

COMMISSION COMMENT

Charging for a Broker Price Opinion or Certified Market Analysis

[Editor's Note: Recent questions received by the Commission have indicated that the subject of receiving fees for performing a Broker Price Opinion (BPO) or a Comparative Market Analysis (CMA) should be revisited. It is the Commission's intention that the following article provide clarification.]

Beginning August 28, 1999, Neb. Rev. Stat. § 76-2221(2) has allowed real estate licensees to charge separately for a Broker Price Opinion (BPO) or a Comparative Market Analysis (CMA).

Here is a quote from the exceptions section of the Appraiser Act: "A person licensed under the Nebraska Real Estate License Act who, in the ordinary course of his or her business, gives a

broker's price opinion or comparative market analysis, except that such opinion or analysis shall not be referred to as an appraisal. No compensation, fee, or other consideration shall be charged for such opinion or analysis other than a real estate commission or brokerage fee charged or paid for brokerage services rendered in connection with the sale of the real estate involved unless the opinion or analysis is in writing and carries the following disclosure in bold fourteen-point type:



"This opinion or analysis is not an appraisal. It is intended only for the benefit of the addressee for the purpose of assisting buyers or sellers or prospective buyers or sellers in deciding the listing, offering, or sale price of the real property and not for any other purpose, including, but not limited to, lending purposes. This opinion or

analysis is not governed by the Real Property Appraiser Act, but is subject to enforcement through the Nebraska Real Estate License Act;" [Shown in bold

14-point type.]

Affiliated licensees, i.e. associate brokers and salespersons, are reminded that, under Neb. Rev. Stat. § 81-885.24 (8), it is a violation of the Nebraska Real Estate License Act to accept "... any form of compensation or consideration ... from anyone other than ... "your" ... employing broker without the consent..." of the employing broker. A separate fee for a BPO/CMA would be a form of "compensation or consideration".. ■

Commission Meeting Schedule

March 6-7Lincoln
April 3-4Lincoln
May 5-6Lincoln
June 26-27Lincoln
August 28-29Lincoln
September 26Lincoln

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COMMISSION COMMENT

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Director's Desk

Listings in a Divorce Situation

[Editor's note: In consultation with Commission legal counsel the following guidance is offered. The following should not be considered legal advice. If you have specific questions regarding this issue, you should consult your legal counsel.]



Over the past few months we have had inquiries regarding listings in divorce situations and had a complaint filed specifically on this issue.

Consider the following:

A man calls a licensee and says he wants to sell his house. He says he is in the process of getting a divorce and cannot afford to stay in his current house. The licensee meets with the man and by the end of the meeting, the man signs a listing agreement with the licensee.

Is the property properly listed for sale? The answer is "no".

In the scenario above, is there anything the licensee can do with regard to the property other than acquire the wife's signature on the listing agreement? The answer again is "no."

Nebraska law requires that the listing agreement be signed by all parties having a legal interest in the property, including spouses even though they are not listed on the deed. Even when parties are going through a divorce, both husband and wife maintain legal ownership of the property until otherwise ordered by a court, usually in a divorce decree.

Another situation requiring careful attention involves the sale of property belong to a decedent's estate. The person who should sign the listing agreement is the "personal representative". The personal representative is the person appointed by the County Court to handle the affairs of the estate. Before listing the property, it would be recommended that you obtain a copy of the "Letters of Appointment" from the personal representative, which will show that the personal representative has been appointed by the Court to act on behalf of the estate.

Until all parties having a legal interest in the property (in the scenario above, the husband and wife) have signed a listing agreement (that complies in all other respects with the Agency Relationships statute), the licensee should not engage in any sales or leasing efforts. In other words, the licensee cannot engage in any marketing activities, including advertising the property for sale or lease in the newspaper or electronically; placing it in a multiple listing-type service; placing a "For Sale" or "For Lease" sign on the property, etc.

In essence, the statutes can be summarized as follows: Before listing a property, licensees must have a written listing agreement signed by all owners. Remember the old adage with regard to married couples- it takes one to buy and two to sell!

**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 *Monica Rut*
InfoTech@nrec.ne.gov
- Complaint Procedures *Terry Mayrose*
DDEnf@nrec.ne.gov
- Continuing Education History or
Inquiries *Melanie Patrick-Heather*
EdEnf@nrec.ne.gov
- Curriculum Design (Education &
Instructor Approval) *Teresa Hoffman*
DeputyD@nrec.ne.gov
- Errors and Omissions Insurance
Inquiries *Teresa Hoffman*
DeputyD@nrec.ne.gov
- Financial Officer *Rebecca Hallgren*
Finance@nrec.ne.gov
- License Applications Packet
Requests *General Staff*
- License Applications Process *Marilyn Masters*
Applic@nrec.ne.gov
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Requirements *Teresa Hoffman*
DeputyD@nrec.ne.gov
- New Licenses in Process *Marilyn Masters*
Applic@nrec.ne.gov
- Specialized Registrations *Monica Rut*
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- Transfer of License *Tawny Snider*
LicTsf@nrec.ne.gov
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- Webmaster *Monica Rut*
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**Disciplinary Actions Taken by
the Real Estate Commission**

(Does Not Include Cases on Appeal)

SC2007-003 Commission vs Perry M Platisha, Broker. Show Cause Hearing held December 20, 2007. License revoked. [Violated Neb. Rev. Stat. § 81-885.17 (7) “. . . Within ninety days after the issuance of a license to a nonresident licensee, the licensee shall provide to the commission adequate proof of completion of a three-hour class approved by the commission specific to the Nebraska Real Estate License Act and the law of agency relationships enumerated in sections 76-2401 to 76-2430. If the licensee fails to provide adequate proof of completion of the approved class to the commission within the ninety-day period, the director of the commission or his or her designee shall place the license on inactive status and notify the licensee that he or she must show cause why the license should not be revoked.” Platisha failed to show cause why he did not complete the three-hour class within the prescribed timeframe and, therefore, why his license should not be revoked.] December 20, 2007

2008-002 Commission vs Carolyn Van Horne, Broker. Stipulation and Consent Order. License suspended for a period of two (2) years commencing on January 25, 2008, continuing through January 25, 2010, with the entire suspension period

served on probation; plus an additional six (6) hours of continuing education with three (3) hours in the area of license law and three (3) hours in the area of trust accounts, all to be completed by July 22, 2008. [Violated Title 299, Ch. 3-002 Every broker shall maintain a book-keeping system which will disclose full compliance with the law relating to the maintaining of trust accounts. Van Horne failed to maintain a book-keeping system which accurately and clearly accounted for trust funds received and disbursed from her real estate trust account. Neb. Rev. Stat. § 81-885.24 (29) Demonstrating negligence, incompetency, or unworthiness to act as a broker. Van Horne failed to maintain a bookkeeping system which accurately and clearly accounted for trust funds received and disbursed from her real estate trust account; failed to reconcile monthly bank statements on a timely basis; failed to prepare a monthly Trial Balance identifying the property owner(s) and the amount of the property owner’s trust funds in the trust account as of the date of the monthly bank statement reconciliation; and Van Horne improperly allowed a property owner’s sub-ledger to reflect a negative cash balance.] January 25, 2008



License Transfer From Broker to Broker Process

[Editor's note: Recently licensees have appeared confused as to when their license transfer from one broker to another broker is complete and, therefore, when they may legally represent a new broker. This article is an effort to clarify the process.]

It seems that almost everyone with a real estate license decides to transfer that license at one time or another. This article is being published, not because the process has undergone change but it is helpful from time to time to refresh licensees' information regarding the process to transfer a license.

Materials Required to be Sent to the Commission Office to Process a License Transfer

1. Release from current broker. This is evidenced by either:
 - A) a copy of the letter sent from the licensee to the current employing broker requesting release as of an effective date and requesting that the licensee's wall certificate be forwarded to the Commission **OR**
 - B) the wall certificate of the licensee, itself (if the wall certificate cannot be found, then a lost wall certificate form must be completed and sent). **Please remember that associate brokers and salespersons may not handle wall certificates.**
2. Transfer fee of \$15.00.

3. Letter from the new broker agreeing to employ licensee on an effective date.
4. Letter from licensee requesting transfer to the new broker on an effective date.
****3 and 4 can be addressed through the use of the "Notice and Application to Transfer License" form signed by both the new broker and the transferring licensee. See the note at the end of this article.
5. Appropriate verification/certification of Errors and Omissions Insurance coverage if the licensee has other than Individual Errors and Omissions Insurance coverage.

Beware!

Licensees are advised not to "jump the gun" when anticipating a license transfer from one broker to another broker or they could be guilty of violating Neb. Rev. Stat. § 81-885.24(7) "Representing or attempting to represent a real estate broker, other than the employer without the express knowledge and consent of the employer;" Just filling out the forms or signing the letters is not enough. These materials have to be received and processed by the Commission Office. Licensees are strongly advised to work closely with our office during the transfer process.

When is the Transfer Effective?

When **all** materials required to transfer are mailed to our office under one

cover, the transfer is effective as of the requested transfer date or the date on the postmark (postal meter marks will not be accepted) whichever is later. In those instances where there is no postmark, the materials are faxed or the materials are hand-carried into the office, the transfer is effective as of the requested transfer date or the date the Commission receives them, whichever is later.

In the event that transfer materials are incomplete, the transfer will not be effective until the date on which all materials have been received in the Commission Office.

The license will be transferred to Inactive Status for an interim period between brokers in the following cases:

- a) when the Commission office receives the material described in #1 and has not yet received the rest of the material described in #s 2-5 above **OR**
- b) the date the wall certificate is received (or the effective date of the licensee's release letter to the current Broker) precedes the effective date indicated by the new broker.

Note: The "Notice and Application to Transfer License" form can be of significant assistance in addressing and organizing the information set out in 1 through 5 above. A copy of the "Notice and Application to Transfer License" form may be downloaded from our website at www.nol.org/home/NREC, and used for future transfers. ■

Don't Get Caught Without Your Continuing Education!

Every year a few licensees find that the renewal of their license is delayed and they incur late renewal fees because they have failed to submit continuing education to meet their license requirement. Sometimes it is because they have forgotten their continuing education period and which year the requirement is due. Sometimes it is because they have missed the continuing education

reminder letter mailed to them in the Spring. Sometimes it is because they have lost track of how many hours they have submitted to the Commission or they erroneously thought someone else was going to submit the hours for them.

It is your responsibility to submit certificates showing completion of continuing education to the Commission. We strongly encourage you to

submit your continuing education certificates as you earn them. Having done so, you can then receive a complete account of course titles, content numbers and dates the education was taken, as they are recorded with the Real Estate Commission, when you reference Licensee Information on the Real Estate Commission's website

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Use of Unlicensed Persons by Licensees

Licensees, both brokers and salespersons, often use unlicensed persons, either employed or contracted, to perform various tasks related to a real estate transaction which do not require a license. Such persons, for example, are used as personal assistants, clerical support staff, closing secretaries, etc.

The Nebraska Real Estate License Act prohibits unlicensed persons from negotiating, listing, or selling real property. It is, therefore, important for employing brokers and other licensees using such persons to carefully restrict the activities of such persons so that allegations of wrongdoing under the License Act or Rules can be avoided.

Licensees should not share commissions with unlicensed persons acting as assistants, clerical staff, closing secretaries, etc. The temptation for such unlicensed persons, in such situations, to go beyond what they **can** do and negotiate or take part in other prohibited activities is greatly increased when their compensation is based on the successful completion of the sale.

In order to provide guidance to licensees with regard to which activities related to a real estate transaction unlicensed persons can and cannot perform, the Commission established the following Policy:

Activities which can be performed by unlicensed persons who, for example, act as personal assistants, clerical support staff, closing secretaries, etc., include, but are not necessarily limited to:

1. Answer the phone and forward calls to licensees.
2. Transmit listings and changes to a multiple listing service.
3. Follow up on loan commitments after a contract has been negotiated.
4. Assemble documents for closings.
5. Secure documents, i.e. public information, from courthouse, sewer district, water district, etc.
6. Have keys made for company listings.
7. Write and prepare ads, flyers and promotional information and place such advertising.

8. Record and deposit earnest money and other trust funds.
9. Type contract forms under direction of licensee.
10. Monitor licenses and personnel files.
11. Compute commission checks.
12. Place and remove signs on property.
13. Order items of routine repair as directed by licensee and/or supervising broker.
14. Act as courier service to deliver documents, pick up keys, etc.
15. Schedule appointments.
16. Measure property, if measurements are verified by the licensee.
17. Hand out objective written information on a listing, other than at functions such as open houses, kiosks, and home show booths or fairs.

Activities which **cannot** be performed by unlicensed persons who, for example, act as personal assistants, clerical support staff, closing secretaries, etc., include, but are not necessarily limited to:

1. Host open houses, kiosks, home show booths or fairs, or hand out materials at such functions.
2. Show property.
3. Answer any questions on listings, title, financing, closing, etc.

4. Discuss or explain a contract, agreement, listing, or other real estate document with anyone outside the firm.
5. Be paid on the basis of real estate activity, such as a percentage of commission, or any amount based on listings, sales, etc.
6. Negotiate or agree to any commission, commission split or referral fee on behalf of a licensee.

Employing brokers, whether they are employing unlicensed persons or whether licensees under their supervision are using unlicensed persons as personal assistants or the like, are responsible for assuring that such unlicensed persons are not involved in activities which require a license and/or activities which violate this policy. Brokers should establish guidelines for the use of unlicensed persons and procedures for monitoring their activities. It is the responsibility of the employing broker to assure that unlicensed persons, either directly employed or contracted, or employed or contracted by licensees under his or her supervision, are not acting improperly.

This policy does not include unlicensed persons who are acting under the exemption related to management of property as set forth in 81-885.04(4). ■



(Continued from page 4)

Don't Get Caught Without . . . (Cont'd)

(www.nrec.state.ne.us) or call the Commission requesting your continuing education records.

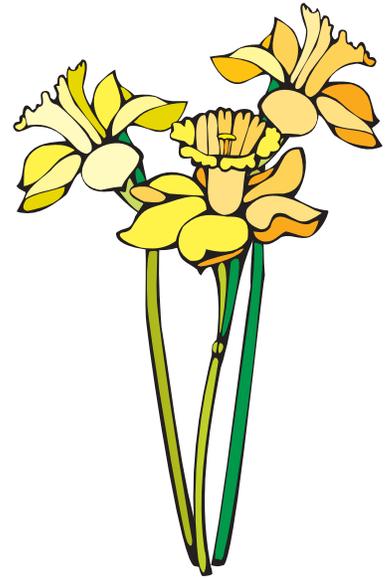
Reminders on Mailing Labels

Additionally, if you submit your continuing education certificates as you earn them the reminder on our *Commission Comment* mailing label will be current as well. The mailing label, as it appears on this newsletter, can help an active licensee keep track of how many continuing education hours he or she has submitted in his or her current continuing education period. The label indicates a numerical code to the right of the address. The first set of numbers indicates the number of hours of continuing education the active licensee has submitted, the number behind the slash mark indicates the total number of hours required. If this is followed with an asterisk (*) then the licensee has NOT yet submitted the required 3-hours of

designated subject matter (the R course). The second set of numbers identifies the licensee's continuing education period. For example the notation 07-08 indicates a 2007-2008 continuing education period. In this example November 30, 2008, would be the last day to submit continuing education, along with complete renewal materials, to avoid incurring a late renewal fee.

For example, if an individual's continuing education is due this year and the individual has completed 6 hours of continuing education without an R course the notation on the mailing label would read: 6.00/12.00* 07-08. The notation for an individual who has completed the current continuing education requirement would be: 12.00/12.00 07-08.

The benefit to regularly submitting your certificates is that you will have up-to-date reminders on your newsletter mailings and education history "at your fingertips". These will assist you in avoiding duplication of subject matter and deficiencies that threaten timely renewals. ■



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Return Service Requested