the licensee, and may negate this argument.

There is also concern with a possible violation of our Agency Relationships statutes (Neb. Rev. Stat. § 76.2401 et seq.). These statutes require certain disclosures and admissions, as indicated in the following two paragraphs:

When a licensee is the agent for the seller, the licensee is required to promote the interests of the client with the utmost good faith, loyalty, and fidelity. If the agent for the seller is originating the loan and has access to the financial information of the buyer, the licensee is still required to promote the interests of the seller. Promoting the interests of the seller may conflict with closing the loan for the buyer. The licensee must insure that the proper disclosures are made to the principals in the transaction.

Neb. Rev. Stat. § 81.885.24 (8) may also be of concern. Appropriate legal counsel and the designated/employing broker should be consulted with regard to whether or not the receipt of a portion of the origination fee needs to be consented to by the broker in writing, and according to the time table set forth in 299 NAC 2-010.

The [loan originator’s] program is probably impacted by the Real Estate Settlement Procedures Act and banking regulations. Licensees should probably consult the Department of Housing and Urban Development and the Nebraska Department of Banking and Finance regarding these issues.

This letter should not be construed as a legal opinion. It is my opinion as Director of the Commission, based on the information described earlier. This opinion is not binding on the Nebraska Real Estate Commission.

Should you have any question, please feel free to contact our office.

Respectfully,

[Signature]

The Nebraska Real Estate Commission grants permission to reprint articles which appear in this newsletter on condition that recognition of their original publication in the Nebraska Commission Comment also appears with the article.

The Nebraska Real Estate Commission often solicits articles from outside experts or reprints articles with permission. While we feel that these articles may offer a broader perspective and will be of interest to the reader, it should be remembered that the views expressed are those of the author and not necessarily those of the Commission.
Real Estate Commission Website
www.nol.org/home/NREC

The Real Estate Commission recently launched its website at: www.nol.org/home/NREC. We went on-line the first part of March. Although we will continue to serve requests for information personally, eventually, we hope to make everything that has been available through our office available over the Internet as well. While some things are “work in progress”, look for the following information already available on our Site:

- The Real Estate License Manual
- The Real Estate Trust Account Manual
- License Application Materials & Forms
- Professional Corporation Information & Forms
- License Issuance Information & Forms
- Pre-License Education Information
- Continuing Education Information
- Certifications of Licensee History/Licensure Recognition Information
- License Transfer Materials & Forms
- Complaint Process Information & Forms
- Commission Meeting Materials & Notices
- Specialized Registrations Application Materials & Forms
- Additional Information & Forms
- Landlord/Tenant Act
- Service Satisfaction Survey

It is our goal to offer the renewal of real estate licenses for 2001 on-line. We will update you on this later in the year. Ultimately, with proper security in place, certain aspects of licensee files will also be accessible through the website.

We hope that you will review our website and tell us what you think. In this Information Age we believe it is important to make this material accessible in this convenient, efficient, and user-friendly manner.

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

1999-038 - Commission vs. Charles Eugene Grimes, salesperson. Stipulation and Consent Order. License censured; plus three (3) hours of additional continuing education in the area of contracts to be completed by June 6, 2000. (Violated Neb.Rev.Stat. § 81-885.24(19) by failing to include a fixed date of expiration in a Listing Agreement; Neb.Rev.Stat. § 81-885.24(29) by demonstrating negligence, incompetency or untruthfulness to act as a salesperson.

December 7, 1999

1999-035 - Commission vs. Charles E. Degaillez, broker. Stipulation and Consent Order. License suspended for two years, with said suspension stayed and served on probation, from December 14, 1999 through December 13, 2001; plus twelve (12) hours of additional continuing education to include three (3) hours in trust accounts, three (3) hours in agency, three (3) hours in license law, and three (3) hours in disclosures to be completed by December 13, 2000. (Violated Neb.Rev.Stat. § 81-885.24(19) by failing to include a date of expiration on the listing contract; § 81-885.24(26) by violating a rule or regulation adopted and promulgated by the Commission in the interest of the public and consistent with the Nebraska Real Estate License Act, specifically: Title 299, N.A.C. Ch. 3-002 by failing to maintain a bookkeeping system which accurately and clearly discloses full compliance with the laws relating to the maintaining of trust accounts; Ch. 5-003.10 by

(Continued to page 6)
Legislation in the Year 2000 . . . (Continued from page 1)

person in this state.
Section 76-1736 of the Nebraska Time-Share Act would provide that if a developer making an application for registration or amendment thereof fails to provide within 90 days any additional information required by the Real Estate Commission, the Commission may deny the application or amendment.

LB 918 would amend Section 76-1738 of the Nebraska Time-Share Act to provide that no registration with the Real Estate Commission shall be required in the case of any offering, other than through an individual or in this state, of a time-share interval for a time-share project situated outside this state, if the offer states that the time-share interval is in compliance with the law of the jurisdiction in which the time-share interval is located.

A new section in the Nebraska Time-Share Act would provide that a developer shall supervise, manage, and control all aspects of the offering of a time-share interval, including promotion, advertising, contracting, and closing.

This bill is on General File at the time of this writing.

LB 1341

The second bill, LB 1341 will, if passed and signed into law, broaden the list of financial institutions in which broker's real estate trust accounts can be placed. Currently, as you know, only banks can hold real estate trust accounts required under the License Act. LB 1341 would, in addition to banks, allow broker's real estate trust accounts to also be maintained in a savings bank, a building and loan association, a savings and loan association or credit unions. The trust account, no matter in which institution it was maintained, would still need to be in a separate, insured non-interest bearing checking account.

There is a Committee amendment pending, at the time of writing this article which proposes to delete credit unions.

LB 1341 was introduced by Senator David Landis.

Copies of both bills are available through the Clerk of the Legislature's Office by calling (402)471-2877 (24-hour request line) or on the web at www.unicam.state.ne.us/bills.htm.

Final disposition of these two bills will be reported in the next "Commission Comment". If passed and signed into law neither of these bills would be in effect until mid-July. ■

Security Issues at the Examination Sites

Technological Devices

Recently, an examination site coordinator requested that an examination candidate exchange the calculator he had brought with him for one supplied by the examination site coordinator. It is important to note that this applicant does not appear to have attempted to do anything wrong. But the calculator he brought with him was unfamiliar to the site coordinator and, therefore, a substitution was made. The exchange was polite, expedient, and the candidate suffered little delay in taking the examination. However, this event was unexpected and a little disquieting to someone already in a potentially stressful situation.

The Candidate Information Handbook developed by Applied Measurement Professionals (AMP), our examination service, describes permissible calculators as:

"Only silent, handheld, solar-or battery-operated calculators, without paper tape printing capabilities or alphabetic keypads, may be used. Calculator malfunction during a test does not constitute grounds for challenging test scores or requesting additional testing time."

However, in this age of electronics where everything is smaller, multitask capable, and changes rapidly, familiarity sometimes suffers and examination administrators must be extremely cautious. They must be alert to palm-size scanners and other devices that could compromise the security of the examinations. Candidates may bring calculators that meet the description, above, and may still be asked to exchange equipment. AMP has assured us that they will offer adequate substitute calculators when exchanges are necessary. We support them in their efforts and courteous consideration to the candidates. We all benefit from AMP's efforts to maintain the integrity of their examination.

It should also be said, here, that AMP is not prepared to provide calculators for candidates for anything other than substitutions of this type. Candidates should come prepared with their own materials as defined as acceptable by the examination company.

Educators have been asked to share this experience and help students to be prepared for this possibility and you can help by being aware of it, too. It may happen only rarely, but we would like to spare candidates any undue surprises at the examination site.

(Continued to page 5)
IS SOMEONE ELSE ADVERTISING ON YOUR WEBSITE?

(Editor's note: The following article is reprinted with permission from the New Jersey Real Estate Commission Newsletter, Summer 1999.)

In recent years many individual licensees and firms have, with the assistance of technology professionals, created sites on the World-Wide Web. There are now a number of businesses whose sole or main service is creating websites for others.

Among the features which can be placed on a website are “button ads”. These can allow consumers looking at a broker’s site to “hot-link” to the sites of other businesses offering services buyers or sellers might need. The Commission has learned that it is possible for a website construction company to insert button ads on a site it created without the knowledge and consent of the owner. For example, a company which constructed websites for three brokers in a particular area might, in an effort to get a new account from a home inspection company, offer to place that company’s button ads on the websites of the brokers. Such an offer of free, targeted advertising might be very appealing to the inspection company.

Aside from the obvious issues concerning unauthorized use of the broker’s website, a perhaps bigger concern is that consumers viewing the broker’s site may construe the presence of the button ad as an endorsement of the inspection company by the brokerage firm.

If a company which was retained as a result of the appearance of its button ad on a broker’s website failed to perform an adequate inspection, which in turn caused the consumer to incur a financial loss, it is possible (and perhaps even probable in this era of rampant litigation) that the consumer would attempt to recover by suing the broker.

The point is, brokers and licensees should either take preventative measures or continuously check their websites to ensure that no one is riding their coattails without authorization. From this perspective, a website is similar to the display window of a broker’s office. The only items viewable through such windows should be things which the broker or office manager have authorized to be there.

Security Issues . . . (Continued from page 5)

On-site Photograph

Another security measure undertaken by AMP involves photographing examination candidates. This is described in the Candidate Information Handbook written by AMP and provided to every applicant in the application packet. The candidate should be prepared for the fact that they take their own picture with a camera attached to the computer monitor early in the examination process.

This photo-ID becomes a part of the electronic record and is reproduced on the original score report given the candidate upon leaving the site. ONLY THE ORIGINAL SCORE REPORT CONTAINS THIS PICTURE duplicate score reports do not contain the picture and copies of the original score report are inadequate. Before a license is issued, the ORIGINAL score report, with the picture, must be submitted to the Commission. Recently, applicants have misunderstood the importance of this original document with photograph. Replacing this document has proven difficult and time-consuming.

It is the Commission’s desire that every applicant go through the licensing process as smoothly and efficiently as possible. It is also important that the examination process be secure. If you know anyone preparing to proceed through the examination and licensing process, please help us to impress upon them the importance of the original score report document and its importance to the licensing process.
Disciplinary Actions Taken ... (Continued from page 3)

1999 through December 13, 2001; plus twelve (12) hours of additional continuing education to include three (3) hours in trust accounts, three (3) hours in agency, three (3) hours in license law, and three (3) hours in disclosures to be completed by December 13, 2000. (Violated Neb.Rev.Stat. § 81-885.24(26) by violating a rule or regulation adopted and promulgated by the Commission in the interest of the public and consistent with the Nebraska Real Estate License Act, specifically: Title 299, N.A.C. Ch. 3-002 by failing to maintain a bookkeeping system which accurately and clearly discloses full compliance with the laws relating to the maintaining of trust accounts; Ch. 5-003.10 by failing to identify to the seller, in writing, at the time the offer was presented and accepted, those categories of cost the seller would be expected to pay at closing, failing to prepare a written estimate of the costs the purchaser would be expected to pay at closing and failing to obtain a signature of the purchaser on said written document; Ch. 5-003.14 by failing to deposit any funds received as an earnest money deposit within 48 hours or before the end of the next banking day after an offer is accepted, in writing, unless otherwise provided in the purchase agreement; Ch. 5-003.24 and Neb.Rev.Stat. § 71-2120 by, when acting as an agent of the purchaser, the Respondent failed to obtain the signed receipt of the purchaser on the Seller Property Condition Disclosure Statement; Ch. 5-003.07 and Ch. 5-003.08 by failing to comply with Neb.Rev.Stat. § 76-2401 through § 76-2430 in the following particulars: Neb.Rev.Stat. § 76-2421 by failing to provide a written copy of, or properly complete, the current brokerage disclosure pamphlet to a seller or buyer who is not entered into a written agreement for brokerage services with a designated broker at the earliest practicable opportunity during or following the first substantial contact, § 76-2419 by failing to obtain the written consent of the buyer and seller to act as a dual agent, § 76-2422 and §76-2417 by acting as a limited agent for the seller without entering into a written agency agreement; Neb.Rev.Stat. § 81-885.24(29) by demonstrating negligence, incompetency or unworkliness to act as a broker.)

December 14, 1999

1999-036 - Commission vs. Michele Williams, broker. Stipulation and Consent Order. License censured for two years, with said suspension served and served on probation, from December 14, 1999 through December 13, 2001; plus twelve (12) hours of additional continuing education to include three (3) hours in trust accounts, three (3) hours in agency, three (3) hours in license law, and three (3) hours in disclosures to be completed by December 13, 2000. (Violated Neb.Rev.Stat. § 81-885.24(26) by violating a rule or regulation adopted and promulgated by the Commission in the interest of the public and consistent with the Nebraska Real Estate License Act, specifically: Title 299, N.A.C. Ch. 3-002 by failing to maintain a bookkeeping system which accurately and clearly discloses full compliance with the laws relating to the maintaining of trust accounts; Ch. 5-003.10 by failing to identify to the seller, in writing, at the time the offer was presented and accepted, those categories of cost the seller would be expected to pay at closing, failing to prepare a written estimate of the costs the purchaser would be expected to pay at closing and failing to obtain a signature of the purchaser on said written document; Ch. 5-003.14 by failing to deposit any funds received as an earnest money deposit within 48 hours or before the end of the next banking day after an offer is accepted, in writing, unless otherwise provided in the purchase agreement; Ch. 5-003.24 and Neb.Rev.Stat. § 71-2120 by, when acting as an agent of the purchaser, the Respondent failed to obtain the signed receipt of the purchaser on the Seller Property Condition Disclosure Statement; Ch. 5-003.07 and Ch. 5-003.08 by failing to comply with Neb.Rev.Stat. § 76-2401 through § 76-2430 in the following particulars: Neb.Rev.Stat. § 76-2421 by failing to provide a written copy of, or properly complete, the current brokerage disclosure pamphlet to a seller or buyer who is not entered into a written agreement for brokerage services with a designated broker at the earliest practicable opportunity during or following the first substantial contact, § 76-2419 by failing to obtain the written consent of the buyer and seller to act as a dual agent, § 76-2422 and §76-2417 by acting as a limited agent for the seller without entering into a written agency agreement; Neb.Rev.Stat. § 81-885.24(29) by demonstrating negligence, incompetency or unworkliness to act as a broker.)

December 15, 1999

1999-032 - Diane & Larry Overman vs. Douglas Emory Forbes, salesperson. Stipulation and Consent Order. License censured; plus an additional three (3) hours of continuing education in the area of disclosures. (Violated Neb.Rev.Stat. § 81-885.24(26) by violation of a rule or regulation adopted and promulgated by the Commission in the interest of the public and consistent with the Nebraska Real Estate License Act, specifically Title 299, N.A.C., Ch. 5-003.20 by failing to disclose, in writing, to a buyer, at or prior to the time the buyer signs an offer to purchase, an adverse material fact.)

January 19, 2000

98-036 - Commission vs. Roger Eugene Rader, - Order to Show Cause. License placed on probation subject to the terms and conditions set forth in the Stipulation and Consent Order dated November 30, 1998, for a period of two years from December 31, 1999 through December 31, 2001. (Violated Neb.Rev.Stat. § 81-885.24(26) by violating a rule or regulation adopted and promulgated by the Commission in the interest of the public and consistent with the Nebraska Real Estate License Law, specifically violated Title 299 NAC, Chapter 3-002 by failing to maintain a bookkeeping system which accurately and clearly discloses full compliance with the laws relating to the maintaining of trust accounts; and Neb.Rev.Stat. § 81-885.24(29) by demonstrating negligence to act as the broker.)

December 14, 1999

1999-036 - Commission vs. H. Michael Cutler, broker. Stipulation and Consent Order. License censured. (Violated Title 299, Ch. 5-003.04 by failing to make known, in writing, to the initial prospective purchaser any interest Respondent had in the property he was selling and that the required disclosure was not made prior to the initial buyer becoming obligated to purchase the property in question.)

December 15, 1999

1999-021 - Commission vs. Susan R. Haggar, salesperson. License censured. (Violated Neb.Rev.Stat. § 81-885.24(14) by negotiating directly with an owner to withdraw from or break a listing contract for the purpose of substituting, in lieu thereof, a new listing contract; Neb.Rev.Stat. § 81-885.24(29) by demonstrating negligence to act as a salesperson in that she failed to determine the type of arrangement the sellers of the property had with WHY USA Independent Brokers although she had knowledge that some type of contract existed, and she caused information regarding her listing to be entered in the Multiple Listing Service prior to the date the listing commenced.)

January 13, 2000

1999-032 - Diane & Larry Overman vs. Douglas Emory Forbes, salesperson. Stipulation and Consent Order. License censured; plus an additional three (3) hours of continuing education in the area of disclosures. (Violated Neb.Rev.Stat. § 81-885.24(26) by violation of a rule or regulation adopted and promulgated by the Commission in the interest of the public and consistent with the Nebraska Real Estate License Act, specifically Title 299, N.A.C., Ch. 5-003.20 by failing to disclose, in writing, to a buyer, at or prior to the time the buyer signs an offer to purchase, an adverse material fact.)

January 19, 2000

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January 24, 2000
DIGEST OF REAL ESTATE LAWS AND ISSUES

A complete set of real estate license laws from North America would require an encyclopaedia set full of volumes. The Digest of Real Estate Laws and Issues comprises shorthand grids of regulations from provinces, states and territories across the continent useful in doing business across boundaries. Also included are summaries of significant real estate rulings and reports on industry issues.

DIRECTORY OF REAL ESTATE REGULATORS

Whether it’s a commission, council or board, the official directory of real estate regulators provides a complete list of real estate license law officials and regulatory bodies.

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(OVER)
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Service Satisfaction Survey

The Commission is interested in receiving feedback from the real estate licensee population and others who have contact with the Commission Office.

You may have had a question, had a license issued or transferred, had continuing education courses approved, or had some other reason for contacting the Commission Office by telephone, regular mail, e-mail, or in person. We are interested in your opinion with regard to that interaction. Through this process, strengths can be recognized and areas needing improvement can be identified and improved upon.

This survey process is in no way intended to replace or diminish personal contact with the Office or the Commissioners. Rather, it is to solicit more feedback on a periodic basis. As always, if you have any questions about this process or matters in general concerning the Commission, please feel free to contact us.

When you have completed the survey, please tear it out, fold it along the lines as indicated on page 10 making certain the pre-printed address of the Real Estate Commission is visible. Please seal with tape, add postage and mail. Thank you for your participation.

Person Completing Survey: (optional) __________________________________________

Staff Member Who Assisted You: __________________________________________

1. What was the reason for your interaction with the Commission staff? Please check all that apply.
   ___Application/New License          ___Complaint
   ___Transfer                        ___Laws, Rules, and Regulations
   ___Continuing Education            ___Request Packet (application, complaint, etc.)
   ___Renewal                         ___General Information
   ___Trust Account                   ___Other (please specify) _______________________

2. How was your contact made?
   ___Telephone                       ___Regular Mail
   ___In Person                        ___E-Mail
   ___Website

3. Was your contact handled in a professional manner?
   Yes _____  No _____  Comment:

4. Were you treated politely, with courtesy and respect?
   Yes _____  No _____  Comment:

5. Did staff seem knowledgeable, and assist you in a timely manner?
   Yes _____  No _____  Comment:
6. Overall, how would you rate your experience(s) with the Commission staff?
   Excellent _____ Good _____ Fair _____ Poor _____

7. Do you have any additional comments or suggestions? If so, please use the remaining space or additional pages as needed.

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