Based on inquiries received in the Commission Office since last July, when the new procedures to acquire limited dual agency consent went into effect, it was determined that an explanatory article might be helpful. This article is not intended to promote the use of limited dual agency. It is intended to give guidance to licensees, if limited dual agency has to be used in a real estate transaction.

The required written consent for dual agency can be obtained from the seller or landlord by including the duties and responsibilities of a limited dual agent, as set forth in the Agency Relationships Statute, in the written agreement with the seller or landlord. This is usually done by placing what has become known as the “threshold” dual agency language in the listing agreement or management agreement. It could also be obtained by a separate written dual agency consent which includes the duties and responsibilities of a limited dual agent as set forth in the Agency Relationships Statute.

The required written consent from the buyer or tenant can be obtained by having the buyer or tenant sign, no later than at the time the dual agency occurs with the buyer or tenant, a written consent to dual agency which includes the duties and responsibilities of a limited dual agent as set forth in the Agency Relationships Statute.

This consent could also be included in any written agency agreement entered into by the licensee and the buyer or tenant similar to the way the “threshold” dual agency language appears in a listing or management agreement.

The written consent of the buyer or tenant can: a) be general and apply to any dual agency which could occur with that licensee and that particular buyer or tenant; or b) only apply to a specific property. The decision whether a written consent to dual is general or property specific is made by the designated broker for the firm.

The buyer or tenant could sign the consent to dual agency at the initial contact with the licensee.

The “Brokerage Relationship” Acknowledgment must still be signed also and is NOT a substitute for the written consent document. However, as indicated previously in the article, the buyer or tenant must consent in writing no later than at the time the dual agency occurs.

Finally, prior to or at the time a contract to purchase or lease or letter of intent to lease is entered into for a specific property, the seller and buyer or the landlord and tenant MUST confirm in writing that limited dual-agency had occurred and confirm the party or parties responsible for paying any compensation. This confirmation can be in a separate document or may be a provision of the contract into which the parties entered.
DIRECTOR’S DESK

2003 LEGISLATION

The Real Estate Commission developed two pieces of legislation during 2002 which were introduced into the Legislature in January. They are LB 60 and LB 61. Both bills were introduced by Senator Dennis Byars. Hearings on the two bills were held before the Banking, Commerce and Insurance Committee which advanced both bills to the floor of the Legislature.

LB60 will require all original applicants for licensure as a salesperson or broker to complete a fingerprint, criminal background check. The bill also clarifies that there is an examination for salesperson applicants and an examination for broker applicants. As of the printing date of this “Comment”, LB 60 is on Final Reading.

LB61 will amend the Retirement Communities and Subdivisions registration statutes which are administered by the Real Estate Commission. This legislation will provide more enforcement options to the Commission and consumers as well as providing for additional disclosures to consumers. It provides for the escrow of payments in certain situations and for Public Offering Statements given to consumers prior to purchase or lease, to include additional financial and occupancy rights information. As of the printing date of this “Comment”, LB61 is on Final Reading.

Current information on both bills can be accessed through the Commission’s website.

IS THAT PERSON LICENSED?

If you are trying to determine if a person holds a real estate license in another real estate regulatory jurisdiction, there is a link on the Commission’s website which could help you.

The Commission’s website now links to the Association of Real Estate License Law Officials’ (ARELLO’s) searchable licensee database. There are special instructions on our website suggesting how you may be able to acquire the licensee information in case the licensee’s jurisdiction does not submit data to the ARELLO Licensee Database.

If you have not visited our website recently, take a look at this and other enhancements at: www.nrec.state.ne.us.

Les Tyrrell

Les Tyrnell
Disciplinary Actions Taken by the Real Estate Commission

(Does Not Include Cases on Appeal)

2002-022 - Brett & Nancy Moore vs. Debra K. Carlson, Salesperson. Stipulation & Consent Order. License censured. [Violated Neb. Rev. Stat. § 81-885.24(29) by demonstrating negligence, incompetency or unworthiness to act as a salesperson due to her actions of leaving inappropriate messages on the Buyer’s answering machine.]

December 11, 2002

2002-024 - Allan & Susan Arp vs. Richard Merle Wardell; 2002-044 - Commission vs. Richard Merle Wardell, Broker. Stipulation & Consent Order. License censured; plus an additional six (6) hours of continuing education, including three (3) hours in the area of agency and three (3) hours in the area of license law, to be completed by February 10, 2003. [Violated Neb. Rev. Stat. § 81-885.24(2) by intentionally using advertising which is misleading and inaccurate in any material particular or in any way misrepresents any property, terms, values, policies or services of the business conducted, specifically, advertising a 4.91 acre parcel as 8 acres in the Omaha World Herald on June 4, 2000; § 81-885.24(22) by making a misrepresentation, specifically, that the property was represented by Respondent Wardell to be approximately eight acres when said property was 4.91 acres; § 81-885.24(29) by demonstrating negligence to act as an Associate Broker; 76-2421(1) by failing at the earliest practicable opportunity during or following the first substantial contact with the seller, landlord, buyer, or tenant who has not entered into a written agreement for brokerage services with a designated broker, to provide that person with a written copy of the current brokerage disclosure pamphlet which has been prepared and approved by the Commission, by failing to disclose in writing to that person the type of brokerage relationships a designated broker and affiliated licensees are offering to that person, and by failing to disclose in writing to that person which party the licensee is representing, specifically, failed to complete an Acknowledgment of Disclosure form with the Complainants on or before June 5, 2000.]

December 11, 2002

2002-033 - Earl & LeeAnn Stueve vs. Carolyn Van Horne, Broker. Stipulation & Consent Order. License censured; plus an additional six (6) hours of continuing education, including three (3) hours in the area of license law and three (3) hours in the area of disclosure, to be completed by May 29, 2003. [Violated Title 299, Ch. 5-003.20, for 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 regarding the condition of a parcel of real estate of which a broker has knowledge; Ch. 5-003.25, for failure by a licensee, who knows... (Continued on page 4)
Disciplinary Actions (Cont’d)
of an error, inaccuracy or omission in
a Seller Property Condition Disclo-
sure Statement completed pursuant
to Neb. Rev. Stat. § 76-2, 120, to dis-
lose the error, inaccuracy or omis-
sion, in writing, to a potential pur-
chaser and the seller. Such disclosure
shall be attached to the Seller Prop-
erty Condition Disclosure Statement;
§ 81-885.24(29) by demonstrating
negligence to act as a broker.

January 29, 2003

2002-015 - Janelle A. Zeleny vs.
Steven Lee Scherich, Salesperson.
Stipulation & Consent Order.
License censured; plus an additional
six (6) hours of continuing educa-
tion, including three (3) hours in the
area of agency and three (3) hours in
the area of ethics, to be completed by
Stat. § 76-2418 (b) by failing to exer-
cise reasonable skill and care for the
client; § 76-2421 by failing, at the
earliest practicable opportunity
during or following the first substan-
tial contact with a buyer who has not
entered into a written agreement for
brokerage services with a designated
broker to provide the buyer with a
written copy of the current brokerage
disclosure pamphlet and disclose in
writing the type of brokerage rela-
tionships the designated broker and
affiliated licensees are offering or
disclose in writing to the buyer
which party the Respondent is repre-
senting.]

January 29, 2003

Anchorage Case Puts Cold Chill
On Dual Agency

(Editors note: the following
article was written by Blanche Evans
Associate Editor of the REALTY
TIMES and is reprinted, here, with
permission.)

Disclose, disclose, disclose may
soon become a more important real
estate catchphrase than location,
location, location.

An Alaskan judge has awarded
$200,000 to a buyer whose dual
agent failed to provide proper disclo-
sure of her agency status which
resulted in the buyer overpaying for
his home.

And that was only one misdeed in
a long list of behaviors by
REALTOR Bonnie Mehner that the
judge called “outrageous.” But
failure to disclose agency is a
problem that could keep haunting
Mehner long after she and her broker
pay their civil fines. She could face
industry sanctions
as well.

Joe Columbus,
Jr. and his agent
Robert Holbrook
and McAlpine
Investments, Inc.
sued Mehner and
her broker Pruden-
tial Jack White when Columbus dis-
covered that he overpaid for his new
home. Columbus made a full-price
offer of $585,000, because the listing
agent, Mehner, had tricked him into
using her services to buy the home
from her instead of his own agent.
She was successful because she
failed to disclose what her role as a
dual agent would mean to Columbus
as the buyer.

From the findings of the court,
Anchorage REALTOR Bonnie
Mehner:
• poached the buyer from her
agent
• tricked him into believing that
he could not secure the home without
her help
• told the buyer that his initial
offer was too low, and then
failed to tell the seller of the
buyer’s offer. The buyer’s first
offer was closer to comparables
than what the buyer ultimately
paid for the home
• told the buyer there were multi-
ple offers on the home when
there were not to encourage him
to pay more for the home
• failed to show him existing
comparables that would have
illustrated that he was overpay-
ing for the home
• admitted in court that she did
not follow state law with regard
to dual representation

The court ruled in April that
Mehner behaved unethically and vio-
lated state law by not informing the
seller of Columbus’
initial offer, mislead-
ing him about other
offers on the house,
missing to properly
inform him about her
dual agency status,
and unfairly leading
him to believe he
could buy the house only if he made
his offer through her, said an account
of the story in the Anchorage Daily
News when the ruling became public
on Sunday, July 28th, 2002.

Columbus’ broker also benefitted
from the ruling. As a state-licensed
agent, but not a member of the
Anchorage Board of REALTORS,
age Holbrook and the firm he rep-
resents McAlpine Investments, Inc.,
were able to collect half of the
$35,040 commission paid to Mehner
and her firm for the dual representa-
tion of both the buyer and seller in
the transaction. If Holbrook had been

(Continued from page 5)
Anchorage Case (Cont’d)

a member, he would not have been able to collect commissions via a civil suit. REALTORS are precluded in their codes of ethics from suing one another. They instead have to petition their boards in “procuring cause” hearings to collect disputed commissions.

Mehner was a 27-year veteran, an award-winning agent whose earnings topped $600,000 a year. However, between 30 and 60 percent of her earnings came from sales in which she performed as a dual agent, according to court records, and that’s the real crux of the case—not the rogue behavior of one agent, but the implication for dual agents at large.

The real estate industry has so far been protective of the dual-dip transaction, because brokers and agents can work half as hard to get results—one transaction closed; two commission sides collected. This as evidenced by the development of alternative business models to dual agency such as transactional brokerage and designated agency.

But as cases such as Mehner’s come to light, how will the industry and large brokers such as hers continue with the practice if it means the expense of consumer goodwill?

“Agents are going to have to do a better job in complying with their disclosure requirements and obligations to the consumer,” says Charlie Sandberg, broker for ERA Real Estate Center, in Anchorage.

Sandberg is a national director of the National Association of REALTORS and a member of the NAR’s professional standards committee. He also served as an expert witness for the plaintiff. Sandberg believes this case will resonate with consumers.

“This is a big story,” says Sandberg. “The point is that it is important that the consumer understand and agents understand who they work for and that the agent has the obligation to tell the consumer who they are working for and under what circumstances changes might take place.

“What we’ll see is consumer awareness over representation,” continues Sandberg. "Buyers will want their issues represented, and you'll see more buyers being represented to minimize conflicts of interest and that could pose some economic challenges for offices dependent on dual transactions, not to mention the liability issues and statutory liability.”

Mehner’s worst misstep could be one of timing. In an increasingly intolerant-of-miscreants political and economic environment, she could become the next “example”.

Mehner could face a hearing and disciplinary actions from her board’s professional standards committee. According to insiders, the Alaska Real Estate commission is already looking into her case as well. While a variety of sanctions could apply, in the worst case, Mehner could lose her license to practice real estate.

The Consumer Guide to Buying and Selling Homes

The Commission has recently revised the Consumer Guide to Buying and Selling Homes and once again has these booklets available for the public. They can be accessed by contacting our Office for copies of the booklet or by visiting our Website at: www.nrec.state.ne.us.

The Nebraska Real Estate Commission has published this booklet to aid consumers in the buying and selling of real estate. The processes involved in a real estate transaction are described, as well as, the roles of the various individuals who may take part in the transaction.

Sections of the Booklet describe: The Real Estate Licensee’s Role; The Selling Process; The Buying Process; Financing Information; Federal Fair Housing Information; The Real Estate Commission’s Role; and an extensive Glossary. Throughout the booklet Consumers are advised of the information they should gather, the advice they should seek, and resources available to them as they navigate through the home buying process.

The Commission believes that everyone benefits when complete information is available and all parties to a transaction have a basic understanding of what to expect. If you know of someone who can benefit from this information at this time, we encourage you to refer them to the Real Estate Commission, the Commission’s website, or to obtain a copy of the booklet on their behalf.

Please note that in addition to this booklet a Consumer Section is under construction on our website at the address given above. Please visit from the site from time to time and stay updated on our progress.
Advertising – A Reminder to be Accurate

Based on inquiries and complaints received in the Commission office in recent months, the Commission determined that a reminder regarding misleading advertising would be beneficial. The License Act and Rules provide that the Commission may investigate the holder of a real estate license for alleged violations of the License Act and Rules; this includes revoking, suspending or censuring any license or entering into consent orders when a licensee engages in an unfair trade practice. An unfair trade practice includes the intentional use of advertising which is misleading or inaccurate, or in any way misrepresents any property, terms or services of the licensee’s business. Advertising includes all forms of identification or promotion, including business cards, flyers, websites or newsletters. All advertising must be under the direct supervision of the designated broker and in the name the broker is conducting business as recorded with the Commission.

If the advertising contains statistical information, the broker should assure himself or herself that the statistical information can be traced in some material respect to actual numbers available to the broker. The use of statistical information to report market share and the like is not per se prohibited by the License Act or Rules, however, the Commission advises brokers to exercise caution and assure themselves that the statistical numbers can be validated by accurate numbers in the possession of the brokers.
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. Or you may have utilized our website. 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 the back of this page 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.

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

You may also complete the survey on our website at www.nrec.state.ne.us

Person Completing Survey: (optional) ______________________________________________

Staff Member Who Assisted You (if applicable): ______________________________________

1. What was the reason for your interaction? 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             ___Website
   ___In Person                 ___E-Mail

3. Was your contact handled in a professional and efficient manner?

   Yes _____     No _____     Comment:

(Website users may skip to question #6)

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. In using the Website, did you receive accurate, sufficient, and timely information?
   Yes _____     No _____     Comment:

7. Overall, how would you rate your experience(s) and interaction with the Commission office?
   Excellent _____     Good _____     Fair _____     Poor _____

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