



COMMISSION COMMENT

Summer | 2014

On the Inside

Director's Deskpage 2
New Application
Procedurespage 3
Disciplinary Reportpage 4
License Law Briefspage 7

Commission Meeting Schedule


August 21-22Lincoln
September 25-26Lincoln
October 17Lincoln
November 20-21Lincoln

Duran Cell Named Deputy for Enforcement

The Nebraska Real Estate Commission has named Duran Cell as the new Deputy Director for Enforcement. Duran



replaces Terry Mayrose, who retired, having worked for the Commission for 31 years, including 16 years as Deputy Director for Enforcement.

Duran, a native of Michigan, earned a Bachelor's degree and a Master's degree in Criminal Justice from the University of Central Florida and has also worked as a Unit Caseworker for the Nebraska Department of Corrections, and as a Probation Officer for the Florida Department of Corrections, he enjoys playing disc golf and terrarium building in his spare time. 

Your Licensee Portal

Check Your License Status Anytime

Did you know you can check the status of your license, renewal, errors & omissions insurance, disciplinary actions, continuing education and broker approved training online? The Nebraska Real Estate Commission's licensee portal also allows designated brokers to access information on affiliated licensees, and allows all licensees to access our online services.


Your License Number is Your Userid

The licensee login is at the upper right hand corner of the Commission's homepage: <http://www.nrec.ne.gov/index.html>. You will need your userid and password to get in, as mentioned in the caption, your userid is your license number, all licensees have a password which is initially assigned by our system and will look something like this \$7%9)44rrt, in all likelihood you will not remember it. We recommend that you reset your password to something you can remember, or write it down and leave it somewhere which is both reasonably secure and where you will be able to find it when needed.

Resetting Your Password

In order to reset your password you need to go into our "change password" option on the licensee login page. When you reset your password a **temporary password** will be sent to the e-mail address we have on record for you. The temporary password **can only be used for the purpose of resetting your password** it will not work for access to the portal or our online services. Use the link in the email instructions to reset your password by typing in the temporary password as shown in the email and create a new password you will be able to remember. With your new password you can access your licensee portal and our online services.

Keep Your Email Current

As the Commission has moved towards providing more online services we are also relying on email for notifications as well as for other communications, such as the note we send about resetting your password. Unfortunately, we do not yet have a self-service online email entry function. The email we will have on file for you will be whatever you provided in your initial license application or last renewal, unless you have otherwise notified us of a change. You may let us know if your email address changes by phone, letter, fax, or by sending an email to realestate.commission@nebraska.gov. 

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

DIRECTOR'S DESK

Acting in the Client's Best Interest (and Your Own)

I am often asked "How do you stay out of trouble with the Real Estate Commission?" The Commission receives a large number of calls and complaints where the caller states, "I didn't feel that my agent was acting in my best interest" and goes on to explain why. Some of possible scenarios outlining why a client might feel that way are further outlined in this issue of the Commission Comment. The law requires licensees to "promote the interests of the client with the utmost good faith, loyalty, and fidelity" (NEB. REV. STAT. 76-2417 (1)(c) Seller's or Landlord's Agent, NEB. REV. STAT. 76-2418 (1)(c) Buyer's or tenants agent).

Breach of fiduciary duty can be more difficult to prove than more well defined violations such as failure to provide a required disclosure or statement, however, we do pursue such complaints and find that such violations have occurred. There are certainly many technical requirements of the License Act and Agency laws which must be remembered and followed, but the licensees who get in, for want of a better term, "big trouble" often have breached their fiduciary duty and put their own or other's interests ahead of their client's, by (worst case) directly taking client funds for their own use, or promoting a transaction that is of more benefit to them or someone the licensee knows than the client, or not doing their best to assist the client in the transaction with the "utmost good faith, loyalty, and fidelity" by simply failing to be there to provide answers, information, and documents when needed, or, if not available, by not arranging for another licensee to cover for them. In addition to the possibility of disciplinary action for breach of fiduciary duty, what do you think the odds are of the client who doesn't feel that their interests were looked after of recommending their agent to a friend or family member, or using them again in the future?

Greg Lemon, Director
Nebraska Real Estate Commission



Director Greg Lemon



Photo courtesy of Nebraska Tourism Commission


A young wrangler is plumb tuckered out after a day of Nebraska's Big Rodeo in Burwell, NE.

License Application Process Revised

Recently the State Patrol and the FBI began mandating a Notice of Rights be given to all applicants prior to their proceeding through the background check process. Additionally, the State Patrol initiated changes in the manner in which they process fingerprints. Because of this the Commission sought and received changes to our statute. As of July 18, 2014, we now require that an application, which will include the required Notice, be received prior to fingerprint cards being released and applicants pursuing the background check process. It is our belief that this change will be helpful in that it will eliminate the separate Notice and at least one exchange of information back and forth.

While there are at least three parties that can affect this process; the applicant, the State Patrol and the Commission, we would like to share with you what we believe will be the most expedient manner in which to pursue a real estate license.

- Obtain an application packet either from the office or online
- If qualifying through education and examination, consider pre-license education requirements; proof of completion may be sent into the Commission before, with, or after the application form, itself, has been submitted
- Submit the application and fees to the Commission
- Upon receiving the application, the Commission will, **immediately**, return fingerprint cards with instructions to the applicant
- The applicant should pursue the fingerprint process as soon as possible to avoid delays; be aware that it is taking on average 3-4 weeks for criminal reports to be received in the Commission office, **background check fees will be paid directly to the State Patrol**
- While waiting for the report, provide everything else required for a complete application including course completion certificates or transcripts; those seeking licensing through the license recognition process will need to make arrangements for a Certification of License History, relative to the license being recognized, to be sent directly to the Nebraska Real Estate Commission
- When the criminal background report has been received in the Commission office a letter will be mailed to the applicant indicating either:
 - 1) the application is complete and an appointment may be made to take the examination, or
 - 2) the application is incomplete and listing the items remaining for a complete application **Applicants will no longer have to call periodically to see if the Commission has received the report, we will confirm receipt with one of the letters described in this section.**
- To have a license issued upon successfully completing the examination, applicants must provide proof of errors and omissions insurance, if seeking to have an active license; all necessary information regarding the manner in which they intend to do business; and the license fee

In closing please remember that applications, with their fees, are only considered current for one year from the date we receive them. Therefore, it is in the applicant's best interest that he/she pursue the fingerprinting process immediately upon receiving the fingerprint cards from the 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 . . .	<i>Monica Rut</i> monica.rut@nebraska.gov
Complaint Procedures	<i>Duran Cell</i> duran.cell@nebraska.gov
Continuing Education History or Inquiries	<i>Tawny Snider</i> tawny.snider@nebraska.gov
Curriculum Design (Education & Instructor Approval)	<i>Teresa Hoffman</i> teresa.hoffman@nebraska.gov
Errors and Omissions Insurance Inquiries	<i>Teresa Hoffman</i> teresa.hoffman@nebraska.gov
Financial Officer.	<i>General Staff</i> realestate.commission@nebraska.gov
License Applications Packet Requests	<i>General Staff</i> realestate.commission@nebraska.gov
License Applications Process . . .	<i>Marilyn Masters</i> marilyn.masters@nebraska.gov
Licensing and Education Requirements	<i>Teresa Hoffman</i> teresa.hoffman@nebraska.gov
New Licenses in Process.	<i>Marilyn Masters</i> marilyn.masters@nebraska.gov
Specialized Registrations	<i>Monica Rut</i> monica.rut@nebraska.gov
Transfer of License	<i>Patricia Menousek</i> patricia.menousek@nebraska.gov
Trust Account Matters	<i>John Clark</i> john.clark@nebraska.gov <i>Patricia Stehly</i> <i>Ron Pierson</i>
Webmaster.	<i>Monica Rut</i> monica.rut@nebraska.gov

WEBSITE: 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)

2013-026 – Commission vs. Nancy E. Miller; Salesperson; Firth, NE. Stipulation and Consent Order entered January 22, 2014. License revoked. [Miller 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; for knowingly and willfully submitting a false Renewal Application for 2013-14 by reporting that she did not have any criminal charges pending against her at that time. NEB. REV. STAT. § 81-885.12(2) When an applicant has been convicted of forgery, embezzlement, obtaining money under false pretenses, larceny, extortion, conspiracy to defraud, or any other similar offense or offenses or has been convicted of a felony or a crime involving moral turpitude in any court of competent jurisdiction of this or any other state, district, or territory of the United States or of a foreign country, such untrustworthiness of the applicant and the conviction may in itself be sufficient ground for refusal of a license; for entering a plea of guilty to a state felony charge of Theft-Deception. 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; by submitting a false Renewal Application for 2013-14 reporting that she did not have any criminal charges pending against her at that time. NEB. REV. STAT. § 81-885.24(28) Conviction of a felony or entering a plea of guilty or nolo contendere to a felony charge by a broker or salesperson; for entering a plea of guilty to a state felony charge of Theft-Deception. NEB. REV. STAT. § 81-885.24(29) Demonstrating negligence, incompetency, or unworthiness to act as a broker, associate broker, or salesperson; for violating NEB. REV. STAT. § 81-885.11, 81-885.12(2)(4) and 81-885.24(28).]

2013-028 – Joyce Krings vs. Michael Joseph Korth; Broker; Humphrey, NE. Stipulation and Consent Order entered January 22, 2014. License censured; plus a civil fine of \$1,000.00 to be paid by February 21, 2014; plus complete an additional three (3) hours of continuing education each in the areas of Ethics and License Law by May 22, 2014. [Korth violated 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; by advertising the property for sale after the expiration date of the listing contract with the sellers. 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; for failing to have sellers' spouses sign the listing contract. NEB. REV. STAT. § 81-885.24(22)

Making any substantial misrepresentations; for telling a Buyer's Agent that the property was sold when it was not. Violated NEB. REV. STAT. § 81-885.24(29) Demonstrating negligence, incompetency, or unworthiness to act as a broker, associate broker, or salesperson; for violating NEB. REV. STAT. § 81-885.24(2)(12) and (22).]

2013-031 – Commission vs. Troy Michael Ortmeier; Broker; West Point, NE. Stipulation and Consent Order entered January 22, 2014. License revoked. [Ortmeier violated NEB. REV. STAT. § 81-885.12(2) When an applicant has been convicted of forgery, embezzlement, obtaining money under false pretenses, larceny, extortion, conspiracy to defraud, or any other similar offense or offenses or has been convicted of a felony or a crime involving moral turpitude in any court of competent jurisdiction of this or any other state, district, or territory of the United States or of a foreign country, such untrustworthiness of the applicant and the conviction may in itself be sufficient ground for refusal of a license. NEB. REV. STAT. § 81-885.24(28) Conviction of a felony or entering a plea of guilty or nolo contendere to a felony charge by a broker or salesperson; for entering a plea of guilty to a federal felony charge for fraud by wire, television, or radio. NEB. REV. STAT. § 81-885.24(29) Demonstrating negligence, incompetency, or unworthiness to act as a broker, associate broker, or salesperson; for violating NEB. REV. STAT. § 81-885.12(2) and 81-885.24(28).]

2014-008 – Greg Lemon, Director vs. George Noel Herrington; Salesperson; Lincoln, NE. Stipulation and Consent Order entered March 20, 2014. License suspended for three (3) years with the first forty five (45) days served on suspension and the remainder stayed and served on probation; plus pay a civil fine of \$1,500.00 by April 18, 2014; plus report any future alcohol or drug related charge or conviction, to the Director of the Commission within seven (7) days of the charge or conviction; plus submit to a Criminal Background Check on or about January 1, 2015, January 1, 2016 and January 1, 2017, by having his finger prints captured by the Nebraska State Patrol; and submit the resulting criminal background reports to the Commission office no later than February 28th of each year. [Herrington 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; by submitting a materially false original Application in 2001 and submitting materially false Renewal Applications to the Commission for Calendar years 2002, 2003, 2004 and 2005; NEB. REV. STAT. § 81-885.12 When an applicant has made a false statement of material fact on an application, such false

(Continued on page 5)

(Continued from page 4)

Disciplinary Action (Cont'd)

statement may in itself be sufficient ground for refusal of a license; by submitting a materially false original Application in 2001 and submitting materially false Renewal Applications to the Commission for calendar years 2002, 2003, 2004 and 2005; 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 in 2001 and submitting Materially false Renewal Applications to the Commission for calendar years 2002, 2003, 2004 and 2005, and also for having been convicted of Three DUI misdemeanors.]

2014-012 – Greg Lemon, Director vs. Adam Tyler Vogt; Broker; Omaha, NE. Stipulation and Consent Order entered June 25, 2014. License suspended for three (3) years with the first ninety (90) days served on suspension and the remainder stayed and served on probation; plus pay a civil fine of \$1,000.00 by July 25, 2014; plus report any future alcohol or drug related charge or conviction, to his broker and the Director of the Commission within seven (7) days of the charge or conviction; plus submit to a Criminal Background Check on or about January 1, 2015, January 1, 2016 and January 1, 2017, by having his finger prints captured by the Nebraska State Patrol; and submit the resulting criminal background reports to the Commission office no later than February 28th of each year, plus attend regular meetings of Alcoholic Anonymous (“AA”) or a similar substance abuse program which provides group therapy or substance abuse counseling during the three (3) year suspension/probation period and provide proof of such attendance to the Commission office on a monthly basis; plus obtain an “AA” sponsor or counselor for such substance abuse program and provide proof to the commission office of such sponsorship or counselor; and any future alcohol or drug related charge or conviction will result in a Show Cause Hearing against him. [Vogt 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, by submitting a materially false 2011 Renewal Application 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 submitting a materially false 2011 Renewal Application to the Commission; 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 2011 Renewal Application, and for having been convicted of four misdemeanor convictions for driving under the influence of alcohol and for his other misdemeanor conviction for minor in possession of alcohol.]

2014-013 – Commission vs. Geraldine B. Allen; Broker; Mitchell, NE. Stipulation and Consent Order entered June 25, 2014. License was suspended for a period of three (3) years all stayed and served on probation, plus pay a civil fine of

\$1,500.00 due July 25, 2014, plus complete nine (9) hours of additional continuing education, three (3) hours each in the areas of contracts, ethics and license law by September 23, 2014. [Allen violated 299-5-003.22 Failure by a designated or employing broker to supervise his or her associate brokers and salespersons, by failing to supervise Heimbouch as set forth by the Stipulation and Consent orders in case no. 2014-013 Commission vs. Jane Hartman Heimbouch and Commission vs. Geraldine B. Allen; NEB. REV. STAT. § 81-885.24(29) Demonstrating negligence, incompetency, or unworthiness to act as a broker, associate broker, or salesperson, whether of the same or of a different character as otherwise specified in this section, by failing to supervise Heimbouch as set forth by the Stipulation and Consent orders in case no. 2014-013 Commission vs. Jane Hartman Heimbouch and Commission vs. Geraldine B. Allen.]


2014-013 – Commission vs. Jane Hartman Heimbouch; Salesperson; Gering, NE. Stipulation and Consent Order entered June 25, 2014. License revoked. [Heimbouch violated NEB. REV. STAT. § 76-2422(4) Before engaging in any of the activities enumerated in subdivision (2) of section 81-885.01, a designated broker intending to act as a dual agent shall obtain the written consent of the seller and buyer or landlord and tenant permitting the designated broker to serve as a dual agent. The consent shall include a licensee’s duties and responsibilities specified in section 76-2419. The requirements of this subsection are met as to a seller or landlord if the written agreement entered into with the seller or landlord complies with this subsection. The requirements of this subsection are met as to a buyer or tenant if a consent or buyer’s or tenant’s agency agreement is signed by a potential buyer or tenant which complies with this subsection. The consent of the buyer or tenant does not need to refer to a specific property and may refer generally to all properties for which the buyer’s or tenant’s agent may also be acting as a seller’s or landlord’s agent and would be a dual agent. If a licensee is acting as a dual agent with regard to a specific property, the seller and buyer or landlord and tenant shall confirm in writing the dual-agency status and the party or parties responsible for paying any compensation prior to or at the time a contract to purchase a property or a lease or letter of intent to lease is entered into for the specific property, by failing to disclose in writing brokerage services, to have clients sign an Agency Disclosure and to note the refusal of an individual to sign an Agency Disclosure; NEB. REV. STAT. § 81-885.01(2) Broker means any person who, for any form of compensation or consideration or with the intent or expectation of receiving the same from another, negotiates or attempts to negotiate the listing, sale, purchase, exchange, rent, lease, or option for any real estate or improvements thereon, or assists in procuring prospects or holds himself or herself out as a referral agent for the purpose of securing prospects for the listing, sale, purchase, exchange, renting, leasing, or optioning of any real estate or collects rents or attempts to collect rents, gives a broker’s price opinion or comparative market analysis, or holds himself or herself out as engaged in any of the foregoing. Broker also includes any person: (a) Employed, by or on behalf of the owner or owners of

(Continued on page 6)

(Continued from page 5)

Disciplinary Action (Cont'd)

lots or other parcels of real estate, for any form of compensation or consideration to sell such real estate or any part thereof in lots or parcels or make other disposition thereof; (b) who auctions, offers, attempts, or agrees to auction real estate; or (c) who buys or offers to buy or sell or otherwise deals in options to buy real estate, by failing to disclose in writing brokerage services, to have clients sign an Agency Disclosure and to note the refusal of an individual to sign an Agency Disclosure; NEB. REV. STAT. § 81-885.24(16) Violating any provision of sections 76-2401 to 76-2430; by failing to disclose in writing brokerage services, to have clients sign an Agency Disclosure and to note the refusal of an individual to sign an Agency Disclosure; Neb. Rev. State § 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, by failing to disclose in writing brokerage services, to have clients sign an Agency Disclosure and to note that an individual refused to sign an Agency Disclosure; Neb. Rev. State § 81-885.24(3) Failing to account for and remit any money coming into his or her possession belonging to others by failing to timely deposit or remit earnest monies, failed to keep separate earnest money from clients and to account for money belonging to others with respect to irrigation payments or utility charges; NEB. REV. STAT. § 81-885.24(4) Commingling the money or other property of his or her principals with his or her own, by failing to timely deposit or remit earnest monies, also failed to keep separate earnest money from clients and to account for money belonging to others with respect to irrigation payments or utility charges; NEB. REV. STAT. § 81-885.24(24) Failing by an associate broker or salesperson to place, as soon after receipt as practicable, in the custody of his or her employing broker any deposit money or other money or funds entrusted to him or her by any person dealing with him or her as the representative of his or her licensed broker, by failing to timely deposit or remit earnest monies, to keep separate earnest money from clients and to account for money belonging to others with respect to irrigation payments or utility charges; 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; by failing to timely deposit or remit earnest monies, to keep separate earnest money from clients and to account for money belonging to others with respect to irrigation payments or utility charges; NEB. REV. STAT. § 81-885.24(29) Demonstrating negligence, incompetency, or unworthiness to act as a broker, associate broker, or salesper-

son, whether of the same or of a different character as otherwise specified in this section, by failing to timely deposit or remit earnest monies, to keep separate earnest money from clients, to account for money belonging to others with respect to irrigation payments or utility charges, to deliver a written copy of offers and/or purchase agreements and to protect interests of her clients. Heimbouch also failed to truthfully and timely inform her clients of the status of transactions concerning their properties and to competently complete paperwork; 299 NAC 3-005 Earnest money deposits and other deposits relating to the sale of real estate shall be kept in a separately identified trust account and all other trust funds may be deposited in another separately identified trust account, by failing to timely deposit or remit earnest monies, to keep separate and/or commingling earnest money received from clients, to account for money belonging to others with respect to irrigation payments or utility charges, to deliver a written copy of offers and/or purchase agreements and failed to protect the interests of her clients; 299 NAC 5-003.14 Failure to deposit any funds received as an earnest money deposit within 72 hours or before the end of the next banking day, after an offer is accepted, in writing, unless otherwise provided in the purchase agreement. In the event an offer is not accepted, said earnest money deposit shall be returned forthwith, by failing to timely deposit or remit earnest monies, to keep separate earnest money from clients and to account for money belonging to others with respect to irrigation payments or utility charges; 299 NAC 5-003.15 Withholding earnest money when the purchaser or seller is rightfully entitled to the money; provided, a broker may retain funds to cover expenses he or she has prepaid for a purchaser or seller from the broker's funds, by failing to timely deposit or remit earnest monies, to keep separate earnest money from clients, and to account for money belonging to others with respect to irrigation payments or utility charges; NEB. REV. STAT. § 81-885.24(20) Failing to deliver within a reasonable time a completed and dated copy of any purchase agreement or offer to buy or sell real estate to the purchaser and to the seller, by failing to deliver a written copy of the offer and/ or purchase agreements; 299 NAC 5-003.18 Failure to reduce an offer to writing where a prospective purchaser requests such offer be submitted when the licensee is: the limited seller's agent for the property; the prospective purchaser's limited buyer's agent; or the dual agent of the seller and the prospective purchaser, by failing to deliver a written copy of offers and/or purchase agreements; NEB. REV. STAT. § 81-885.24(22) Making any substantial misrepresentations, by advising clients of offers without the necessary documents and also disclosing personal information about possible clients.] 

License Law Briefs

“I have a buyer for your Property” The “In Cahoots” Story

The Commission gets many complaint calls (not a formal complaint, but an inquiry into whether grounds for a complaint exists) about situations where a potential seller’s agent makes the representation that “I have a buyer for your property”.

The story too often continues on like this, “The buyer never materialized, my house was on the market for some time with little activity, eventually my agent came in with a buyer from his or her own (company/family/agent themselves) with an offer at quite a bit lower than what they initially had said my house should sell for. I feel the parties that I was working with on the transaction, including my agent, may have been in cahoots with each other.” While it is not inconceivable that a transaction could legitimately occur this way, sellers in such situations are left with the feeling that their agent was looking out for their own best interests and not the seller’s. While such violations may be difficult to prove, and the Commission does not have a specific provision prohibiting being “in cahoots” in a transaction, it does not reflect well on the industry, we recently had a license revocation based on an extreme example of this type of misconduct.

Know Your Broker Policy


Nebraska law requires each designated broker to have a written policy describing the types of services that the broker and his or her affiliated licensees offer. In addition to the general types of agency the firm will offer (limited seller’s agent, limited buyer’s agent, dual, etc.); who is authorized to enter into such relationships and a statement as to whether the broker offers and/or accepts subagency (default answer is no if not specifically stated in the policy that subagency is offered), the policy should state, and the broker and all licensees should know, if the broker will utilize the appointment option within the firm.

1. **Default Agency Policy** – “All for one and one for all” might be the way you remember the default agency policy. The broker and affiliated licensees act as one, so that if the broker or any affiliated licensee enters into an agreement to represent a seller as limited seller’s agent, every affiliated licensee in the firm is acting as a limited seller’s agent for that seller (the same principle would apply across the brokers firm to an agency relationship with a buyer, landlord, or tenant). Default agency policy is not often used in practice, especially by large firms (to avoid an automatic dual agency situation when affiliated licensees under the same broker represent both sides of a transaction), but it is the operative policy if an appointed agency policy is not stated in the broker policy.
2. **Appointed Agency Policy** – Most brokerages, especially large ones, practice appointed agency, wherein a single (or multiple specifically named in the listing

agreement, such as on a team) affiliated licensee represents a seller, for example, but all other affiliated licensees not named in the listing agreement are then appointed by the designated broker as buyer’s agents for that transaction. Appointed agency has also been referred to as “designated agency” in past *Commission Comment* articles.

Here is an example of where knowing and understanding the policy is important; licensee A, working for a broker that practices appointed agency, has an exclusive listing agreement on a residential property, but can’t be at one of the open houses scheduled for that property. Licensee A asks a colleague from their firm to assist with the open house, unless specifically named in the listing agreement or an addenda that colleague will be acting as a buyer’s agent when hosting the open house in a brokerage firm practicing designated agency.

No Drones

Federal Aviation Administration regulations generally prohibit the use of Unmanned Aircraft Systems, commonly referred to as drones, for commercial purposes, which would include using them for commercial marketing of real estate (i.e. taking birds-eye view pictures of listings or prospective listings). However, you can get a special permit from the FAA which will certify your aircraft for such use. More information at: <http://www.faa.gov/documentLibrary/media/Notice/N7210.766.pdf>. 



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

PRSRT STD
U.S. POSTAGE
PAID
STATE OF
NEBRASKA

