



COMMISSION COMMENT

Winter | 2011

Drew Stange Appointed to the Commission



Commissioner Drew Stange

Drew Stange was sworn in as the District 1 broker representative on the Nebraska Real Estate Commission at the September 15, 2011 Commission

meeting, replacing Rita Griess, whose term expired this year. Commissioners are appointed by the governor and limited to one six year term.

Drew graduated from the University of Nebraska Lincoln in 1982 with a BS in business, majoring in accounting. He worked in the accounting field for six years before entering the real estate profession.

Drew received his salesperson's license in 1992 and his broker's license in 1996. He is the designated broker for NAI FMA Realty in Lincoln. Stange has served as co-chair of the Nebraska Realtors Association's Governmental Affairs

Committee, and in various capacities, including RPAC chair, of the Lincoln Realtors Association. He is also active in many charitable and philanthropic organizations in the community, serving in the capacity of officer or member of the board of directors on various organizations including the ARC Housing Development Corporation, and the Nebraska Kidney Association.

Drew is a lifelong Lincoln resident, where he lives with his wife

Holly and has two children, Jocelyn 21 and Dayton 18. Drew enjoys playing golf and following college sports.



Above: Real Estate Commission Chairman John Gale Administers the Oath of Office to Commissioner Stange

At Left: Real Estate Commission Members: Seated (l to r) Al Avery, Chairperson John Gale, Kathryn Rouch; standing (l to r) Vince Leisey, David Ptak, Robert Dover, Drew Stange



Commission Meeting Schedule

January 19-20Lincoln
February 16-17Lincoln
March 15-16Lincoln
April 19-20Lincoln

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Broker Approved Training

The new regulations on broker approved training, which will be required of all licensees, were approved by the Governor and became effective in October of this year. The six hour requirement for broker approved training must be met every two years along with the current continuing education requirements, and has been discussed in the Director's Desk Column of the Winter 2010 and Summer 2011 *Commission Comment*, and in the Legislative Roundup article in the Spring 2011 *Commission Comment*.

As in the past, the renewal confirmation letter sent to all licensees will detail your continuing education requirements for future years.

The Commission will begin processing and recognizing broker approved training in January of 2012, all designated brokers will receive a letter in December (or may have already received depending upon the publication date of this newsletter) with details on how to implement the new program.

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The Nebraska Real Estate Commission grants permission to reprint articles which appear in this newsletter on condition that recognition of their original publication in the **Nebraska Commission Comment** also appears with the article.

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.

Printed with soy ink

Season's 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!

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.

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 and your professional associations to find ways to sustain and improve public confidence. For example, the new law increasing continuing education requirements was supported by the industry and the Commission, and approved by our Governor. These new CE hours should be helpful in assuring that the industry's professionalism remains high.

Director Greg Lemon, Deputy Directors Teresa Hoffman and Terry Mayrose, and the Commission staff have all been working hard on the Commission's 2011-12 objectives. 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 August, Drew Strange joined the Commission, filling the position of First Congressional District broker representative for a six-year term. Drew replaces Rita Greiss, a broker for Woods Bros. Realty of Lincoln. Drew brings a high level of knowledge and experience to the position as a commercial realtor, and we welcome him to the Commission. He is a broker for NIA FMA Realty of Lincoln. We also extend our warmest appreciation to Rita Greiss for her outstanding and dedicated service.

We realize that 2011 continued to be a challenging year for many of you. Fortunately, Nebraska has shown solid growth compared to the other states in a nine-state region in the Midwest and Plains. Our foreclosure rates have been low compared to national rates; current mortgage interest rates are historically low; and our home sales in some areas have been more brisk than national averages. While we still need to see better reduction in housing inventories and improvement in the stability of home values, there are reasons for encouragement as we move into 2012.

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 2012!

Sincerely,
John A. Gale
Chair and Secretary of State



Secretary of State John Gale

DIRECTOR'S DESK

Rules Hearings January 19th

The Commission will be holding public hearings on changes to the **Seller Property Condition Disclosure Statement** ("SPCD") and rules regarding **distance education** courses on January 19th, 2012. Changes to the SPCD include adding more specificity to questions about appliances and other items that may or may not be sold with the property, getting rid of certain logical inconsistencies such as "age of roof (if known)" followed by spaces for a yes or no answer, and changing the format from a two page legal, to a four page letter sized document and increasing the font size. The revised SPCD can be viewed on the Commission website by clicking on the rules and regulations hearing information under "What's New".

The second hearing relates to distance education courses for pre-license and continuing education. Under current rules certain correspondence courses would be phased out, requiring licensees in certain parts of the state to travel a significant distance in order to be able to take these courses. The proposed amendments grandfather these courses in, and are also available for viewing on the Commission website.

Complaints Down

While many jurisdictions are experiencing an increased number of complaints in a slow market, Nebraska complaints are down considerably from years past. That is good news for the Commission, the industry, and the public. On that positive note I would like to wish you all a safe and happy holiday season and a joyful and prosperous new year!

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
- 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
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Disciplinary Actions Taken by the Real Estate Commission

(Does Not Include Cases on Appeal)

2010-003 - Richard and Janet Marler vs. Gayle Gene Herbst, Broker. Hearing held August 18, 2011. Herbst's real estate broker's license is censured. Herbst must complete an additional three (3) hours of continuing education in Agency to be completed by November 22, 2011; plus pay court reporter fees of \$360.00, on or before September 23, 2011 [Herbst violated Neb. Rev. Stat. § 81-885.24(29) Demonstrating negligence, incompetency by mismanaging and neglecting the property thereby allowing the property to be damaged and rundown. August 18, 2011

2009-028 - Beth and John Wiersma vs. Betty Jane Warren and Jamie Paul Bollwitt. Designated Broker Betty Jane Warren dismissed due to the Commission entering a Stipulation and Consent Order on Case No. 2010-021. Associate Broker Jamie Paul Bollwitt - Stipulation and Consent Order entered August 24, 2011. License censured; plus complete an additional nine (9) hours of continuing education by September 23, 2011, with three (3) hours each in the area of Agency, Contracts and License Law and submit documentary proof to the Commission that said courses have been satisfactorily completed; plus pay a civil fine of \$1,500.00 by September 23, 2011. [Bollwitt violated Neb. Rev. Stat. § 76-2418(1) A licensee representing a buyer or tenant as a buyer's or tenant's agent shall be a limited agent with the following duties and obligations: (b) To exercise reasonable skill and care for the buyer/client; Bollwitt failed to check all necessary boxes on the buyer's Offer to Purchase; 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 brokerage 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; Bollwitt failed at the earliest practicable opportunity during or following first substantial contact with the Buyers, to complete an Agency Disclosure which disclosed, in writing, to the Buyers that Bollwitt was acting as a limited Buyer's Agent; and by failing at the earliest practicable opportunity during or following first substantial contact with the Sellers, to complete and Agency Disclosure which disclosed in writing to the Sellers that he was acting as a limited Buyer's Agent; Bollwitt violated Neb. Rev. Stat. § 81-885.24(16) by violating Neb. Rev. Stat. § 76-2418(1) and Neb. Rev. Stat. § 76-2421(1) of the agency statutes; Bollwitt violated Neb. Rev. Stat. § 81-885.24(29) Demonstrating negligence, incompetency, or unworthiness to act as a broker, associate broker, or salesperson; by violating Neb. Rev. Stat. §§ 76-2418(1), 76-2421(1), and 81-885.24.

August 19, 2011

2010-021 - Commission vs. Betty Jane Warren, Broker. Stipulation and Consent Order entered August 24, 2011. Warren's real estate broker's license suspended for a period of one (1) year with the entire period stayed and served on probation, commencing on August 24, 2011, and continuing through August 23, 2012; plus pay a civil fine of \$2,000.00 by September 23, 2011; plus complete an additional nine (9) hours of continuing education with three (3) hours each in the area of Agency, Contracts, and License Law to be completed by December 22, 2011, and submit documentary proof to the Commission that said courses have been satisfactorily completed. [Warren violated 299 NAC 5-003.22, for failing to supervise Bollwitt with respect to the subject real estate transaction; Warren violated Neb. Rev. Stat. § 76-2417(1) A licensee representing a seller...as a sell-

er's agent...shall be a limited agent with the following duties and obligations: (a) To perform the terms of the written agreement made with the client; (b) To exercise reasonable skill and care for the client; Warren improperly marked boxes on the initial Offer to Purchase without the consent of the sellers/clients, thereby changing the terms and conditions of the Offer; and, by allowing the Buyer's Agent to present the buyers' counteroffer to the sellers thereby leaving the sellers unrepresented. Warren 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 brokerage 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; Warren offered brokerage services to the sellers and failed, at the earliest practicable opportunity during or following first substantial contact, to complete an Agency Disclosure with the sellers; Warren violated Neb. Rev. Stat. § 81-885.24(16) by violating Neb. Rev. Stat. § 76-2417(1)(b) and 76-2421(1)(a)(b) of the agency statutes; Warren violated Neb. Rev. Stat. § 81-885.24(26) violating any rule or regulation adopted and promulgated by the commission; by violating 299 NAC 5-003.22; and, Warren violated Neb. Rev. Stat. § 81-885.24(29) demonstrating negligence, incompetency, or unworthiness to act as a broker, by violating 299 NAC 5-003.22; Neb. Rev. Stat. § 76-2417(1)(b), 76-2421(1)(a)(b), and 81-885.24(26). August 19, 2011

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Disciplinary Actions (Cont'd)

2011-009 - Commission vs. Michael Robert Kelly, Salesperson. Stipulation and Consent Order entered August 24, 2011. License revoked.; [Violated Neb. Rev. Stat. § 81-885.24(29) Demonstrating negligence, incompetency, or unworthiness to act as a broker, associate broker, or salesperson for having been convicted of possessing or obtaining legend drugs, a Class 3 Misdemeanor.

August 19, 2011

2011-021 - Commission vs. Matthew Kurt Pieper, Broker. Stipulation and Consent Order entered August 31, 2011. License censured; plus an additional three (3) hours of continuing education in "Agency" to be completed by November 28, 2011. Plus pay a civil fine of \$500.00 by September 29, 2011 [Violated Neb. Rev. Stat. § 81-885.24 (12) Offering real estate for sale or lease without the knowledge and consent of the owner or his or her authorized agent or on terms other than those authorized by the owner or his or her authorized agent; and 81-885.24(29) Demonstrating negligence, incompetency, or unworthiness to act as a broker, associate broker, or salesperson.

August 19, 2011

2011-023 - Commission vs. Beverly Arlene Redwine, Salesperson. Stipulation and Consent Order entered August 24, 2011. Redwine's real estate salesperson's license is suspended for a period of ninety (90) days with the first fifteen (15) days served on suspension and the remainder stayed and served on probation. The suspension period commenced on August 25, 2011, and continued through September 8, 2011. The probation period commenced on September 9, 2011, and continues through November 23, 2011.; plus complete an additional nine (9) hours of continuing education to include three (3) hours in Agency, three (3) hours in Contracts and three (3) hours in License Law to be completed by December 22, 2011. [Redwine violated Neb. Rev. Stat. § 76-2417(1) A licensee representing a seller or landlord as a seller's agent or a landlord's agent shall be a limited agent with the following duties and obligations: (a) To perform the terms of the written agreement made with the client; (b) To exercise reasonable skill and care for the client; (c) To pro-

motivate the interests of the client with the utmost good faith, loyalty, and fidelity by providing the sellers with two false closing dates, and failing to advise the sellers that by signing the Addendum to the Purchase Agreement, it would reduce their net proceeds by \$500.00; Redwine violated Neb. Rev. Stat. § 81-885.24(16) by failing to obtain the informed written consent of both the Sellers and the Buyer permitting her to act as a dual agent for the proposed sale/purchase of the Property; Redwine violated Neb. Rev. Stat. § 81-885.24(19) in that she failed to include a fixed date of expiration in her Listing Agreement with the Sellers of the Property; Redwine violated Neb. Rev. Stat. § 81-885.24(22) in that she misrepresented in the Purchase Agreement that she was acting as a dual agent, at a time when she had never met the Buyer; Redwine violated Neb. Rev. Stat. § 81-885.24(26) violating any rule or regulation adopted and promulgated by the commission in the interest of the public and consistent with the Nebraska Real Estate License Act, and, Title 299 Chapter 5-003.10, in that she failed to have the sellers sign and date the Sellers' "Estimated" Closing Cost Statement; Redwine violated Neb. Rev. Stat. § 81-885.24(29) demonstrating negligence, incompetency, or unworthiness to act as a broker, associate broker, or salesperson, by violating Neb. Rev. Stat. § 76-2422 (4), 81-885.24 (16), (19), (22) and 299 NAC 5-003.10, and by failing to identify in the Offer to Purchase how the buyer intended to pay the remainder balance of \$239,000.00.

August 19, 2011

SC2011-002 - Commission vs. Michael Dean Slatten, Broker. Show Cause Hearing held August 19, 2011. License revoked.; Slatten did not show cause as to why his real estate broker's license should not be subject to sanctions for failing to abide by the terms of the final Order entered in Case No. SC2010-005; by failing to abide by the requirement that he pay the Court Reporter's fee of \$120.00 within sixty (60) days of the entry of the final Order, or by February 6, 2011.

August 19, 2011

2011-004 - Commission vs. Michael Rae Crawford, Broker. Hearing held September 15, 2011, Crawford's real estate broker's license is suspended for a period of two (2) years with the entire

two (2) year period stayed and served on probation. The suspension period commenced on October 28, 2011, and continues through October 28, 2013; plus complete an additional fifteen (15) hours of continuing education with three (3) hours in Agency, three (3) hours in Contracts, three (3) hours in License Law, three (3) hours in Landlord-Tenant Act, and three (3) hours in Short Sales, all to be completed by April 25, 2012; plus pay a civil fine of \$1,500.00, court reporter fees and witness fees totaling \$973.81, on or before October 28, 2011. [Crawford violated Neb. Rev. Stat. § 81-885.24(3) Failing to account for and remit any money coming into his possession belonging to others; Crawford withheld rent proceeds from the Sellers and threatened to withhold the security deposit unless Sellers released Crawford from the Management Agreement. Crawford violated Neb. Rev. Stat. § 76-2417 (1)A licensee representing a seller or landlord as a seller's agent or a landlord's agent shall be a limited agent with the following duties and obligations: (a) To perform the terms of the written agreement made with the client; Crawford failed to perform the terms of the Management Agreement he had with the Sellers which required that he disburse the security deposit and other deposits, and it provided that either party may terminate the Agreement by providing thirty (30) days written notice. Crawford withheld rent proceeds and threatened to withhold the proceeds of the security deposit, unless Sellers released Crawford from the Management Agreement; (b) To exercise reasonable skill and care for the client. Crawford failed to timely forward funds owed to Sellers, failed to ascertain whether Sellers, Sellers' bank, or both owned the Property, and/or was engaging Crawford's services and failing to communicate Buyers' offer to Sellers; (c) To promote the interests of the client with the utmost good faith, loyalty, and fidelity, including: (ii) Presenting all written offers to and from the client in a timely manner regardless of whether the property is subject to a contract for sale or lease or a letter of intent to lease; Crawford failed to communicate Buyers' Offer to Sellers. (d) To account in a timely manner for all money and property received; Crawford failed to account in a

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Disciplinary Actions (Cont'd)

timely manner for all money received, in that he withheld rent proceeds and threatened to withhold the proceeds of the security deposit unless Sellers released Crawford from the Management Agreement; Crawford violated Neb. Rev. Stat. § 76-2422(2) by failing to enter into a written agency agreement with the Bank; Crawford violated Neb. Rev. Stat. § 81-885.24(29) Demonstrating negligence, incompetence, or unworthiness to act as a broker; by violating numerous unfair trade practices as previously identified ; Crawford violated Neb. Rev. Stat. § 81-885.24(16); Violating any provision of sections 76-2401 to 76-2430.

September 15, 2011

2009-057 - Commission vs. Kevin Dean McCully, Broker. Hearing held September 16, 2011. License censured; plus an additional three (3) hours of continuing education in “Agency” to be completed by December 27, 2011. McCully must pay a Civil Fine of \$500.00 by October 28, 2011; and McCully must pay court reporter fees of \$160.00, and witness fees of \$365.79, totaling \$525.79, by October 28, 2011. [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 brokerage 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. McCully offered brokerage services to the Seller and failed at the earliest practicable opportunity following the first substantial contact with the Seller to provide the Seller with a written copy of the current brokerage disclosure pamphlet approved by the Commission, and McCully failed to disclose in writing to the Seller the type of brokerage relationship he was offering to

the Seller; Violated Neb. Rev. Stat. § 81-885.24(16) Violating any provision of 76-2401 through 76-2430; Violated Neb. Rev. Stat. § 81-885.24(29) Demonstrating negligence, incompetency, or unworthiness to act as a broker, by violating Neb. Rev. Stat. § 76-2421(1) and 81-885.24(16). September 16, 2011

2010-060 - Brandon Schroeder vs. Douglas Lee Meier, Broker. Stipulation and Consent Order entered September 15, 2011. Meier’s real estate broker’s license suspended for a period of six (6) months with the entire period stayed and served on probation, commencing on September 15, 2011, and continuing through March 15, 2012; plus pay a civil fine of \$500.00 by October 15, 2011; plus complete an additional six (6) hours of continuing education with three (3) hours each in the area of Agency and Contracts to be completed by December 14, 2011, and submit documentary proof to the Commission that said courses have been satisfactorily completed. [Meier violated Neb. Rev. Stat. § 76-2417(1) A licensee representing a seller...as a seller’s agent...shall be a limited agent with the following duties and obligations: (b) To exercise reasonable skill and care for the client; (c) to promote the interests of the client with the utmost good faith, loyalty, and fidelity; Meier failed to contact the buyer’s attorney as represented to seller, Meier negligently drafted the terms of buyer’s July 24, 2010 Offer by indicating that the balance due at closing from the buyer was \$54,000.00, instead of \$54,500.00; and Meier failed to correct the erroneous date entered by buyer on the Offer from 8-13-10 to 9-13-10, as well as the date following the buyer’s signature from 8-13-10 to 9-13-10; Meier violated Neb. Rev. Stat. § 81-885.24(29) Demonstrating negligence, incompetency, or unworthiness to act as an associate broker by violating Neb. Rev. Stat. § 76-2417(1)(b)(c). September 16, 2011

2011-012 / 2011-020 - Commission vs. Michael Douglas Garrison, Broker. Stipulation and Consent Order entered October 27, 2011. Garrison’s real estate broker’s license is suspended for a period of five (5) years commencing on October 27, 2011, and continuing through October 27, 2016, and, Garrison must pay a civil fine of \$2,500.00 by December 26, 2011. [Garrison violated Neb. Rev. Stat.

§ 81-885.21 (1) in that trust funds deposited into his real estate trust accounts were removed from the trust accounts prior to the time the related transactions were closed or otherwise terminated despite the absence of written agreements by the parties having an interest in the funds; Violated Neb. Rev. Stat. § 81-885.24 (3) Garrison failed to account for and remit money coming into his possession belonging to others with respect to his real estate trust accounts when he allowed Realty Linc., Inc.’s bookkeeping system to be manipulated, and he failed to maintain sufficient funds in the trust accounts and was unable to make the trust accounts whole; Violated Neb. Rev. Stat. § 81-885.24 (26) Violating any rule or regulation adopted and promulgated by the Commission. Specifically, 299 NAC 3-002 By failing to maintain a bookkeeping system which accurately and clearly discloses full compliance with the law relating to the maintaining of trust accounts when he allowed Realty Linc., Inc.’s bookkeeping system to be manipulated, such that his trust account appeared to be balanced at a time when it was not; Violated 299 NAC 5.003.19 Failure by any licensee to supervise persons hired to assist the licensee in his or her licensed real estate activities. Specifically, Garrison failed to supervise and stop a licensed employee from engaging in real estate brokerage activities while such employee’s real estate broker’s license was on suspension, and by failing to stop his other unlicensed employees from engaging in real estate brokerage activities; Violating Neb. Rev. Stat § 81-885.24 (16) Violating any provision of sections 76-2401 to 76-2430. Specifically, Neb. Rev. Stat. § 76-2422 (6) Garrison failed to comply with the terms of the Realty Linc. Management Agreement with a specific property owner and the terms of the Lease Agreement with a tenant, by failing to collect the security deposit of \$850.00 in its entirety at the time the Lease Agreement was signed by the tenant; Violated Neb. Rev. Stat. § 81-885.24 (29) unfair trade practice for a licensee to demonstrate e negligence, incompetency or unworthiness to act as a broker, and 299 NAC 5-003.14 for failing to deposit any funds received as an earnest money deposit within 72 hours or before the end

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Disciplinary Actions (Cont'd)

of the next banking day, after an offer is accepted, in writing, unless otherwise provided for in the purchase agreement. In the event an offer is not accepted, the earnest money deposit shall be returned forthwith: (a) Garrison failed to deposit funds received as an earnest money deposit within 72 hours or before the end of the next banking day; (b) Garrison failed to notify the Commission of the July 2010 levies against Realty Linc.'s trust accounts; (c) Garrison allowed the real estate trust account to become short approximately \$37,559.83, from about July 14, 2010, through October 21, 2010; (d) Garrison allowed Realty Linc., Inc.'s bookkeeping system to be manipulated, such that the real estate trust account appeared to be balanced at a time when it was not; (e) Garrison allowed trust funds to be improperly removed from the trust accounts; (f) Garrison allowed the real estate trust account to be short \$8,082.62, on January 12, 2011, and g) Garrison violated Neb. Rev. Stat § 76-2422 (6), 81-885.24 (16) and (26) and 299 NAC 5-003.19.

October 27, 2011

2011-024 - Commission vs. Bruce Delmar Connell, Salesperson. Stipulation and Consent Order entered October 27, 2011, Connell's real estate salesperson license suspended for six (6) months, with the entire six (6) month period stayed and served on probation. The suspension/probation period commenced on October 27, 2011 and continues through April 27, 2012. Connell must pay a civil fine of \$750.00 by December 26, 2011; plus complete an additional six (6) hours of continuing education by February 24, 2012, with three (3) hours each in the area of Agency and License Law, and submit documentary proof to the Commission that said courses have been satisfactorily completed. [Connell violated Title 299, Chapter 5, 003.23 for failing to deliver a copy of the Seller Property Condition Disclosure Statement to the purchaser on or before the effective date of the contract which binds the purchaser to purchase the property; Connell violated Title 299, Chapter 5, 003.25 for failing to disclose any errors, inaccuracies or omissions in the Seller Property Condition Disclosure Statement, in writing to the purchaser and seller and failing

First Substantial Contact

One of the questions that often arises regarding the license law is when the licensee's obligation to present the agency disclosure pamphlet to a seller, buyer, landlord or tenant arises. The following is an excerpt from the Winter 2000 Commission Comment Article on the Agency Disclosure Pamphlet regarding the interpretation of "first substantial contact".

According to the Agency Relationships statute, disclosure of how a licensee is working with a seller, landlord, buyer, or tenant must take place "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 brokerage services with a designated broker...."

The definition of "the first practicable opportunity" depends upon the circumstances of each situation. A time limitation may be a circumstance that prevents the disclosure from being practicable. For example, it may not be practicable to make the disclosure during a brief residential showing arranged during the potential buyer's lunch break, during a potential tenant's brief tour of an apartment, or during a telephone conversation which turns out to be a substantial contact. When hosting an open house not every visitor needs to be given the required written disclosure, even if fliers which include the price and specifications or licensee promotional brochures are provided. If a

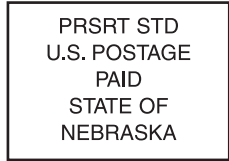
substantial discussion of the property ensues with a potential buyer, the disclosure should then be made by completing the "acknowledgement" page, either during the open house or at the "earliest practicable opportunity...following the first substantial contact"

In the case of an open house, a lunch break showing, or a brief apartment tour, the "practicable" time to make the disclosure may actually be when the licensee next meets the interested party. At an auction, the first substantial contact occurs when the successful bidder is identified. In the case of a telephone conversation, e-mail, or any other substantial contact not made in person, the completed Brokerage Relationships pamphlet should be included when additional materials are sent to an interested party. In the cover letter, request that the "Acknowledgement" page be signed and returned, and keep a copy of the letter. If the interested party does not return the signed page, you will have your copy of the letter which documented that you provided the pamphlet, and that you requested its return. By law, if a party refuse or fails to sign the "Acknowledgement" page, the licensee can note the refusal or failure to sign the page and be in compliance with the disclosure requirement [Neb. Rev. Stat. §76-2421(5)].

to attach the written disclosure to the Seller Property Condition Disclosure Statement; Connell violated Neb. Rev. Stat. § 76-2421 (1) for failing to complete an Agency Disclosure with the seller and buyer at the earliest opportunity during or following the first substantial contact; for failing to mark customer or client on the disclosure with the buyer; and for failing

to have the buyer identify the date buyer signed the Agency disclosure; Connell violated Neb. Rev. Stat. § 81-885.16 Violating any provision of sections 76-2401 to 76-2430 for violating Neb. Rev. Stat. § 76-2421; Connell violated Neb. Rev. Stat. § 81-885.24 (26) Violating any rule or regulation adopted by the commission in the interest of the public and

Return Service Requested



(Continued from page 7)

Disciplinary Actions (Cont'd)

consistent with the Nebraska Real Estate License Act, for violating Title 299, Chapter 5, Sections 003.23 and 003.25; Connell violated Neb. Rev. Stat. § 81-885.24 (29) Demonstrating negligence, incompetency, or unworthiness to act as a salesperson; for: 1) failing to deliver a copy of the Seller Property Condition Disclosure Statement to the purchaser on or before the effective date of the contract which binds the purchaser to purchase the property; 2) failing to review the Seller Property Condition Disclosure Statement for errors, inaccuracies, or omissions; 3) failing to disclose omissions by the seller in the Seller Property Condition Disclosure Statement, in writing, to both the purchaser and the seller, and failing to attach the disclosure to the Seller Property Condition Disclosure Statement ; 4) failing to complete an Agency Disclosure with the seller and buyer at the earliest opportunity during or following the first substantial contact, and, failing to mark customer or client on the Agency

Disclosure with the buyer; and failing to have the buyer identify the date buyer signed the Agency Disclosure; 5) violating any provision of sections 76-2401 to 76-2430, specifically 76-2421; 6) violating any rule or regulation of the commission, specifically Title 299, Chapter 5, Sections 003.23 and 003.25; 7) having the buyer sign the receipt for a fully-accepted copy of the offer before the seller signed and accepted the offer; 8) failing to receipt in the Offer to Purchase for the buyer's earnest money deposit of \$800.00; 9) improperly entering a date of April 5, 2010, on the buyer's Agency Disclosure which the Buyer signed on March 27, 2010; 10) failing to review the final closing statement which contained material errors including; a) the sale price of \$25,000.00, instead of the reduced price of \$24,536.12; b) an expense to the seller of \$463.88, for the water pipe repairs which expense was actually paid for by the buyer; and c) failing to reflect that \$1,500.00, of seller proceeds was to be escrowed at closing for clean-up of the Property. October 27, 2011

