

NEBRASKA REAL ESTATE COMMISSION

COMMISSION COMMENT



Winter | 2012

Herb Freeman Sworn in as Newest Commissioner

Herb Freeman was sworn in as the District 2 broker representative on the Nebraska Real Estate Commission at the September 27, 2012 Commission meeting, replacing Vince Leisey, whose term expired this year. Commissioners are appointed by the Governor and limited to one six year term.

Mr. Freeman worked as an English instructor both at the high school and college levels before receiving his salesperson's license in 1972 and his broker's license in 1973. Mr. Freeman has his Masters degree in business administration from the University of Nebraska and currently works



Commissioner Herb Freeman

as Chief Operations Officer for NP Dodge Real Estate Sales, Inc., and he is Director of Builder Services and the designated broker for NP Dodge VII, L.L.C., in Omaha.

Mr. Freeman has served as President of the Omaha Area Board of Realtors and he currently serves as a Director of the OABR, the Great Plains Realtors MLS, and the Nebraska Realtors Association. He is past president of the First Unitarian Church of Omaha, the UNO Alumni Association, Family Friends, and the Better Business Bureau in Omaha. Mr. Freeman is a member of The Realty Alliance, the Congress for the

New Urbanism and the National Town Builders Association. 



Real Estate Commission Chairman John Gale and Commissioner Freeman



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

Commission Meeting Schedule

January 17-18	Lincoln
February 21-22	Lincoln
March 21-22	Lincoln
April 18-19	Lincoln
May 16-17	Lincoln
June 20-21	Lincoln

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Printed with soy ink

Season's Greetings

On behalf of the Nebraska Real Estate Commission members and staff, I want to extend warm season's greetings to all of our licensees and the dedicated office teams of every agency! You are part of a highly productive and professional industry that is serving our Nebraska citizens well.

The primary goals of the Commission are to keep high professional standards for the real estate industry and maintain positive public trust and confidence in the industry. Our state legislature has entrusted these goals with the Commission. However, it requires a good working relationship with the industry as well which we feel privileged to have. With the help of our licensees, we have a shared commitment of high professional service to our citizens.

The 2011 law increasing CE requirements was supported by the industry, the Commission, and our Governor. We are pleased with the efforts of our brokers to make use of these broker-approved training courses. These new education hours should be helpful in assuring that the industry's professionalism remains high. This unique program is gaining the attention of other states!

Director Greg Lemon, Deputy Directors Teresa Hoffman and Terry Mayrose, and the Commission staff have all been working hard on the Commission's 2012-13 objectives. We are excited about the progress we are making. Our online renewal program has proven to be very well-received by our licensees, and helps our staff be more efficient with their time and resources.

In August, Herb Freeman joined the Commission, filling the position of Second Congressional District broker representative for a six-year term. Herb replaces Vince Leisey, the managing broker for Prudential-Ambassador, headquartered in Omaha. We thank Vince for his dedicated service! Herb brings a high level of knowledge and experience to the position as an experienced broker, and we welcome him to the Commission. He is the designated broker for NP Dodge VII L.L.C.

We realize that 2012 has been another challenging year for many of you, but we are seeing increased sales and improved home values in our state compared to the other states in a nine-state region in the Midwest and Plains. Mortgage interest rates are at an historic low, and inventories are improving. There are certainly good reasons for encouragement as we move into 2013.

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 2013!

Sincerely,
John A. Gale
Chair and Secretary of State



Secretary of State John Gale

DIRECTOR'S DESK

License Manual Updates

In the past the Commission has periodically sent out loose leaf updates to the License Law Manual, which is a compilation of the License Law, Commission Regulations, Agency law, and other pertinent authority regulating real estate practice. Because of the time and expense involved in sending out these updates we cannot distribute them every time there is a change to the manual, in fact we have not sent one out for several years. Most of the time, including now, the printed version of the loose leaf manual is inevitably not current and people have to look at the online version of the manual to make sure they get the correct information.

We have decided to forego the printing and distribution of the loose leaf updates and instead suggest that licensees and other interested parties go online to get the latest version of the Commissions law and policies, which are available both as a single complete document and in indexed form, and view it there or print it out. We are also working on an update index, showing recent changes to the provisions of the Manual materials. Lastly we will still distribute the paper manual to new licensees and to others upon request. The online version is available at: <http://www.nrec.ne.gov/legal/licensemanual.html>.

Happy Holidays

We 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



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.



Director Greg Lemon

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
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	tawny.snider@nebraska.gov
Curriculum Design (Education & Instructor Approval)	Teresa Hoffman
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Disciplinary Actions Taken by the Real Estate Commission

(Does Not Include Cases on Appeal)

2011-026 – John V. and Jamie D. Eberly vs. Timothy Charles Plate; Broker; Grand Island, NE. Hearing held September 27, 2012. Order entered October 9, 2012 License censured; plus complete six (6) hours of additional continuing education, three (3) hours each in the areas of “Agency” and “Contracts” by February 6, 2013; plus pay court reporter fees of \$220.00 on or before November 7, 2012. [Violated Neb. Rev. Stat. § 76-2417(1)(a)-(c) 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; and (c) to promote the interest of the client with the utmost good faith, loyalty, and fidelity; Neb. Rev. Stat. § 81-885.24(16) Unfair trade practice for violating any provisions of sections 76-2401 to 76-2430: for failing to have the Eberlys’ initial the option in the Listing Agreement allowing for a Buyer’s Agent to conduct an open house of the Eberly property.]

2012-023 – Commission vs. Robin A. Petersen; Broker; St. Francis, KS. Stipulation and Consent Order entered October 2, 2012. License censured; plus pay a civil fine of \$500.00 by November 1, 2012; plus complete nine (9) hours of additional continuing education, three (3) hours each in the areas of “Agency”, “Contracts” and “License Law” by March 31, 2013. [Violated Title 299 Chapter 5 Section 003.18 Failure to reduce an offer to writing where a prospective purchaser requests such offer be submitted when the licensee is: the limited sell-

er’s agent for the property: Petersen failed to reduce a buyer’s offers to writing while acting as a limited Seller’s Agent for the property; Violated Neb. Rev. Stat. § 81-885.24(26) Violating any rule or regulation adopted by the Commission in the interest of the public and consistent with the Nebraska Real Estate License Act: Petersen violated Title 299 Chapter 5 Section 003.18; 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: Petersen failed to complete an agency disclosure with the buyers on first substantial contact; Violated Neb. Rev. Stat. § 81-885.24(29) Demonstrating negligence and unworthiness to act as a broker, associate broker, or salesperson: Petersen violated Title 299 Chapter 5 Section 003.18; Neb. Rev. Stat. § 76-2421(1) (a) and (b); and 81-885.24(26)]

SC2012-003 – Commission vs. Monte L. Froehlich; Broker; Lincoln, NE. Stipulation and Consent Order entered October 18, 2012. License suspended for six (6) months

with the entire six (6) month suspension stayed and served on probation; plus a civil fine of \$1,000.00 to be paid by November 17, 2012. [Froehlich violated the terms of a previous Stipulation and Consent Order pertaining to Case No. 2012-001 dated June 28, 2012, which required Froehlich to pay a civil fine of \$1,000.00 by July 28, 2012.]

2012-024 – Commission vs. Michael Nathan Helmuth; Broker. Kansas City, MO. Stipulation and Consent Order entered November 15, 2012. License censured; plus pay a civil fine of \$1,000.00, by December 14, 2012. [Helmuth violated Title 299 Chapter 2 Section 003 Advertising shall include all forms of identification, representation, promotion, and solicitation disseminated in any manner and by any means of communication to the public for any purpose related to licensed real estate activity. All advertising shall be under the direct supervision of the broker, and in the name the broker is conducting business as recorded with the Commission. Advertising which is contrary to Sections 003 to 006 of these regulations shall constitute misleading or inaccurate advertising under Section 81-885.24(2) of the Nebraska Real Estate License Act; Neb. Rev. Stat. § 81-885.24 (2) Intentionally using advertising which is misleading or inaccurate in any material particular or in any way misrepresents any property, terms, values, policies, or services of the business conducted; Neb. Rev. Stat. § 81-885.24 (26) Violating any rule or regulation adopted and promulgated by the Commission; and Neb. Rev. Stat. § 81-885.24 (29) Demonstrating negligence, incompetency, or unworthiness to act as a broker, associate bro-

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Disciplinary Actions (Cont'd)

ker, or salesperson. Helmuth conducted real estate business in Nebraska from April 16, 2011 through September 11, 2012, under an inactive Limited Liability Company, and he improperly advertised Nebraska real estate for sale under the name of the inactive Limited Liability Company which constitutes misleading or inaccurate advertising.]

2012-030 – Commission vs. Julie Christie David; Salesperson; Omaha, NE. Stipulation and Consent Order entered November 15, 2012. License censured; plus pay a civil fine of \$500.00 by December 14, 2012. [Violated Neb. Rev. Stat. §

81-885.24 (29) Demonstrating negligence, incompetency, or unworthiness to act as a broker, associate broker, or salesperson; for having had a disciplinary action taken against her Iowa real estate salesperson's license by the Iowa Real Estate Commission.]

2012-031 – Commission vs. Steven Andrew Alloway; Broker; Omaha, NE. Stipulation and Consent Order entered November 15, 2012. License censured; plus pay a civil fine of \$500.00 by December 14, 2012. [Violated Neb. Rev. Stat. § 81-885.24 (29) Demonstrating negligence, incompetency, or unworthiness to act as a broker, associate broker, or salesperson; for having had a disciplinary action taken against his

Iowa real estate broker's license by the Iowa Real Estate Commission.]

SC2012-002 – Commission vs. Cortney Sells; Omaha, NE. Stipulation and Consent Order entered November 15, 2012. Sells shall pay a civil fine of \$5,000.00 by December 14, 2012; and modify her advertising to contain a conspicuous disclaimer as outlined in the Commission's Order; plus Cease and Desist Order CD2012-010 shall remain in full force and effect. [Sells violated the Commission's Cease and Desist Order by conducting the unlicensed practice of real estate without having first secured a Nebraska real estate license.] 



Handling Absences and Unavailability

Licensees' will inevitably be confronted with situations where they are not available to meet their client's needs, and must find another licensee to fill in for them in their absence. It may be an instance of a long planned vacation, an unexpected illness, or simply a weekend when open houses are being held at the same time at two or more of the licensee's listings. This article explores the appropriate ways to deal with such situations, as well as the potential problems which should be avoided.

BACKGROUND INFORMATION

Know Your Broker's Agency Policy

Every designated broker must have a written agency policy and must make that policy known to his/her affiliated licensees. In addition to outlining the types of agency that may be offered (limited agent for buyer, seller, landlord or tenant, dual limited, common law) the more important provision of this policy for the purposes of this article relates to what the agency relationship to the client is for the other affiliated licensees in the same brokerage firm. A small minority of firms do not practice **designated agency**. In these firms, if one agent represents the seller, then all agents represent the seller. More often than not, though, the agency policy calls for designated agency where licensees within the same firm may be designated as seller's agents while others in the same firm may be designated as buyer's agents on the same property. The practice of exercising designated agency has been preferred because it eliminates the necessity of automatically creating a dual agency situation

every time the brokerage firm represents parties on both sides of the transaction.

The policy may also state whether the broker offers **subagency**, the importance of which we will explain later.

Know the Terms of Your Agency Agreements

In firms where designated agency is practiced it is extremely important that the listing agreement should state exactly who is acting as the limited landlord or as limited seller's agent, whether that be one party or more than one party who works under the same broker. If written buyer's or tenant agency agreements are used they, too, should state exactly who the identified agent is or multiple agents are.

WHAT TO DO IN CASES OF ABSENCE OR UNAVAILABILITY

There may be occasions when the "identified" limited agent(s) of the client(s) is/are unavailable, perhaps out-of-town or ill, and: the buyer or tenant wants to look at a specific property or properties that has/have become available; or the buyer or tenant want to make an offer or enter into a lease immediately; or there is an open house that needs to be hosted, or the seller needs to receive an offer for consideration which expires prior to the return of the identified agent(s); or other similar situations. In the situation where only one affiliated licensee is representing a client, and it becomes necessary that another affiliated licensee under the same broker, not heretofore representing the client, needs to become a limited agent for the client, certain actions need to be taken. In cases

where a written agreement between the client and the agent exists, (single or dual agency) the name of the affiliated licensee who needs to become a limited agent of the client(s) should be added to the agreement. (Usually, written agreements of designated brokers utilizing "designated agency" give the broker the authority to appoint additional affiliated licensees as limited agents of the client.) If the appointment authority is applicable, the client should be timely notified, in writing, that the newly identified agent is representing the client. Notification of the client could also be done by having the client sign a new "Acknowledgement of Disclosure" page with the new agent's name and the appropriate blanks checked.

In the case where an additional agent is identified to represent a buyer or tenant where there is no written buyer agency agreement the buyer should be notified and consent to such arrangement. Although not required by law, we suggest that the new buyer's agent could complete the "Acknowledgement of Disclosure" page appropriately and have the buyer(s) or tenant(s) sign the "Disclosure" prior to performing any duties on behalf of the buyer or tenant as evidence of such notification, or that the buyer's agent note the date time, location, and nature of that conversation in the transaction file for their own records and protection.

It is also permissible for a buyer's agent to host an open house for the seller, but they can only do so with the knowledge and consent of the seller, who should be thoroughly apprised of the situation verbally by his or her seller's agent, making it clear to the seller that the host of the

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Handling Absences (Cont'd)

open house will not be representing him or her. Although it is not required, we suggest that the buyer's agent could complete the "Acknowledgement of Disclosure" page appropriately and have the seller(s) sign the "Disclosure" prior to the open house or the seller's agent could note the date time, location, and nature of that conversation in the transaction file for their own records and protection.

In cases where the designated broker is a sole proprietor with no licensees working under him/her, or where there are multiple licensees in the firm, but none are available, the licensee may want to consider utilizing another firm as a subagent if the broker's agency policy allows it. The client and, of course, the subagent must agree in writing to the offer of subagency. With the proper written disclosures and consents in place, the licensee working as subagent can then act as the client's limited agent as needed.

CONCLUSION

What we are trying to avoid here, of course, is a situation where a client is not absolutely aware of who the person conducting their open house, showing them a property, presenting an offer or otherwise providing assistance is representing.

The important thing to remember is to take care of your client and to make certain he/she is represented when you can't be there AND to have all proper disclosures and consents in place in writing before your absence occurs. 

Changes in the Administration of Salesperson Examinations

At the October Commission Meeting the Commission moved to allow candidates taking the salesperson licensing examination who pass either the national or the state-specific section of the examination but fail the other section to retain credit for the section they pass. The applicant will be allowed to retain credit for the section of the exam which they passed through three subsequent administrations of the examination or six months, whichever comes first. Should the candidate fail to pass the additional section of the examination within this framework, he/she will be required to retake both portions of the examination again and the retention schedule will begin again from that point forward, and so on.

This change will affect the processing of applications, therefore, a transition period is necessary. The last testing under the current procedure will be January 31, 2013, with the first administrations allowing retention on February 6.

Because the staffing needs and site commitment remain the same, the examination fee will remain at \$150 whether two parts are being taken or one.

This is how the salesperson

examination will be administered in order to accommodate this change:

- If a candidate is approved for both portions, they will be administered separately. After signing in and taking the photo, the candidate will choose either the national or state portion to start. When completing the first portion, candidates will see a message that indicates they can start on the second portion right away or take up to a 10-minute break (at which time the next portion will automatically start).
- Commission staff will keep track of which portion(s) the candidates will take, and similarly, which portion(s) the candidate has passed. AMP will allow access to the examination part as directed by the Commission staff.
- For testing time 2.5 hours (150 minutes) will be allowed for the 105 national items (100 scored); and 1.5 hours (90 minutes) for the 55 state items (50 scored).
- Score reports will print separately, one page for state, one page for national. 

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ERRORS AND OMISSIONS INSURANCE REMINDER

PLEASE REMEMBER THAT ALL LICENSEES SHOULD CHECK THE EXPIRATION DATE OF THEIR ERRORS AND OMISSIONS INSURANCE WHETHER OR NOT THEIR REAL ESTATE LICENSE EXPIRES THIS YEAR. LICENSES MAY NOT BE HELD ON ACTIVE STATUS WITHOUT PROOF OF CURRENT INSURANCE COVERAGE IN THE COMMISSION OFFICE. MOST LICENSEE'S ERRORS AND OMISSIONS INSURANCE EXPIRES ON OR ABOUT JANUARY 1 OF EACH YEAR, YOU NEED TO MAKE SURE YOUR INSURANCE IS CURRENT EVEN IF YOU DO NOT NEED TO RENEW YOUR LICENSE THIS YEAR.