

# NEBRASKA REAL ESTATE COMMISSION

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# COMMISSION COMMENT

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Winter | 2010

## Al Avery Sworn in as Member of the Commission

Governor Dave Heineman has appointed Alvin A. Avery to a six-year term as the broker representative of the third congressional district on the Nebraska Real Estate Commission. Commissioner Avery was sworn in by Secretary of State Gale at the September 30 meeting of the Nebraska Real Estate Commission.

Al was born in O'Neil, Nebraska, after living in South Dakota and several northeastern Nebraska communities, Al moved with his parents to Grand Island where he attended junior high and graduated from Grand Island Senior High School. Al attended Central Technical Community College in Hastings where he received his diploma in Construction Technology. After several years in the residential construction industry, Al took real estate classes and received his real estate salesperson license in 1987. After taking additional real estate courses, Avery received his real estate broker's

license in 1991. Al was an Associate Broker for a number of years before joining Woods Bros Realty in 2000. At that time he assisted in opening a Woods Bros office in Grand Island and became the branch manager of that office.

Al is very active with the Grand Island Board of REALTORS® and the Nebraska REALTORS® Association. Al was selected as a recipient of the REALTOR® of Distinction award in 1994. Avery has also served on many committees and leadership positions at the state level, including President of Nebraska REALTORS® Association in 2001. He has served on the City of Grand Island's Board of Adjustment since 2003 and is a past Board member of District 1-R School.

Al and his wife, Terry, have two sons, a daughter, daughter-in-law and two granddaughters. Son, Nathan, resides in Kearney; son, Eric, along with his wife, Maran, and their daughters, Brianna and CoraLynn, live in Omaha; daughter, Andrea, lives in Lincoln.



*Chairperson John Gale administers the oath of office to Al Avery*

### Commission Meeting Schedule

Jan 20-21 .....Lincoln  
 Feb 17-18 .....Lincoln  
 March 17-18 .....Lincoln  
 April 21-22 .....Lincoln  
 May 19-20 .....Lincoln  
 June 16-17 .....Lincoln

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*Commission Members, back row, l to r: Al Avery, David Ptak, Robert Dover, Vince Leisey; front row, l to r: Kathryn Rouch, Chairperson John Gale, Rita Griess*

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P.O. Box 94667  
Lincoln, Nebraska 68509-4667  
(402) 471-2004  
www.nrec.state.ne.us  
EDITOR: Greg Lemon

#### COMMISSION MEMBERS

##### CHAIRPERSON

John Gale  
Secretary of State  
State Capitol  
Lincoln, NE 68509  
(402) 471-2554

##### PUBLIC MEMBER

David H. Ptak  
1010 Darrus Drive  
Norfolk, NE 68701  
(402) 844-7046

##### SALESPERSON MEMBER

Kathryn Rouch  
13110 W. Dodge Rd.  
Omaha, NE 68154  
(402) 498-8300

##### BROKER MEMBERS

Rita M. Griess  
5901 N. 27th St.  
Lincoln, NE 68521  
(402) 323-8700

Vince W. Leisey  
13340 California St.  
Omaha, NE 68154  
(402) 493-4663

Robert Dover  
1000 Norfolk Avenue  
Norfolk, NE 68702  
(402) 371-0200

Al Avery  
819 Diers Ave, Suite 5  
Grand Island, NE 68803  
(308) 398-6600

##### DIRECTOR

Greg Lemon  
1200 "N" Street, Suite 402  
Lincoln, NE 68508  
(402) 471-2004  
greg.lemon@nebraska.gov

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# SEASONS GREETINGS

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.

Director Greg Lemon, Deputy Directors Teresa Hoffman and Terry Mayrose, and the Commission staff have all been working hard on a number of new initiatives under consideration. We are excited about the progress we are making to improve our regulatory oversight and to make filing and technology changes that benefit all of our licensees.

In September, Al Avery of Grand Island joined the Commission as a new member, filling the position of Third Congressional District broker representative for a six-year term. Al replaces Wes Grady of North Platte. Al brings a high level of knowledge and experience to the position, and we welcome him to the Commission. He is a broker for Woods Brothers Realty in Grand Island where he manages their branch office and is a past President of the Nebraska REALTORS Association. We extend our warmest appreciation to Wes Grady for his outstanding and dedicated service.

In terms of its 2011 goals, the Commission seeks to accomplish the following, among others: review pre-licensing education curriculum; research standards/regulations pertaining to closing agents and home inspectors; research a possible citation or expedited complaint process for routine/minor violations; and make improvements to online services and electronic delivery of information to licensees. The Commission has also approved drafts of legislation to be introduced in 2011 that would eliminate pocket cards; create a two year license renewal cycle; and change continuing education requirements.

We realize that 2010 continued to be a challenging and difficult year for many of you. Fortunately, Nebraska has not suffered as much as many of the high-growth states. Our foreclosure rates have been low compared to national rates; current mortgage interest rates are historically low; and our home sales in some areas are more brisk than national averages. While we still need to see some reduction in housing inventories, and improvement in the stability of home values, there are reasons for encouragement as we move into 2011.

Nebraska bankers and real estate representatives have expressed confidence about the Midwest economy, although the rebound has not been as strong as once expected. Recovery seems to be on a road of steady growth and improvement in employment numbers.

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 2011!

Sincerely,  
John A. Gale  
Chair and Secretary of State



# DIRECTOR'S DESK

At the October Commission meeting a number of legislative items were approved for introduction endorsement by the Commission for the 2011 session, all of these bills will affect you as licensees, so I would like to use my "bully pulpit" which is the Director's Desk column to discuss these.

## Administrative Changes, Two Year Renewal, Pocket Cards

One of my goals as director has been to get rid of unnecessary red tape that makes both your busy life and my busy life busier than it needs to be. To that end we have a bill which does a couple of things, it will place renewals on a two year cycle, to coincide with the continuing education submission, and it will eliminate the need for pocket cards. The two year renewal change is pretty self explanatory, you will have to fill out and we will have to process renewals once every two years instead of once a year, because we will reduce our renewal volume each year by 50% we will be able to process the renewals and answer your questions faster. A number of years ago the requirement to carry pocket cards was eliminated, we would like to do away with the pocket card requirement completely as it adds paperwork for both licensees and the Commission when licensees go on inactive status or transfer from one broker to another.

## Continuing Education

It has been a long standing objective of both the Commission and the Nebraska REALTOR's Association to enhance continuing education requirements in a meaningful way for the benefit of both the industry and the public. Surveys have shown that our requirements are lower than other states on average, and we are constantly asked about expanding the allowable subject matter of courses offered. The proposal that the Commission has endorsed would require an additional 6 hours of broker approved training every two years, the training courses will have a broader subject matter criteria for approval than our traditional CE courses and it will allow brokers to choose areas of emphasis in training and education. The bill itself simply adds 6 hours of training to the existing 12 hours of CE required every two years. The details of the proposal will be established through the rule and regulation process after the legislation has passed, we will have more details on this proposal in a future issue of the Commission Comment.

## Asset Management Companies

There has been an ongoing problem with asset management companies that handle the sale of properties for large institutional property and mortgage holders including banks, FANNIE MAE, HUD, etc. These companies will generally list such properties with a licensee, but they do not use a listing and transaction model (particularly when it comes to presenting offers) that conforms with our laws. The proposed legislation we have come up with would craft a narrow exception for licensees when dealing with these companies so that licensees can continue to work with them without violating the license law.



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
Continuing Education History or Inquiries . . . . .	Tawny Snider tawny.snider@nebraska.gov
Curriculum Design (Education & Instructor Approval) . . . . .	Teresa Hoffman teresa.hoffman@nebraska.gov
Errors and Omissions Insurance Inquiries . . . . .	Teresa Hoffman teresa.hoffman@nebraska.gov
Financial Officer . . . . .	Rebecca Hallgren rebecca.hallgren@nebraska.gov
License Applications Packet Requests . . . . .	General Staff realestate.commission@nebraska.gov
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
Transfer of License . . . . .	General Staff realestate.commission@nebraska.gov
Trust Account Matters . . . . .	Terry Mayrose terry.mayrose@nebraska.gov John Clark Patricia Stehly Ron Pierson
Webmaster . . . . .	Monica Rut monica.rut@nebraska.gov

WEBSITE: [www.nrec.state.ne.us](http://www.nrec.state.ne.us)

TELEPHONE NUMBER

(402) 471-2004

FAX NUMBER

(402) 471-4492

ADDRESS:

Nebraska Real Estate Commission

P.O. Box 94667

Lincoln, NE 68509-4667



# Disciplinary Actions Taken by the Real Estate Commission

*(Does Not Include Cases on Appeal)*

**2010-004** – Commission vs. Rebecca Mae Estrada, Broker. Hearing held September 30, 2010, Estrada's real estate broker's license is suspended for a period of four (4) years with the entire four (4) year period stayed and served on probation. The suspension period commenced on November 5, 2010, and will continue through November 4, 2014; plus complete an additional six (6) hours of continuing education with three (3) in Ethics and three (3) hours in Disclosures to be completed by May 4, 2011; plus pay a civil fine of \$2,500.00, on or before November 5, 2010; plus pay court reporter fees of \$220.00, on or before November 5, 2010. [Estrada violated Neb. Rev. Stat. § 81-885.11 any person desiring to act as a real estate salesperson shall file an application for a license with the commission, application shall be in such form and detail as the commission prescribes, setting forth the following ... such other information as the commission requires, by repeatedly submitting materially false Renewal Applications to the Commission; Estrada violated Neb. Rev. Stat. § 81-885.12 when an applicant has made a false statement of material fact on an application, such false statement may in itself be sufficient ground for refusal of a license, by repeatedly submitting materially false Renewal Applications to the Commission; Estrada violated Neb. Rev. Stat. § 81-885.24 (29) Demonstrating negligence, incompetency, or unworthiness to act as a salesperson by repeatedly submitting materially false Renewal Applications to the Commission].

September 30, 2010

**2010-009** – Commission vs. Michael Victor Mullenberg, Salesperson. Hearing held October 1, 2010, Mullenberg's real estate salesperson's license is suspended for a period of four (4) years, with the entire four(4) year period stayed and served on probation. The suspension period commenced on November 5, 2010, and will continue through November 4, 2014; plus complete an additional six (6) hours of continuing education with three (3) in Ethics and

three (3) hours in Disclosures to be completed by May 4, 2011; plus pay a civil fine of \$2,500.00, on or before January 4, 2011; plus pay court reporter fees of \$80.00, on or before January 4, 2011. [Mullenberg violated Neb. Rev. Stat. § 81-885.11 any person desiring to act as a real estate salesperson shall file an application for a license with the commission, application shall be in such form and detail as the commission prescribes, setting forth the following...such other information as the commission requires, by repeatedly submitting materially false Renewal Applications to the Commission; Neb. Rev. Stat. § 81-885.12 when an applicant has made a false statement of material fact on an application, such false statement may in itself be sufficient ground for refusal of a license, by repeatedly submitting materially false Renewal Applications to the Commission; and Neb. Rev. Stat. § 81-885.24 (29) Demonstrating negligence, incompetency, or unworthiness to act as a salesperson by repeatedly submitting materially false Renewal Applications for 2008, 2009, and 2010, to the Commission].

October 1, 2010

**2009-042** – Commission vs. John H. Dickerson, Broker. Stipulation and Consent Order. Dickerson's real estate broker's license is suspended for a period of thirty (30) days, with the entire thirty (30) day suspension period stayed and served on probation. The suspension/probation period commenced on October 28, 2010, and will continue through November 27, 2010; plus complete six (6) hours of additional continuing education with three (3) hours in Contracts and three (3) hours in Ethics to be completed by February 25, 2011; plus pay a civil fine of \$1,000.00, on or before November 27, 2010. [Dickerson violated Neb. Rev. Stat. § 76-2417 (1) by failing to exercise reasonable skill and care for the client and by failing to promote the interests of the client, for failing to insist upon a tenant's strict compliance with the explicit terms of a written lease agreement; and Neb. Rev. Stat. § 81-885.24 (29)

Demonstrating negligence, incompetency, or unworthiness to act as a broker; for failing to exercise reasonable skill and care for the client and by failing to promote the interests of the client, for failing to insist upon a tenant's strict compliance with the explicit terms of a written lease agreement].

October 28, 2010

**2009-042** – Commission vs. John S. Krecek, Salesperson. Stipulation and Consent Order. Krecek's real estate salesperson's license suspended for a period of thirty (30) days, with the entire thirty (30) day period stayed and served on probation. The suspension/probation period commenced on October 28, 2010, and will continue through November 27, 2010.; plus complete six(6) hours of additional continuing education with three(3) hours in Contracts and three (3) hours in Ethics to be completed by February 25, 2011; plus pay a civil fine of \$1,000.00, on or before November 27, 2010. [Krecek violated Neb. Rev. Stat. § 81-885.24 (29) Demonstrating negligence, incompetency, or unworthiness to act as a salesperson; by failing to exercise reasonable skill and care for the client and by failing to promote the interests of the client; for failing to supervise Wojcinski in her licensed activities as a Property Manager].

October 28, 2010

**2009-042** – Commission vs. Deborah A. Wojcinski, Salesperson. Stipulation and Consent Order. Wojcinski's real estate salesperson's license is suspended for a period of thirty (30) days, with the entire thirty (30) day suspension period stayed and served on probation. The suspension/probation period commenced on October 28, 2010, and will continue through November 27, 2010; plus complete six(6) hours of additional continuing education with three(3) hours in Contracts and three(3) hours in Ethics to be completed by February 25, 2011; plus pay a civil fine of \$1,000.00, on or before November 27, 2010. [Wojcinski violated Neb. Rev. Stat. § 76-2417 (1) by failing to exercise reasonable skill and care for

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## Disciplinary Actions (Cont'd)

the client and by failing to promote the interests of the client, for failing to insist upon a tenant's strict compliance with the explicit terms of a written lease agreement, and Neb. Rev. Stat. § 81-885.24 (29) Demonstrating negligence, incompetency, or unworthiness to act as a broker; for failing to exercise reasonable skill and care for the client and by failing to promote the interests of the client, all by failing to insist upon a tenant's strict compliance with the explicit terms of a written lease agreement]. October 28, 2010

**2010-005** – Commission vs. Kenneth J. Landolt, Jr., Salesperson. Stipulation and Consent Order. Landolt's real estate salesperson's license suspended for a period of two (2) years with the entire two (2) year suspension period stayed and served on probation. The suspension/probation period commenced on October 29, 2010, and will continue through October 28, 2012; plus complete an additional six (6) hours of continuing education to include a three (3) hour course in Disclosures and a three (3) hour course in Ethics to be completed by February 25, 2011; plus pay a civil fine of \$500.00, on or before December 28, 2010. [Landolt violated Neb. Rev. Stat. § 81-885.11 Any person desiring to act as a real estate broker or real estate salesperson shall file an application for a license with the Commission. The application shall be in such form and detail as the Commission prescribes, setting for the following (3) Such other information as the Commission requires; Neb. Rev. Stat. § 81-885.12 When an applicant has made a false statement of material fact on an application, such false statement may in itself be sufficient ground for refusal of a license; and Neb. Rev. Stat. § 81-885.24 (29) Demonstrating negligence, incompetency, or unworthiness to act as a salesperson. Landolt repeatedly submitted materially false Renewal Applications to the Commission for 2007, 2008, 2009, and 2010.

October 28, 2010

**2010-013** – Commission vs. Dirk Conrad Blume, Salesperson. Stipulation and Consent Order. Blume's real estate salesperson's license is suspended for a period of six (6) months, with the entire

six (6) month suspension period stayed and served on probation. The suspension/probation period commenced on October 28, 2010, and will continue through April 27, 2011; plus complete an additional three (3) hour course in License Law by February 25, 2011; plus pay a civil fine of \$1,500.00, on or before November 27, 2010. [Blume violated Neb. Rev. Stat. § 81-885.24 (29) Demonstrating negligence, incompetency, or unworthiness to act as a sales-

# "Flopping", "Dual Deeding", or "Simultaneous Closing"

By Diane Louser, Commissioner, North Dakota Real Estate Commission

This article first ran in the Fall edition of the North Dakota Real Estate News & Views, and is re-printed with the permission of the North Dakota Real Estate Commission

Real estate regulators across the country are being faced with new challenges as a result of the increase in delinquencies in home mortgages.

One growing problem involved "flopping" of homes. It is being referred to as "dual deed" or "simultaneous closing." Companies are apparently being set up for the purpose of searching for vacant properties around the country, finding buyers for those properties, utilizing an individual to negotiate with the bank for the purchase of the property through a short sale, and immediately selling it to the pre-arranged buyer, resulting in a considerable profit to the company and a loss to the bank.

In many instances the vacant property is anti-staged by the company. The home is deliberately damaged by removal of appliances, fixtures, doors, etc. Some have gone to the extent of allowing animals in the home, resulting in soiled floors and damage to the interior. It was reported that in one state, faucets were turned on and water left running throughout the home, causing flooding to the property and resulting in a large reduction in price by the lender. Generally, however, the destruction is cosmetic so that once pictures are taken for the bank, and appraisals are completed (often by appraisers who are selected from a pool and who may not be familiar with local markets), there is a reduced value established, a short sale is completed, and the property is immediately rehabilitated and cleaned for the new buyer.

Some lenders are requiring all offers to be written and presented by licensed real estate agents in short sale situations. In instances where the banks require disclosure of resales of homes that have again been sold after a short sale, these transactions are coming to light more rapidly. When a licensee is involved, it is likely the agent and broker will have complaints filed against them by the lender who was damaged in the transaction and may be investigated for bank fraud. If the transaction involves an unlicensed individual, that person can be subject to cease and desist orders and criminal investigations. However, many of the companies and individuals involved in these short sale transactions are moving quickly from state to state, making it expensive and time consuming for authorities to track them down.

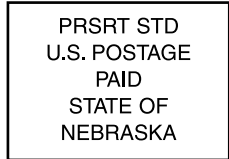
Bank fraud is on the rise and is becoming a big business. Because of the effect of these types of short sales not only on lenders but on the housing market and economy as a whole, it is likely we will be seeing more investigations, complaints, and litigation in this area in the days and months ahead.

person; for conducting licensed real estate activities in Nebraska during the period January 1, 2010 and January 31, 2010, a period of time when Blume failed to renew his real estate salesperson's license for 2010.

October 28, 2010

**2010-013** – Commission vs. Donald Wray Evans, Broker. Stipulation and Consent Order. Evans' real estate broker's license suspended for a period of six

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### **Disciplinary Actions (Cont'd)**

(6) months with the entire six (6) month suspension period stayed and served on probation. The suspension/probation period commenced on October 28, 2010, and will continue through April 27, 2011; plus complete an additional three (3) hour course in License Law to be completed by February 25, 2011; plus pay a civil fine of \$1,500.00, on or before November 27, 2010. [Evans violated Neb. Rev. Stat. § 81-885.24 (29) Demonstrating negligence, incompetency, or unworthiness to act as a broker; by allowing an affiliated licensee, Dirk Conrad Blume, to write offers for buyers, negotiate listings with sellers, and advertise properties for sale on his website, knowing that he had not renewed his Nebraska real estate license for 2010; and Title 299 Chapter 5 003.21 by failing to return Blume's real estate license to the Real Estate Commission within fifteen days of the Real Estate Commission's request to do so.

October 28, 2010

## **Receipting for Items Not Yet Received**

At a recent Nebraska Real Estate Commission meeting the practice of getting a signed receipt for an executed purchase agreement was discussed. It was observed that some licensees may be having parties sign the document saying they have received the executed purchase agreement at the same time it is executed, and not actually providing a copy of said purchase agreement at that time.

There are a couple of problems with this, whatever the intentions are for copying and later providing the purchase agreement, suggesting someone sign a document which is known to not be factually correct would directly violate Neb. Rev. Stat. 81-885.24(29), demonstrating negligence, incompetence or unworthiness to act as a licensee.

The other potential issue is of course that the best laid plans may fall through, and the purchase agreement might not get copied and provided, compounding the issue.

While it may be more convenient to have receipts for executed offers signed at the time the offer itself is signed, it is not appropriate to do so unless you can actually provide a copy of the offer to your client at that time, and violating this rule could subject you to disciplinary action.