



# Governor Heineman Appoints David H. Ptak to the Commission

Governor Dave Heineman has appointed David Ptak to a six-year term as the Public Member on the Nebraska Real Estate Commission. Commissioner Ptak was sworn in by Secretary of State Gale at the November meeting of the Commission on November 19, 2009. Dave was born and raised in Norfolk and continues to reside there. He left Norfolk to obtain a Bachelors degree in Business Administration from Hastings College and his Juris Doctorate from the University of Nebraska Lincoln.

Dave is currently the General Counsel and Vice President of Human Resources at Northeast Community College in Norfolk, Nebraska. He has spent over 30 years in the practice of law representing clients in all facets of civil and criminal law. He has been a deputy

County Attorney, served 12 years as City Attorney for the City of Norfolk, and was attorney for the Norfolk Board of Realtors before joining Northeast Community College in 2006.

Dave has taught both Business Law and Real Estate as an adjunct instructor at Northeast Community College since 1977, as well as continuing education courses for real estate licensees. In addition, Dave has been involved in the legal aspects of planning and zoning throughout his entire legal career.

Dave is the immediate Past President of the Nebraska Planning and Zoning Association, a state-wide organization of cities, villages, counties, as well as citizen and professional planners. In 1989 and 1995 he was awarded the

“Outstanding Professional Service Award” by the Nebraska Planning and Zoning Association and received the President’s Award from Nebraska Association of County Officials in 2004 for outstanding professional service to counties. Dave has been a frequent lecturer at Municipal Clerk’s School, and presenter of seminars on all aspects of local government law, planning, and zoning throughout Nebraska since 1975. He has worked extensively with both planning consultants and over 80 municipalities and counties in Nebraska.

Dave and his wife, Gwen, have two daughters: Erin, who is a freshman majoring in marketing at Hastings College; and Cari, who is a junior at Norfolk High School.

## Commission Meeting Schedule

- January 7-8 .....Lincoln
- February 18-19 .....Lincoln
- March 18-19 .....Lincoln
- April 22-23 .....Lincoln
- May 20-21 .....Lincoln
- June 24-25 .....Lincoln
- August 19-20 .....Lincoln

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To the left: Chairperson John Gale administers the oath of office to David Ptak



To the right: Commission Members front row l to r: Vince Leisey, Rita Griess, Chairperson John Gale, Kathryn Rouch; back row l to r: Robert Dover, David Ptak, Wes Grady

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Printed with soy ink

# A Holiday Greeting

from NREC Chairperson, John Gale

On behalf of the Nebraska Real Estate Commission members and staff, I want to extend a warm season's greetings to all of our brokers, salespeople and the dedicated office teams of every agency. You are part of a highly productive and professional industry that has served our Nebraska citizens well. The Commission is privileged to work with you.

The primary goals of the Commission are to keep high professional standards for the real estate industry and maintain high public trust and confidence in the industry. With the help of our licensees, we are achieving those goals.

We began 2009 with the challenging task of replacing Les Tyrrell as Director. Les resigned in March due to health-related reasons. The Commission formed a search committee and conducted a nationwide search for a replacement.

With a wide diversity of applicants, the Committee narrowed the search down to seven, and invited them to interview in person or by telephone conference call with the full Commission. Further interviews were conducted with three finalists.

Greg Lemon of Lincoln was the choice of the Commission to become Director, effective July 1. Teresa Hoffman, Deputy Director for Education and Licensing, and Terry Mayrose, Deputy Director for Enforcement, have continued in their positions.

Director Lemon's prior experience includes serving as legal counsel to the Nebraska Legislature's Appropriations Committee, as Nebraska Chief Deputy Secretary of State, and as a political and government policy consultant. We are extremely pleased with his selection.

In September, David Ptak of Norfolk joined the Commission as a new member, filling the position of public interest representative for a six-year term. David replaces Bruce Bohrer of Lincoln. David brings a high level of knowledge and experience to the position, and we welcome him to the Commission. We also extend our warmest appreciation to Bruce for his outstanding and dedicated service.

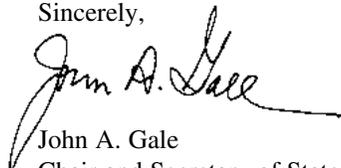
In terms of its 2009 goals, the Commission has begun exercising its fining authority as requested by the Nebraska Realtors Association and granted by the Legislature; the Commission's Web site and online services have been enhanced; and the Commission is developing an orientation training program for new Commissioners for use by the end of 2009.

We realize that 2009 has been a challenging and difficult year for many of you. Fortunately, Nebraska has not suffered as much as many of the high-growth states. The \$8,000 federal income tax credit has been a great stimulus for first-time home buyers in Nebraska. While we still need stability in home values, so essential for sustained economic growth, there are reasons for some encouragement as interest rates remain attractive and the stock market has rebounded.

Nebraska bankers and real estate representatives have expressed confidence about the Midwest economy, but are advising that we are in a tighter lending climate that reduces the number of potential home buyers able to borrow, and that the size of new, single-family homes are becoming smaller. Home ownership expectations will be lower for many people until the economy more fully recovers.

On behalf of all the Commissioners and the Commission staff, I send our best wishes to you and your families for a joyful holiday season. We hope you have a successful and prosperous 2010!

Sincerely,



John A. Gale  
Chair and Secretary of State

# DIRECTOR'S DESK

As I write this column I am just completing my fourth month as director, as well as four meetings of the Nebraska Real Estate Commission, one Commission Comment published and one in the works.

My still relatively fresh observations of the complaints and inquiries we receive at the NREC is that they tend to focus on...a little bit of everything. The pattern seems to be that there is no pattern, each real estate transaction is unique and complex, as are the provisions in the licensing and agency laws.

However, there are still some things that we see on a regular basis, although they by no means constitute a majority of the complaints or inquiries we receive. The first relates to the agency laws and requirements; Neb. Rev. Stat. §76-2421 requires that the agency disclosure be provided to an unrepresented party at the first substantial contact. We often discover that this was not done in investigating complaints. We have run articles explaining this requirement in more detail in the Commission Comment in the past, and we will likely re-run these articles in the near future.

The second involves offering real estate brokerage services over the internet by unlicensed persons or companies or the offering of real estate brokerage services over the internet that may not meet the requirements of Nebraska law. We all know the internet is here to stay and it is a powerful marketing tool, our challenge is to do our best to make sure that it is used correctly. Unfortunately the reality is that we will likely be chasing some of these problems for a long time, as the people involved are often out of state, persistent, and prone to moving both websites and physical addresses around or even changing their DBA name if confronted with regulatory pressure.

On the brighter side, as chronicled on the front page, we welcome a new member to the Commission, David Ptak, the new public member has a strong real estate background and should be an asset to the Commission. We also have an article in this issue of the Comment about our longest serving licensee retiring. Although I do not anticipate recognizing all such achievements in the future it is a good opportunity to reflect on the changes that have occurred in the industry over the last 60 plus years and recognize a long and successful career.

## Input on Seller Property Condition Disclosure Form Invited

At its recent Commission meeting, the Commission indicated that they would be reviewing the current Seller Property Condition Disclosure Statement which is set out in Title 302 of the Commission Rules and Regulations. The Commission is asking for input on any additions or changes you would like to see to the Statement. Please send your comments to me by mail at the Commission office address or by email to: [Greg.Lemon@Nebraska.gov](mailto:Greg.Lemon@Nebraska.gov). Please be as specific and thorough as possible in explaining any additions you would like to see on the form and your rationale for its inclusion. Comments must be received by February 1, 2010. We look forward to your input.

In closing, I would like to wish you all a safe and happy holiday season.

Greg Lemon, Director  
Nebraska Real Estate Commission



Director Greg Lemon

## 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 monica.rut@nebraska.gov
Complaint Procedures . . . . .	Terry Mayrose terry.mayrose@nebraska.gov
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Curriculum Design (Education & Instructor Approval) . . . . .	Teresa Hoffman teresa.hoffman@nebraska.gov
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Financial Officer . . . . .	Rebecca Hallgren rebecca.hallgren@nebraska.gov
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License Applications Process . . . . .	Marilyn Masters marilyn.masters@nebraska.gov
Licensing and Education Requirements . . . . .	Teresa Hoffman teresa.hoffman@nebraska.gov
New Licenses in Process . . . . .	Marilyn Masters marilyn.masters@nebraska.gov
Specialized Registrations . . . . .	Monica Rut monica.rut@nebraska.gov
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Trust Account Matters . . . . .	Terry Mayrose terry.mayrose@nebraska.gov John Clark Patricia Stehly Ron Pierson
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# Disciplinary Actions Taken by the Real Estate Commission

*(Does Not Include Cases on Appeal)*

**2008-028** Mitzi Anne Detavernier vs Rejean Marie Jaksich, Salesperson. Stipulation and Consent Order. Licenses censured; plus an additional three (3) hours of continuing education in the area of ethics to be completed by December 10, 2009 [Violated NEB. REV. STAT. § 81-885.24 (29) Demonstrating negligence, incompetency, or unworthiness to act as a broker, associate broker, or salesperson. Jaksich mailed an unprofessional letter to the Complainant's client.]

August 13, 2009

**2009-005** Commission vs Scott Allen Schaefer, Salesperson. Stipulation and Consent Order. License suspended for period of two (2) years, with the first sixty (60) days of the suspension period actually served on suspension, and the remainder of the suspension period stayed and served on probation. The suspension period commenced on September 18, 2009, and will continue through November 16, 2009. The probationary period will commence on November 17, 2009, and will continue through September 18, 2011; plus an additional six (6) hours of continuing education to include three (3) hours in the area of disclosures and three (3) hours in the area of ethics to be completed by February 9, 2010. Also, Scott Schaefer must abstain from alcohol during the two (2) year period this Order is in effect, immediately obtain an AA sponsor and provide documentary proof of such sponsorship to the Commission, attend meetings of Alcoholic Anonymous on a weekly basis, and provide proof of such attendance to the Commission by the 5th day of each month. Additionally, if he is charged with any criminal offense at any time during the two (2) year period, he must report such charge to his employing broker and the Nebraska Real Estate Commission within seven (7) days following the date of the incident giving rise to the charge. [Violated NEB. REV. STAT. § 81-885.24 (29) Demonstrating negligence, incompetency, or unworthiness to act as a broker, associate broker, or salesperson. Schaefer filed false applications with the Nebraska Real Estate

Commission on his Application for License as a Real Estate Salesperson date May 3, 2005, and on his Application for Annual Renewal of Real Estate License for years 2006, 2007, 2008, and 2009.]

August 13, 2009

**2008-027** Justin and Laura Anderson vs Brian Michael King, Broker and Michael Raymond Bunach, Salesperson, and, 2009-031 Nebraska Real Estate Commission vs. Brian Michael King, Broker and Michael Raymond Bunach, Salesperson. Stipulation and Consent Order. King's and Bunach's real estate license suspended for a period of six (6) months, with the first sixty (60) days served on suspension and the remainder of the suspension period stayed and served on probation. The suspension period commenced on November 4, 2009, and will continue through January 2, 2010. The suspension period will be followed by a probation period which will commence on January 3, 2010, and continue through May 3, 2010; plus King and Bunach shall complete an additional nine (9) hours of continuing education to include three (3) hours in the area of disclosures, three (3) hours in the area of agency, and three (3) hours in the area of ethics to be completed by April 13, 2010. [King and Bunach violated Neb. Rev. Stat. § 76-2421 (1) At the earliest practicable opportunity during or following the first substantial contact with a seller, landlord, buyer, or tenant who has not entered into a written agreement for bro-

kerage services with a designated broker, the licensee who is offering brokerage services to that person or who is providing brokerage services for that property shall: (a) Provide that person with a written copy of the current brokerage disclosure pamphlet which has been prepared and approved by the commission; and (b) 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; by failing at the earliest practicable opportunity during or following the first substantial contact to have the buyer sign an Agency Disclosure in which King and Bunach disclosed they were limited Seller's Agents and the buyer was an unrepresented customer. King and Bunach violated 81-885.24 (29) Demonstrating negligence, incompetency, or unworthiness to act as a broker, associate broker, or salesperson; by failing to obtain sufficient information pertaining to the lot lines of the property being sold at public auction, so they could properly inform potential buyers as to what they were actually purchasing should they be the successful bidder, and, by failing at the earliest practicable opportunity during or following the first substantial contact, to have the buyer sign an Agency Disclosure in which King and Bunach disclosed they were limited Seller's Agents and the buyer was an unrepresented customer.] October 15, 2009



# The Regulation of Radon Professionals In Nebraska

**PROVIDED BY MARK VERSCH,  
ENVIRONMENTAL HEALTH  
ANALYST,  
NEBRASKA DEPARTMENT OF  
HEALTH & HUMAN SERVICES**

In recent years home buyers have become increasingly concerned with indoor air quality. They are concerned for the health of themselves and their families. Having a home tested for radon during a real estate transaction is becoming more common as buyers seek to learn more about a residence prior to making a formal offer.

As with real estate professionals, licensed radon professionals must complete an approved training program, pass a proficiency examination and attend annual continuous education programs to maintain their licenses. In addition, licensed radon measurement professionals must use approved devices that require maintenance and calibration.

The regulation of these individuals is required by the Nebraska Radiation Control Act, in a manner similar to the way salespersons and brokers are licensed by the Nebraska Real Estate Commission. Annual audits of these businesses are conducted by the Nebraska Radon Program to help ensure that the information they provide to their clients is accurate and can be used to make an informed decision.

Salespersons and brokers are reminded that individuals that measure homes for radon and those individuals that fix homes with elevated radon levels must be licensed by the Nebraska Department of Health & Human Services. If you are working with a home inspector that you aren't familiar with, it's appropriate to ask if they are licensed by the Nebraska Department of Health and to have them display their credentials.

## Radon Measurement

Licensed radon measurement businesses typically use a continuous radon monitor which is capable of providing the average radon level at the conclusion of the test. All interested parties are expected to provide the measurement specialist with an opportunity to conduct a valid test. This requires that the windows be closed throughout the home

for 2 hours prior to beginning the test and throughout the testing period and that the doors not be used for excessive entry and exit. Each licensed specialist must verify that the radon measurement protocols have been met during the course of the testing period.

During the past five years the number of licensed radon professionals has increased significantly. At this time there are 60 licensed Radon Measurement Businesses. To view the complete list of the licensed Radon Measurement Businesses in Nebraska:

- Point your browser to [www.hhss.ne.gov/radon](http://www.hhss.ne.gov/radon); or
- Search for "Nebraska Radon Program" in any internet search engine. The webpage for the Department's Radon Program will appear at the top of the list of identified sites. Click on the main page. Colored text will link you directly to the list of licensed businesses that provide radon measurement services; or
- Contact the Nebraska Radon Program at 402-471-0594 or 1-800-334-9491 to request a copy in print or electronically.

## Radon Mitigation

Radon mitigators inspect homes and design and supervise the installation of ventilation systems designed to lower the concentration of indoor radon to safe levels.

In the past five years the number of licensed Radon Mitigation Businesses has grown from eight in 2004 to 26 in 2009. Radon mitigation professionals are now available in Kearney, Norfolk, Wayne and York, as well as in Lincoln and Omaha and other smaller communities and rural areas. A complete listing of the licensed radon mitigation businesses is provided on the website listed above. Periodic updates are also available under "Licensed Radon Mitigation Businesses" on the Nebraska Radon Program

webpage or by contacting the Nebraska Radon Program at 1-800-334-9491.

## REMEMBER...

If you are the Buyer's Agent . . .

As the agent of a home buyer you can help by ensuring:

- that the work is done by a licensed mitigation business; and
- that your client is aware of how the new system will appear on their future home.

If a home is mitigated as part of a real estate transaction, the buyer's agent can also serve their client by checking back with your client to ensure that a follow-up radon measurement was made demonstrating that the installed system is effective. When the system is operating the follow-up test should result in an indoor radon level below the "Action Level" of 4.0 picocuries per liter.

## If you are the Seller's Agent

. . .

As the seller's agent you can help by ensuring:

- that the measurement was done by a licensed individual and business;
- that any mitigation work is done by a licensed business.

If buyers or sellers have questions regarding a radon measurement, please feel free to call. Contact the Nebraska Radon Program office at 1-800-334-9491. This telephone number is provided as a public service to all Nebraskans. 



# Chinese Drywall – Limited Regional Impact or Nationwide Problem?

By now many of you may have heard reports of Chinese manufactured drywall causing major property damage in recently constructed homes, stories have run in numerous publications including the New York Times and the Lincoln Journal Star reporting on the issues created by the gypsum compound used in the manufacture of the drywall being high in sulfur content and emitting acidic gases. The drywall reportedly causes metal and electrical wiring corrosion in homes, as well as respiratory problems and nosebleeds, rendering the homes uninhabitable and uninsurable in the worst cases (Lincoln Journal Star, October 15, 2009, “Insurers Dropping Chinese Drywall Policies”; New York Times, October 9, 2009 “Thousands of Homeowners Cite Drywall for Ills”). The problems with the drywall have been extensively chronicled in trade publications, the internet, and the popular press, but what is the current situation regarding this product in Nebraska?

## No complaints in Nebraska—But Region not Immune

Although national reports indicate as many as 100,000 homes may be impacted, the situation in Nebraska appears to be much better.

The Nebraska Real Estate Commission contacted Bruce Kevil, Executive Vice President of the Nebraska Home Builders Association, and asked if he was aware of any reports or complaints related to the use of Chinese drywall in Nebraska, Kevil stated that he had not received any such reports. The Consumer Product Safety Commission’s website verifies his statement, as of Oct. 20, 2009, they have received 1,501 com-



plaints relating to Chinese drywall from 27 states. The majority of the complaints are from the Southeast region of the country, where accelerated construction caused by a strong economy as well as storm reconstruction created a drywall shortage in the middle part of the decade. The vast majority of complaints have come from Florida (74%) Louisiana, (17%) and Virginia (3%), Alabama and Mississippi account for another 1% of complaints each and all other states combined account for 4% of complaints received by the CPSC. Although there have been no complaints in Nebraska, and the figures certainly bear out the reports that the problem is concentrated in the Southeast region, there have been complaints lodged in the neighboring states of Missouri, South Dakota, and Wyoming. For more on this issue as well as their recently released study of the effects of the drywall go to the CPSC website: <http://www.cpsc.gov/info/drywall/index.html>

## What does This All Mean to Licensees?

Although no complaints have yet been received in Nebraska, regional reports of the defective drywall would indicate that a possibility certainly exists of the product being used in Nebraska. Should a licensee become aware of the use of Chinese drywall in a residential or commercial property this would be considered an adverse material fact which a licensee would be required to disclose in writing to all parties to a transaction. 🏠

# Longest Licensed Broker Retires

Paul Thompson, who according to the records of the Nebraska Real Estate Commission has the oldest active license we have on record, informed us that he was retiring from the practice of real estate and would not renew his license for 2010.

Mr. Thompson was first licensed as a broker on April 4, 1946.



Paul Thompson in 1946.

(Printed with permission.)

To put things in perspective, in 1946 real estate licensing in Nebraska was 11 years old and the Nebraska Real Estate Commission was three years old. Prior to 1943 licensing had been done out of the Secretary of State’s Office. Mr. Thompson recalls making the trip to Lincoln to take the licensee examination in 1946.

The broker’s license fee in 1946 was \$5, a salesperson’s (known as “salesman” in 1946) license was \$2. The decade was also a turbulent time for the housing market as the Census Bureau’s prewar median price for a Nebraska home was \$2,156 (1940) skyrocketing to \$5,918 in 1950 with postwar demand.

Mr. Thompson spent his entire career in Dawson County, the majority in Cozad, and finishing the last ten years in Gothenberg. Mr. Thompson recalls selling many houses in the \$5,000 to \$8,000 range after the war, and had his own house built new for \$5,300, with an additional \$500 for a garage being too much for he and his wife to spend at the time. Mr. Thompson also recalls that they did not have forms and brokers wrote their own purchase contracts when he began his career.

Mr. Thompson retires with a sparkling record with no complaints or actions taken against him in his long career, the NREC would like to salute and recognize Mr. Thompson’s 63 years as a licensee and exemplary record. 🏠

# Agency Relationships with Builders

[Editor's note: the relationship between a licensee representing a builder on new construction and the disclosures the licensee must make continues to be an area of confusion. At a recent Commission meeting, the Commissioners had an opportunity to discuss this issue, yet again. Based on the Commission's discussion, it was determined that this article, which originally appeared in the Spring 2004 issue of the Commission Comment, should be reprinted. The guidance given in this article has not changed and should have been in practice since before 2004. This article should not be considered legal advice; it is an informal interpretation.]

When a licensee is representing a builder on one or more transactions in one or more subdivisions, the licensee is generally considered, by the builder, to be a limited agent for the builder, who is the seller. The agency relationships statute requires that before a licensee engages in **any activity requiring a real estate license** on behalf of the seller, the designated broker or affiliated licensee must enter into a written agency agreement with the seller. The statute, in Neb. Rev. Stat. Section 76-2422, requires that a written agency agreement contain the licensee's duties and responsibilities, the terms of compensation, a fixed date of expiration of the agreement, and whether an offer of subagency may be made to any other designated broker. The licensee's duties and responsibilities are outlined at NEB. REV. STAT. Section 76-2417.

The requirements for a written agency agreement are generally contained in any listing agreement. However, some builders are hesitant to sign a listing agreement for the entire subdivision, or a lot for that matter, without a potential buyer. A solution to this hesitancy is that the agency statute allows for a written agency agreement to be separate from a listing agreement. An area of concern is the terms of compensation. When identifying the terms of compensation in the written agency agreement to be presented to a builder, the terms of compensation may be general. For example, the parties may agree that the compensation be a specific amount such as a flat fee or a percentage of each new construction transaction, or the parties may agree that the compensation will be set at the time the listing agreement or a compensation agreement is entered into for a specific new construction property. The written

agency agreement is not required to contain a specific legal description. This means that the licensee and the builder may enter into a written agency agreement for an entire subdivision, or portion thereof, then a listing agreement or compensation agreement, which specifies the legal description, may be entered into for each new construction property as the sale occurs. The written agency agreement is separate from the agency disclosure document, i.e. the "Disclosure of Brokerage Relationships in Real Estate Transactions" pamphlet. Agency disclosure must be made to the builder at the first substantial contact. The "Acknowledgement of Disclosure" page of the pamphlet or the entire pamphlet may be copied and placed in each new construction transaction file. The licensee must also make an agency disclosure, using the pamphlet, to any potential buyer for any new construction property at the time of first substantial contact, **if the potential buyer is not represented.**

When meeting with a potential buyer, the licensee representing the builder should verbally identify himself or herself as a seller's agent and if the potential buyer is not accompanied by a limited buyer's agent, the builder's agent should ask if the potential buyer has a buyer's agent. If the potential buyer is unrepresented, the licensee representing the builder must disclose, using the "Brokerage Relationship in Real Estate Transaction" pamphlet, that the licensee is a limited seller's agent and will be providing brokerage services to the buyer as a customer. The licensee representing the builder is not automatically a dual agent unless the broker's policy requires a dual agency at this time or the licensee, because of having represented this buyer, must become a dual agent. In the case of a dual agency, a consent to dual agency would need to be signed by the buyer and, if the agency agreement with the builder does not contain the "threshold" dual agency language, the builder. 

## Lets Talk Trust Accounts

BY JOHN CLARK, *Trust Account Examiner*

[Note: The Nebraska Real Estate Commission's Trust Account Examiners frequently cite discrepancies in licensees' handling of trust account funds. This article outlines some of the laws and procedures licensees need to be aware of when handling trust account funds.]

### Handling Trust Funds.

Nebraska License Law requires that any funds received as an earnest money deposit must be deposited into your Real Estate Trust Account within 72 hours or before the end of the next banking day, after an offer is accepted, in writing, unless otherwise provided in the purchase agreement. Routine trust account examinations have shown some brokers are electing to bypass the trust account and have the earnest money deposits payable directly to a closing agent. In order to do this, buyer and seller must first agree to it in writing. If there is an earnest money deposit receipt in the contract and if your agent receipts for the deposit, they should receipt for the deposit "payable to the closing agent". You will also need to receive and maintain a written receipt from the closing

agent for the earnest money deposit. In addition, your bookkeeping system either needs to identify this transaction as "going direct to closing agent" or you need to maintain a separate log on transactions which bypass your trust account. Any cash deposits or deposits payable to your company MUST go through your trust account. You cannot endorse the check over to a third party.

It should also be noted, that the earnest money deposits made to your trust account will be transferred to the listing broker forthwith, following acceptance. The escrow closing clause in the purchase agreement normally will not authorize you to bypass the listing broker's account. Again in order to bypass the listing broker, you must have the written authorization of all parties involved in the contract.

"Trust Funds" as defined by the License Act and Rules also includes rents and security deposits collected while managing Real Estate. Rents and security deposits must be deposited in a timely fashion into your trust account unless the owner has directed you to use

(Continued on page 8)

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*(Continued from page 7)*

### **Trust Accounts (Cont'd)**

an owner operating account or an interest bearing account. This authorization must be clearly spelled out in the management agreement or by addendum. This authorization should also include the following statement: "It is understood by all parties that the placement of funds in such account removes them from the provisions pertaining to trust accounts in the Nebraska Real Estate License Act and the Rules and Regulations of the Nebraska Real Estate Commission." Residential security deposits would need similar written authorizations from the owner, as well as the tenant. The tenant authorization will normally be in the lease agreement, whereby the tenant understands that the security deposit will be held by the property owner and not in the broker's trust account. If it is being held in an interest bearing account, it should also spell out who is to receive the interest. Any cash rent or security deposit **MUST** go through your trust account and then may be transferred with the authorization of the owner and/or the tenant as needed. 🏠

