



# Andy Alloway Sworn in as Commissioner

Andy Alloway was sworn in as the broker at large representative on the Nebraska Real Estate Commission at the September 27, 2013 Commission meeting, replacing Robert Dover, whose term expired this year. Commissioners are appointed by the governor and limited to one six year term.

Mr. Alloway is the owner and designated broker for DEEB Realty, where he has worked for 12 years. Alloway received his Bachelor of Science Degree (Cum Laude) from Northwest Missouri State University in 1999. He worked as a strength and conditioning coach for the Milwaukee Brewers baseball organization after graduation from college and began his real estate career with Deeb Realty in 2001.

Mr. Alloway has served on a number of boards and committees with both the Omaha Area and Nebraska REALTORS organizations. He has also been very

active in his community with many local charities and civic organizations. He lives in Omaha, has two young children and enjoys spending time with his family, playing golf and watching football. 🏡

Terry Mayrose  
Retirement Reception  
3:00-5:00 P.M.  
Thursday, December 19, 2013  
Atrium Building  
Conference Center  
1200 N St. 2nd Floor  
Lincoln NE



Chairperson John Gale (R) Swears in New Commissioner Alloway (L).

## Commission Meeting Schedule

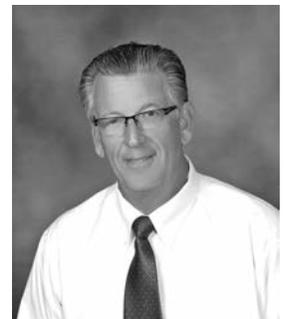
- January 16-17 .....Lincoln
- February 20-21 .....Lincoln
- March 20-21 .....Lincoln
- April 17-18 .....Lincoln
- May 22-23 .....Lincoln
- June 19-20 .....Lincoln

## On the Inside

- Holiday Message .....page 2
- Director's Desk .....page 3
- Disciplinary Actions .....page 4
- License Law Briefs .....page 4
- Wuestehube Case .....page 5

## Deputy Director for Enforcement, Terry Mayrose, Retires

The Commission would like to recognize the service of Deputy Director for Enforcement, Terry Mayrose, who will be retiring December 31st, after 31 years of service with the Real Estate Commission. Terry began his career with the Commission as a Trust Account Examiner, and was appointed Deputy Director for Enforcement in 1998.



Terry plans to volunteer in the community, continue his very active involvement in the Cornhusker Corvette Club, and spend a little more time chasing par instead of hunting down license law violators. He looks forward to enjoying his retirement with his wife DeEtta and family. The Commission extends its thanks to Terry, a Viet Nam era veteran, for his service to our country and to our state. A reception in his honor will be held on the afternoon of December 19th, details above.

## COMMISSION COMMENT

Official Publication of the  
Nebraska Real Estate Commission  
1200 "N" Street, Suite 402  
P.O. Box 94667  
Lincoln, Nebraska 68509-4667  
(402) 471-2004  
www.nrec.ne.gov

Facebook: Nebraskarealestatecommission  
Twitter: @Nerealestatecom  
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

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

Drew Stange  
1248 "O" St.  
Lincoln, NE 68508  
(402) 441-5800

Herb Freeman  
17809 Pacific St.  
Omaha, NE 68240  
(402) 397-4900

Andy Alloway  
2611 S. 117th St.  
Omaha, NE 68144  
(402) 491-0100

## DIRECTOR

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

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

As we approach the New Year 2014, we have many things to be thankful for in the real estate profession! The economy continues to recover, the stock market is at a record high, new home construction is booming, and real estate sales are soaring. While there are some weak spots like existing home inventories, tougher lending policies, and national unemployment levels that need to come down, 2013 has still been a good year. We've been fortunate to fare better in Nebraska than other regions of the country and hope that will continue to be the case in 2014!

On behalf of the Real Estate Commission and the Commission staff, we want to wish all of you a very Merry Christmas, Happy Hanukah, and a Happy New Year!

This past April, I had the opportunity to speak to new licensees at an event hosted by the Nebraska State REALTORS Association. At that time I laid out several of the long-term goals which I feel to be essential to the duties and goals of the Nebraska Real Estate Commission. They include:

- Insuring that the Commission maintains sound, sensible and responsible standards for applicants who wish to become licensed,
- Insuring that licensees subject to complaint are treated in an equitable and impartial manner,
- That the Commission remain actively involved in promoting and supporting legislation that advances high professional standards, and
- Maintaining high public trust and confidence in the professionalism of the industry.

I continue to be impressed with the progressive steps being taken by the Nebraska Real Estate Commission to ensure that each of these objectives are being met and exceeded, year after year.

Fortunately, the Commission has been well-staffed with outstanding personnel and maintains a very professional group of commissioners. As I have mentioned before, our commissioners are very experienced, knowledgeable about the law, thoughtful and fair.

We continued that trend of excellence this year when Governor Heineman appointed Andy Alloway of DEEB Realty of Omaha in August as the broker at large to replace Rob Dover of Norfolk whose term expired. Rob was a very thoughtful and dedicated member of the Commission and helped make many valuable changes in the Commission practices. We look forward to working with Andy.

The Commission also learned in September that Terry Mayrose, Deputy Director for Enforcement would retire at the end of the year. We appreciate Terry's 30+ years of service to the Commission and wish him well in his future. He has been an exemplary investigative and enforcement officer for the Commission and will be hard to replace. Terry has been a true professional.

Serving as chair of the Real Estate Commission is a role which I take seriously and feel honored to hold. My wife Carol and I enjoyed attending the installation of new officers and directors in both Omaha and Lincoln and we appreciate the invitations to other events throughout the year.

On behalf of the Commissioners and the Commission staff, my best wishes to you and your families this holiday season and a very successful 2014.

Sincerely,  
John A. Gale  
Secretary of State



Secretary of State John Gale

# DIRECTOR'S DESK

## License Revocations

This year the Commission has had six license revocations, compared to a typical year when we see one or two. Most of these revocations relate to the misappropriation of other people's money, in some cases these were funds in the broker trust account, and in other instances they were client or company funds which were misappropriated, but not necessarily related to real estate activity. The granting of a real estate license puts the licensee in a position of public trust, where they should be able to be relied upon to hold and properly account for all client funds at all times. The Commission takes this granting of the public trust very seriously, and any breach is met with prompt and serious consequences.



Director Greg Lemon

## Changing of the Guard

Each year we welcome a new Commissioner to the seven member board, and say goodbye to another. This year we are pleased to have Andy Alloway as our new addition (see story page one), and we say farewell to Robert Dover from Norfolk. Robert was a conscientious and thoughtful commissioner whose high ethical standards for the industry were of great benefit to the Commission during his tenure.

I would also like to personally recognize and thank our Chief Deputy for Enforcement, Terry Mayrose, for his service to the Commission. Terry served as one of our trust account examiners before assuming the Deputy position. Although his title was "Enforcement", Terry spent as much time on the phone answering license law questions and preventing violations before they started as he did investigating complaints, and he will be missed

## 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.

## 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	Paige Utecht paige.utecht@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	Patricia Menousek patricia.menousek@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.ne.gov](http://www.nrec.ne.gov)

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)*

**2013-006 – Commission vs. Amy M. Mosser; Salesperson;** Lincoln, NE. Stipulation and Consent Order entered August 23, 2013. License suspended for a period of two (2) years with the entire two (2) period stayed and served on probation; plus a civil fine of \$2,500.00 to be paid by September 22, 2013; plus six (6) hours of additional continuing education with three (3) hours each in the areas of disclosures and ethics, and submit proof of completion to the Commission office by February 19, 2014. [Mosser 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 forth the following; (3) Such other information as the commission requires; *Neb. Rev. Stat. § 81-885.12(4)* 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 broker, associate broker, or salesperson; by submitting a materially false original Application For A Real Estate Salesperson's License on October 26, 2004, and by repeatedly submitting materially false Annual Renewal Applications on November 23, 2005, November 9, 2006, October 15, 2009, November 16, 2010, September 27, 2011 and November 14, 2012.]

**2013-008 – Earnest Kaiman vs. Adrienne Ellen Farnsworth; Broker;** Phoenix, AZ. Stipulation and Consent Order entered September 27, 2013. License revoked. [Farnsworth violated *Neb. Rev. Stat. § 81-885.24(3)* Failing to account for and remit any money coming into his or her possession belonging to others, and for failing to timely remit monies to the Owner after repeatedly being requested to remit such monies.; Violated *Neb. Rev. Stat. § 81-885.24(29)* Demonstrating negligence, incompetency, or unworthiness to act as a broker, associate broker, or salesperson, for being negligent and for violating *Neb. Rev. Stat. § 81-885.24(3)*.]

**2013-011 – David Richard Schnell vs. Adrienne Ellen Farnsworth; Broker;** Phoenix, AZ. Stipulation and Consent Order entered September 27, 2013. License revoked. [Farnsworth violated *Neb. Rev. Stat. § 81-885.24(29)* Demonstrating negligence, incompetency, or unworthiness to act as a broker, associate broker, or salesperson, for being negligent for failing to timely remit monies to the Owner after repeatedly being requested to remit such monies; for failing to provide the Owner in a timely manner with the 2012 financial reports; and for failing to provide the Owner with receipts for a fence after repeatedly being requested to provide such receipts.]

**2013-025 – Commission vs. David Frank Harders; Broker;** Ceresco, NE. Stipulation and Consent Order entered September 27, 2013. License revoked. [Harders 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 a Class 1 Misdemeanor which involved the use of a firearm.]

**2013-027 – Commission vs. Rebecca S. Rutherford; Broker;** LaVista, NE. Stipulation and Consent Order entered September 27, 2013. License revoked. [Rutherford violated *Neb. Rev. Stat. § 81-885.24(29)* Demonstrating negligence, incompetency, or unworthiness to act as a broker, associate broker, or salesperson; for misappropriating funds from her employer's operating accounts.]

## License Law Briefs

### Agency Disclosure, Ag Land Not Exempt

The duty to provide an agency disclosure statement to parties at the earliest practicable opportunity after first substantial contact extends to the sale or lease of farm land as well. *Neb. Rev. Stat. § 76-2421 (6)* exempts the sale or lease of property with five or more dwelling units or commercial and industrial property (but does not exempt ag-land) when the interested party is acting as a representative or agent of a business entity such as a corporation or limited liability company.

### Duty to Disclose Deaths, Crimes, etc.

The license law is clear on the duty of a licensee to disclose (in writing) adverse material facts which affect the value of the property and have not been otherwise disclosed, including facts regarding the physical condition of the property as well as legal impediments affecting ownership, such as liens. However, the law is less clear on items which may have a psychological impact, such as a violent crime, a suicide that has occurred on the property, or even rumors of a house being haunted. While the Commission has not interpreted the license law to impose a duty to disclose psychological impact items, these items may (and have in other jurisdictions in some court cases) expose a seller or lessor of property and their agent to civil liability if not disclosed. The easy out on this one is to discuss disclosure with your client and if they disclose in writing you are off the hook. If the client does not disclose we suggest the licensee consult an attorney regarding potential civil liability and the duty to disclose. The licensee should also suggest that his/her client do the same.

### Trust Account Manual Update

There has been a change to the Commission's Trust Account Manual based upon our communications with the State Treasurer's Office. Unclaimed trust funds may not be forwarded to State Treasurer's Unclaimed Property Divi-

*(Continued on page 5)*

# Commission's Jurisdiction Over Unlicensed Persons Upheld

The Nebraska Real Estate Commission (the "Commission") has successfully defended its exercise of personal jurisdiction in an unlicensed activity case involving a nonresident who was shown as the broker for numerous Internet listings advertising Nebraska properties for sale.

The Commission filed a civil complaint against Carl Wuestehube and TriStar Realty in the Lancaster County, District Court seeking a permanent injunction and enforcement of the \$5,000 fine, plus attorney fees and costs related to a Commission order entered finding him in violation of the Act for conducting real estate activity without a license. Among other counterclaims, Wuestehube challenged the Commission's exercise of personal jurisdiction over himself and Tri-Star. After a hearing, the District Court entered summary judgment in favor of the Commission.

In its Order, the court first affirmed the Commission's findings that Wuestehube's unlicensed online activities required a Nebraska broker's license. The court then examined the personal jurisdiction issue in light of the applica-

ble statutes (Neb. Rev. Stat. 18-885.03, et seq.) that empower the Commission to enforce Nebraska's real estate licensing requirements by issuing administrative cease and desist orders, imposing civil penalties and seeking judicial enforcement of those orders. The statutes also provide that a single act requiring a Nebraska real estate license by an unlicensed person "...constitutes sufficient contact with the state of Nebraska for the exercise of personal jurisdiction over the person...".

The court ruled that Wuestehube's continuing contacts with Nebraska justified the Commission's exercise of "specific personal jurisdiction" in the unlicensed activity proceedings. The court also based its "minimum contacts" findings on Wuestehube's operation of a website, [www.showcasebyseller.com](http://www.showcasebyseller.com), through which advertising assistance is offered to for-sale-by-owners who want to list their own properties on third-party web sites, including Realtor.com. The court concluded that Wuestehube was "instrumental" in listing Nebraska properties on Realtor.com and did nothing to

change the advertisements or dispute the allegations contained in the Commission's Cease and Desist Order.

The District Court also ruled that Wuestehube's constitutional and other counterclaims were barred by the common law doctrine of res judicata because he failed to avail himself of the appeal procedures provided by the real estate licensing laws and the state Administrative Procedures Act. The court thus held that the Commission orders were final, conclusive and could not be collaterally attacked through the civil court proceedings commenced by the Commission.

The District Court granted summary judgment against Wuestehube and Tri-Star, permanently enjoined them from engaging in unlicensed real estate activities in Nebraska, and ordered payment of the \$5,280 civil fine and costs and \$15,675.59 for the Commission's court costs and attorney fees, plus post-judgment interest. The defendants have since paid the judgment. 

© ARELLO®. Condensed from ARELLO's Boundaries magazine.

(Continued from page 4)

## Online Renewal (Cont'd)

sion until five years have elapsed since the last inquiry or claim on the property. <http://www.nrec.ne.gov/pdf/manualupdates/1013tam.pdf>

## Paying for Leads on Prospective Clients

The definition of Broker includes procuring prospects or holding himself or herself out as a referral agent for procuring prospects for the listing, sale, purchase, exchange, renting, leasing or optioning of real estate. It is a violation of the Act to engage in brokerage activities without a real estate license, and it is also a violation of the Act to pay unlicensed persons for activities requiring a license. Paying unlicensed persons for specific leads for clients is a violation of the license act. 



Nebraska Real Estate Commission  
PO Box 94667  
Lincoln, NE 68509-4667  
**Return Service Requested**

PRSR STD  
U.S. POSTAGE  
PAID  
STATE OF  
NEBRASKA



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