

COMMISSION COMMENT

Commissioner Jim Strand Reappointed by Governor to Serve Full Term

In December 2001, Commissioner Jim Strand was originally appointed by Governor Mike Johanns to complete the remainder of the term vacated by Paul Landow and Bob Bell. He served in this capacity until September 2, 2003 when he was reappointed by Governor Mike Johanns to a full six-year term on the Commission.

Commissioner Strand has represented the public interest as the Public Member of the Commission. He has served conscientiously and well and is expected to continue to serve in this manner.

Jim is a native Nebraskan, having been born in Columbus and raised in York. He attended the University of Nebraska and has Masters degrees in Clinical Psychology and Business Administration.

Commissioner Strand is retired from a 27-year career in telecommunications. He remains active in the local community by serving on numerous boards, which have included the Lincoln United Way, the University Place Art Center, the

Lincoln Library Foundation, the Board of Governors of Nebraska Wesleyan University, the Board of Advisors for the Lied Center in Lincoln, and as a member of the Peter Kiewit Institute for Information Technology in Omaha.

Janice Wiebusch Elected to Office in International Organization

Commissioner Janice Wiebusch of Century 21 Midlands in Kearney participated in a joint meeting of the Central and the Southern Districts of the Association of Real Estate License Law Officials (ARELLO) this summer. As the Senior Member of the State Real Estate Commission of Nebraska, Ms. Wiebusch, along with other members and staff of the Commission, represented the State of Nebraska at the meeting which was held in Little Rock, Arkansas.

At the meeting, Ms. Wiebusch was nominated by the Central District of ARELLO to become its District Vice President. Her election took place at the ARELLO Annual Conference recently held in Portland, Oregon. In addition to Nebraska, the District's membership includes real estate regulators from Colorado, Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, North Dakota, Oklahoma, South Dakota and Wisconsin. As District Vice President, Ms. Wiebusch also serves

as a member of the ARELLO Board of Directors and will become a member of the organization's Planning Committee.

ARELLO is an international organization of real estate regulators with membership from the United States, Canada, Central and South America, the Caribbean, Africa, Asia, Australia and the Pacific Rim. ARELLO members regulate the practice of more than 2 million real estate licensees worldwide. ARELLO provides professional education and training for its members. It also facilitates the communication of information and cooperation among the members. In addition, ARELLO provides support for its member jurisdictions in the administration and enforcement of real estate license laws which promote and protect the public interest. Such support comes in the form of research and the development of regulatory processes and guidelines.

Commission Meeting Schedule

December 10-11Lincoln
January 30Lincoln
March 3-4Omaha

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COMMISSION COMMENT

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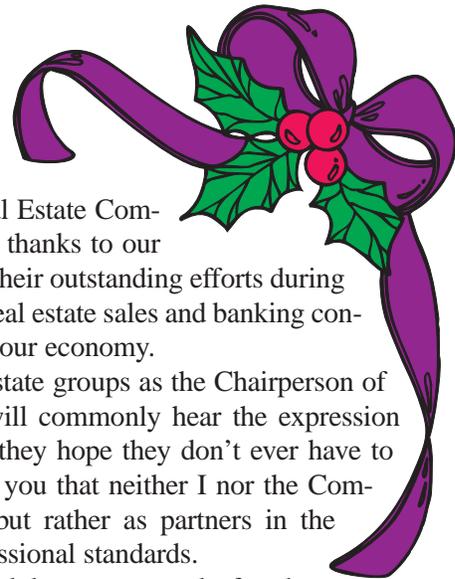
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The Nebraska Real Estate Commission often solicits articles from outside experts or reprints articles with permission. While we feel that these articles may offer a broader perspective and will be of interest to the reader, it should be remembered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

**HOLIDAY MESSAGE
FROM COMMISSION
CHAIRPERSON GALE**



Greetings:

On behalf of the Nebraska Real Estate Commission, I would like to offer my thanks to our real estate agents and brokers for their outstanding efforts during 2003. In many areas of the state, real estate sales and banking continued to be major bright spots in our economy.

When I'm introduced to real estate groups as the Chairperson of the Real Estate Commission, I will commonly hear the expression (somewhat in jest, I hope!) That they hope they don't ever have to appear before me! Let me assure you that neither I nor the Commission see you as adversaries but rather as partners in the process of maintaining high professional standards.

As Chairperson, I have several long-term goals for the Commission:

- We should maintain sound, sensible and responsible standards for applicants to be licensed
- We should ensure that licensees subject to complaint feel confident that they will receive a fair and impartial review, and that they will receive due process of law if a hearing is required
- We should be actively involved in promoting and supporting legislation that will improve the real estate industry
- We should maintain high public trust and confidence in the professionalism of the real estate industry

I wanted to briefly mention some highlights of the Commission's work during 2003. The Commission revised its trust account examination program, with the goal of reviewing every trust account within a 12-month cycle and reviewing large companies' trust accounts every six months. On the legislative front, Commission-backed bills were enacted to require national criminal background checks for all original applicants and make substantial changes in the Retirement Communities and Subdivision Act. The year saw continued improvements in electronic information provided by the Commission.

We are seeing many dynamic changes unfolding on the real estate scene: sales by owners, fixed fee sales, home inspections, home warranties, changing home insurance rating methods, one stop shops, and virtual office websites. Let's keep each other well informed on these developments!

The real estate industry enjoyed an excellent year during 2003 due in part to low interest rates. The industry saw brisk sales and construction activity. This contributed greatly to the consumer confidence and provided badly needed stimulus to the overall economy. We hope 2004 will show a broadening and deepening of our economic recovery!

We send our very warmest wishes to you for the holiday season and the coming new year.



John Gale, Chairperson

MEET THE REAL ESTATE COMMISSION STAFF

The Real Estate Commission Staff is here to serve the public and the licensee population. It is our goal to be helpful and forthright in a courteous and professional manner. We hope that when you contact our office, you always receive useful, accurate information and/or are referred to the proper authority.

Following is a communication resource to assist you when contacting our office. If the indicated person is unavailable to take your call, please share the purpose for the call and your call will be routed to someone else who can help you.

We take pride in having a skilled staff, if you have comments or suggestions as to how we may better serve you, please contact our office.

COMMUNICATIONS GUIDE

Ask for person indicated if you have questions in the following areas.

Commission Meeting Information	. Heidi Burkland InfoTech@nrec.state.ne.us
Complaint Procedures Terry Mayrose DDEnf@nrec.state.ne.us
Continuing Education History or Inquiries Julie Schuur EdEnf@nrec.state.ne.us
Curriculum Design (Education & Instructor Approval) Teresa Hoffman DeputyD@nrec.state.ne.us
Errors and Omissions Insurance Inquiries Teresa Hoffman DeputyD@nrec.state.ne.us
License Applications Packet Requests General Staff
License Applications Process	Melanie Patrick-Heather Applic@nrec.state.ne.us
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Disciplinary Actions Taken by the Real Estate Commission

(Does Not Include Cases on Appeal)

2003-021 – Commission vs. Gary William Smith, Salesperson. Stipulation and Consent Order. License suspended for six (6) months, with the first fifteen (15) days served on suspension and the remainder of the period stayed and served on probation, from September 1, 2003, through February 29, 2004; 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 29, 2004. [Violated Neb. Rev. Stat. § 76-2418(1) by failing to exercise reasonable skill and care for the buyers and by failing to promote the interests of the client with the utmost good faith, loyalty and fidelity in that Respondent did not allow the buyers to have a furnace and air-conditioning inspection, selected the closing date for Respondent's convenience, failed to discuss home inspections and home warranty plans and failed to allow the buyers to have a final walk-through inspection; § 76-2419(2) in that Respondent failed to exercise reasonable skill and care for the buyers and to promote the interests of the buyers with the utmost good faith, loyalty, and fidelity, as follows: Respondent discouraged the buyers from having a furnace and air-conditioning inspection rather than encourage same, Respondent selected the closing date of Respondent's convenience rather than the convenience for the buyers, Respondent failed to discuss and recommend to the buyers home inspections and home warranty plans, and Respondent failed to rec-

ommend the buyers have a final walk-through prior to closing; § 76-2421(1) by failing at the earliest practical 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 broker to provide that person with a written copy of the current Brokerage Disclosure pamphlet, and by failing to 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; § 81-885.24(29) by demonstrating negligence, incompetency or unworthiness to act as a salesperson in that he failed at the earliest practicable opportunity during or following the first substantial contact with the buyers: to provide them with a written copy of the current Brokerage Disclosure Pamphlet, to disclose in writing to the buyers the types of brokerage relationships Respondent was offering to the buyers, and to disclose in writing to the buyers which party Respondent was representing and further, Respondent advised the buyers: the furnace and air-conditioning system worked fine and an inspection of same would be a waste of money.]

August 20, 2003

2003-026 – Russell E. Kirkpatrick vs. Ronald J. Abboud, Broker. Stipulation and Consent Order. License censured; plus an additional six (6) hours of continuing education, includ-

(Continued on page 4)



We've Got Mail!!

E-mail, that is. The Commission is focusing on technology. Our goal is to enhance our accessibility and service to the Public and to our Licensee Population.

With that in mind, let us call your attention to the addition of e-mail addresses in the "Communications Guide" located on page 3. If you have any questions, please feel free to contact us by phone, mail, or e-mail, so that we may be of assistance.



(Continued from page 4)

DISCIPLINARY ACTION (Cont'd)

ing three (3) hours in the area of trust accounts and three (3) hours in the area of license law, to be completed by November 17, 2003. [Violated Neb. Rev. Stat. § 81-885.24(5) when Respondent failed to deposit into a separate non-interest bearing checking account all money received by a broker acting in such capacity, or as escrow agent or the temporary custodian of the funds of others, in a real estate transaction unless all parties having an interest in the funds have agreed otherwise in writing; § 81-885.24(29) for demonstrating negligence to act as a broker.]

August 20, 2003

2003-017 – Commission vs. Vincent Muniz, Sr., Salesperson. Stipulation and Consent Order. License suspended for 5 years from October 1, 2003 through September 30, 2008. [Violated Neb. Rev. Stat. § 81-

885.24(2) by intentionally using advertising which is misleading or inaccurate in any material particular when Respondent sends correspondence regarding a listing to a client or customer on his own company letterhead rather than on letterhead under the direct supervision of the broker and not in the name the broker is conducting business as recorded with the Commission; 81-885.24(3) by failing to account for and remit any money or funds coming into his or her possession belonging to others; 81-885.24(24) by failing to place as soon after receipt as practicable, in the custody of his broker, any funds entrusted to him by any person dealing with him as the representative of his licensed broker; 81-885.24(26) by violating an rule or regulation adopted and promulgated by the Commission in the interest of the

public and consistent with the Nebraska Real Estate License Act, to wit: Title 299, Ch. 2-003 by failing to advertise in the name his designated broker is conducting business as recorded with the Commission; and Ch. 3-003 by failing to account for money advanced by a buyer or seller for the payment of expenses in connection with the closing of a real estate transaction and advancing money by his principal for expenditures on behalf of said principal; 81-885.24(29) by demonstrating negligence, incompetency or unworthiness to act as a salesperson; and 76-2419(2) by failing to exercise reasonable skill and care on behalf of a client and to promote the interest of the client with the utmost good faith, loyalty and fidelity as identified in 76-2417 and 76-2418.] July 21, 2003

2004 Group Errors & Omissions Program

Rice Insurance Services Company, LLC (RISC) has been selected by the Nebraska Real Estate Commission (NREC) as the program administrator for the group Errors & Omissions (E&O) insurance program for Nebraska real estate licensees for calendar year 2004. Continental Casualty Company, one of the CNA insurance companies is the insurance carrier for the program. CNA is rated 'A (Excellent)' by A.M. Best. This program is designed exclusively to provide professional liability insurance for Nebraska real estate licensees. RISC will provide the servicing (claims handling, policy issuance, marketing mailings, etc.) for the Nebraska account. The management team of RISC specializes in handling programs for states with mandatory real estate E&O insurance requirements and has administered mandatory group programs since 1989. RISC will be the provider of group programs in eleven (11) of the

twelve (12) states with mandatory insurance programs for real estate licensees in 2004. In addition to the Nebraska program, they provide group programs in Idaho, Iowa, Kentucky, Louisiana, Mississippi, New Mexico, North Dakota, Rhode Island, South Dakota and Tennessee.

The Nebraska program offers a \$100,000 limit per claim per licensee with a \$300,000 annual aggregate limit. There is a \$1,000 deductible for Damages and no deductible for Claim Expenses. The premium for the one-year policy period, i.e. January 1, 2004 - January 1, 2005, is \$135 per licensee. Principal brokers should verify that each of the licensees at his/her firm has appropriate coverage. All active licensees have received an enrollment form which highlights the program being offered. Principal brokers also receive a letter, information on higher limits available to Nebraska firms, a brochure and a copy of the sample policy form.

Please review your mailing materials for information regarding the program and additional coverages available. Please note that partnerships and corporations, otherwise known as firm licensees, may not purchase endorsements offered as optional coverages. These endorsements are only offered to individual licensees (brokers, including sole-proprietor single license brokers, broker associates or salespersons). However, firm licensees are permitted to purchase a conformity endorsement for other mandated states which require proof of firm license coverage for partnerships and corporations.

The Real Estate Commission will supply insurance enrollment information to new licensees as a part of the application process. Licensees who do not elect to purchase group coverage may purchase independent coverage as long as it meets the minimum requirements established by the

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GROUP ERRORS (Cont'd)

NREC.

Please note, RISC will notify the NREC of your proof of coverage, however, it is the licensee's responsibility to provide verification to other commissions and entities as they may require. RISC will be sending each insured licensee a certificate of coverage. These certificates will be generated by the end of January, 2004.

The Nebraska Real Estate Commission and RISC are dedicated to ensuring the long term success of the Nebraska group E&O insurance program. Any questions about the group program should be directed to RISC at 800-637-7319 or P. O. Box 6709, Louisville, Kentucky 40206-0709 or to Teresa Hoffman at the Real Estate Commission at: (402)471-2004

or emailed to: deputyd@nrec.state.ne.us.

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Incorporating the Criminal Background Check Into the Application Process

As we announced in the last issue of the "Commission Comment" beginning August 31, 2003, all original applicants for a salesperson or a broker license, are required to have a criminal history background report submitted as a part of the application process.

This is true for those applying for licensure through examination and those applying based on the recognition of a license from another jurisdiction. The statute is very specific regarding the timeliness of the criminal history report and the fact that the report must be completed **before** the application is received in the Commission office. The precise wording in Neb. Rev. Stat. Sections 81-885.13 (5) and 81-885.17 (4) reads, in part, as follows:

"...The criminal history record information check shall be completed within ninety days preceding the date the original application for a license is received in the commission's office, and if not, the application shall be returned to the applicant."

All pre-license schools have been contacted in this regard and a chronology for the application process has been suggested to them. This article is an effort to let all licensees know the suggested chronology so that they,

too, may help individuals who are planning to obtain a real estate license.

First, candidates for licensure should thoughtfully estimate the date they plan to send their license application to the Commission. For those qualifying through education and examination they may complete their education and send their proof of education in before, with, or after sending in the application.

Second, within 90 days of the planned application date, but **at least** 15-20 business days prior to sending in the application (it is recommended to allow the most time possible within this time frame) candidates should have their fingerprints taken at a law enforcement facility and mail **both** cards to the State Patrol as directed in the instruction sheet which comes with each set of cards. Fingerprint cards are supplied in all application packets and upon request from the Commission office.

Third, candidates should submit their application to the Commission. If fingerprint cards have only recently been mailed to the State Patrol, it is recommended that candidates call the Commission office prior to submitting the application, to be sure the report has been received. If the report has not been completed prior to an application being received, the application will be

sent back to the candidate.

Fourth, the application will be processed. Any other documents or information not yet received will be solicited from the candidate through check-letter and telephone inquiries.

Fifth, when the application including education information is complete, candidates by examination will receive their notice that they may sit for the examination and information about how to make the examination appointment.

Finally, Those seeking licensure through recognition of a current license held elsewhere or those who have already passed the examination will receive their license when manner of doing business issues and acquisition of errors and omissions insurance have been verified.

In closing, it is important that candidates be fully aware of the entire licensing process so that they may move through it efficiently and be aware of the amount of time it may potentially take to be licensed. Because the criminal history report must be completed before an application can be accepted and processing of it can begin, it is strongly recommended that the criminal history reporting process be initiated as early as possible remembering that it may take as long as a month for the report to reach the Commission.

Revisions to Income Tax Regulations

[Editor's note: The Department of the Treasury, Internal Revenue Service, has requested that we bring to your attention the following information and references regarding Treasury Decision (TD) 9082.]

For those involved in transactions involving foreign persons, the purpose of this article is to bring to your attention changes to the regulation regarding the use of taxpayer identifying numbers (TIN) for foreign persons. For several years, the Internal Revenue Service, through statute and regulation, has imposed a withholding obligation on the buyer or other withholding agent when a United States real property interest is acquired from a foreign person. A foreign person is defined as a non-resident alien individual, a foreign corporation that does not have a valid election to be treated as a domestic corporation, a foreign partnership, a foreign trust or a foreign estate. As a general rule, the buyer or withholding agent is required to withhold a percentage of the sale price. Then, the

buyer or withholding agent is required to file the monies withheld and various forms with the United States Department of Treasury.

On November 4, 2003, new regulations went into effect that require foreign transferors of the United States real property interest to provide their taxpayer identifying number on withholding tax returns, applications for withholding certificates and other documents filed with the Department of the Treasury when a foreign person sells United States real estate. The TIN is the social security number or employer identification number. Without the TIN, the application or withholding tax returns will be considered incomplete and will not be processed by the Internal Revenue Service. Amounts withheld must still be reported and paid to the Internal Revenue Service on the withholding forms even if the appropriate TINs are not provided. However, the receipt showing payment will not be stamped

or mailed until after the TIN has been received. Without the stamped receipt, problems may arise regarding proof of payment and responsibility for payment.

The commentary from the Internal Revenue Service states that it should not cause a delay if a foreign taxpayer has not obtained a TIN as the TIN requirement under the regulations will accelerate the time to obtain a TIN. There is currently a process in place to obtain an employer identification number without delay by facsimile.

The notice received from the Department of the Treasury of this regulation change, states that if anyone has any questions, he or she may contact Juan Santiago at 215-516-7648. The information for this article came from the Internal Revenue Service website, www.irs.gov. The Internal Revenue Service website lists the contact for further information as Robert W. Lorence, Jr., 202-622-3860.

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