



# COMMISSION COMMENT

Summer | 2016

## Teams Bill Passed by the Legislature

LB678, the first law specifically recognizing and regulating real estate teams was passed by the Nebraska Legislature near the end of the 2016 regular legislative session.

The significant provisions of the bill are as follows:

1. Defines Team: Two or more persons licensed by the commission who (a) work under the supervision of the same broker, (b) work together on real estate transactions to provide real estate brokerage services, (c) represent themselves to the public as being part of a team, and (d) are designated by a team name.

2. Defines Team Leader: Team leader means any person licensed by the commission and appointed or recognized by his or her broker as the leader for his or her team.

3. Provides a team leader shall be responsible for supervising the real estate activities of his or her team (subject to the overall supervision of their designated broker).

4. Provides that the team leader must provide, and the broker must keep, a record of the names of all team leaders and team members.

5. Provides that all advertising (team or any other advertising) must “prominently display” the name the designated broker does business under.

6. Provides the team may not advertise or use a team name suggesting that the team is an independent brokerage.

It is anticipated that the Commission will develop rules and regulations regarding teams. The new regulations will further define team regulation, but the basic provisions of the bill will have the full force and effect of law as of October 1, 2016. 

## Commission Prevails in Unlicensed Practice Appeal

The Nebraska Real Estate Commission has gotten a favorable opinion in the appeal (by Young) of the trial court ruling in the Leslie Rae Young v. Pete Ricketts lawsuit. In the Spring of 2010 the Commission issued a cease and desist to Leslie Rae Young, a California licensed broker who did not have a Nebraska real estate license, listing Nebraska properties on her own website eList.me as well as Realtor.com. The site advertising included “brokered by LRY” and “Contact Agent” provisions with Young’s contact information attached.

In the Summer of 2010 the Commission issued another cease and desist to Young based on a recently enacted law which provided the Commission with authority to fine unlicensed persons up to \$1000 per day or unlicensed commissions earned, whichever was greater. Young sued the Commission in federal district court, alleging her constitutional due process, free speech and equal protection rights were being violated by the Commission.

It was the Commission’s position that LRY was holding herself out as a broker, regardless of whether she was acting as one (further discovery in the trial phase showed that she had interacted with clients as a third party intermediary) and was subject to the cease and desist order and licensing law. Young’s position was that she was providing mere advertising services to for-sale-by-owner sellers, and not subject to the Commission’s regulation.

Young lost her motion for a preliminary injunction against the Commission’s power to enforcing the cease and desist in 2012, and thereafter she narrowed her arguments and focused on free speech violations when the case went to trial.

The Commission won that argument at the trial level and it was appealed to the Eighth Circuit Federal District Court, where a three judge panel upheld the trial court’s ruling, saying the state had a legitimate interest in regulating brokerage activities, and the evidence suggested that Young was engaged in those activities as defined by law, and not merely engaged in constitutionally protected “speech”. Full opinion can be found here: <http://tinyurl.com/Young-v-NREC>. 

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### Commission Meeting Schedule

- August 18-19 . . . . .Lincoln
- September 29-30 . . .Lincoln
- October 27-28 . . . . .Lincoln
- November 17-18 . . .Lincoln

**COMMISSION COMMENT**

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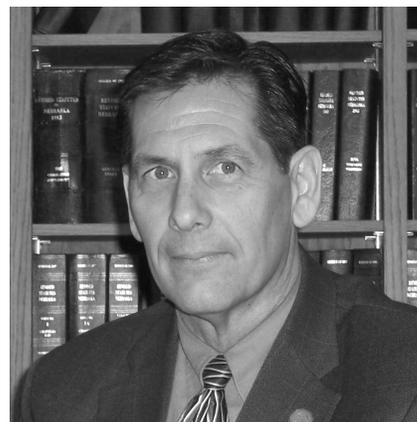
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The Nebraska Real Estate Commission often solicits articles from outside experts or reprints articles with permission. While we feel that these articles may offer a broader perspective and will be of interest to the reader, it should be remembered that the views expressed are those of the author and not necessarily those of the Commission.

# DIRECTOR'S DESK

**Advertising...**

...is defined very broadly in the Commission's regulations, "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" (N.A.C. Title 299, Ch. 2, Sec. 003, emphasis added). The regulations and license act further provide that all advertising be done in the name the broker does business under (prominently featured effective October 1, see the Teams legislation article for further information), and approved by the broker. Please remember that any broadly disseminated communication promoting a licensee or brokerage, including the property he or she may have listed, or their real estate services, including but not limited to Facebook posts, tweets, group texts, and Craigslist advertisements, must follow the advertising rules.



*Director Greg Lemon*

**Errors and Omissions Carrier Change**

The Nebraska Real Estate Commission has recently gone through the public bid process and selected Williams Underwriting Group as the Commission's contractual errors and omissions insurance provider for real estate licensees. Because errors and omissions insurance coverage is mandatory for all Nebraska real estate licensees on active status, the Commission contracts with a specific provider to ensure that the mandatory coverage will be available to all licensees at a reasonable price. Use of the Commission's contract provider is not mandatory, and there are other providers available who write errors and omissions insurance coverage available to Nebraska licensees.

We have included an article in this issue of the Comment on keeping your coverage current and filing claims with Williams that you may want to read. The key to errors and omissions insurance claims coverage is to maintain continuous coverage without a lapse, as explained further in the article.

**New Seller Property Disclosure Statement Coming**

LB34 from 2015, the Carbon Monoxide Safety Act, creates new requirements for carbon monoxide in residential properties. The bill also provides that the Seller Property Condition Disclosure Statement contain information about the presence of the now required alarms on properties for sale. The effective date of the Act is January 1, 2017, and the Commission currently has a rule and regulation change being reviewed that will modify the form. Further information on the minor revisions to the form, and the new form itself, will be provided when it becomes available.

Greg Lemon, Director  
Nebraska Real Estate Commission

# Disciplinary Actions Taken by the Real Estate Commission

*(Does Not Include Cases on Appeal)*

**2015-008 - Commission vs. Felix Dwayne Mitchell and Curtis Hart;** Felix Dwayne Mitchell Salesperson; Bellevue, NE. Hearing held November 19, 2015. License suspended for three (3) years with the first sixty (60) days served on suspension and the remainder stayed and served on probation. Suspension commenced on January 7, 2016 and continues through March 6, 2016. Probation commences on March 7, 2016 and continues through January 7, 2019; plus pay a civil fine of \$2,000.00 due January 7, 2016, plus pay hearing cost in the amount of \$200.00 by January 7, 2016; plus complete an additional six (6) hours of continuing education with three (3) hours each in the areas of Agency and License Law by June 8, 2016. [Mitchell violated Neb. Rev. Stat. § 81-885.24(22) Making any substantial misrepresentations; by representing that there was a valid Residential Lease with Option to Purchase (hereafter the "Lease Agreement") when there wasn't one and resided on the property for three (3) years without a Lease Agreement, Mr. Mitchell also misrepresented the Client/Agent relationship and the Agency Relationship in which he was acting on October 31, 2010; violated 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 making substantial misrepresentations regarding the Residential Lease, the option to purchase the Property, his agency, and the capacity in which he was acting after October 31, 2010.]

**2015-010 - Ilene Weber vs. Darla J. Bruna;** Broker; Hastings, NE. Stipulation and Consent Order entered November 19, 2015. License suspended for one (1) year with the entire suspension period stayed and served on probation. Probation commenced on December 19, 2015 and continues through December 19, 2016; plus pay a civil fine of \$250.00; plus complete an additional six (6) hours of continuing education, three (3) hours each in the areas of Contracts and License Law by May 19, 2016. [Bruna 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; by offering the subject property for sale on the Internet and in print advertising for a price other than that agreed to in the listing agreement.]

**SC2015-001 - Commission vs. Chris Miller d.b.a. Delta Real Estate Portfolio;** Broker; Tampa, FL. Hearing held November 19, 2015. License revoked. [Miller violated 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; Mr. Miller failed to abide by the provisions of the Commission's March 27, 2015 Order in Case No. SC2014-001 and failed to make any payments toward the \$4,000.00 civil fine or the \$260.00 in hearing costs.]

**2015-004 - Jeri Schlickbernd vs. Jeff Rothlisberger;** Salesperson; Ft. Calhoun, NE. Hearing held January 21, 2016. License suspended for twenty four (24) months with the entire period stayed and served on probation. Probation commenced on March 2, 2016 and continues through March 2, 2018; plus pay a civil fine of \$1,500.00 due March 2, 2016, plus pay hearing cost in the amount of \$160.00 by March 2, 2016; plus complete an additional six (6) hours of continuing education with three (3) hours each in the areas of Agency and License Law by July 1, 2016. [Rothlisberger 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 when Rothlisberger posted a blind online advertisement for a property

*(Continued on page 4)*

## 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 . . . *Alane Roubal*  
alane.roubal@nebraska.gov

Complaint Procedures . . . . . *Duran Cell*  
duran.cell@nebraska.gov

Continuing Education History or  
Inquiries . . . . . *Tawny Snider*  
tawny.snider@nebraska.gov

Curriculum Design (Education &  
Instructor Approval) . . . . . *Alane Roubal*  
alane.roubal@nebraska.gov

Errors and Omissions Insurance  
Inquiries . . . . . *Monica Rut*  
monica.rut@nebraska.gov

Financial Officer . . . . . *Erin Blankers*  
erin.blankers@nebraska.gov

License Applications Packet  
Requests . . . . . *General Staff*  
realestate.commission@nebraska.gov

License Applications Process . . . . . *Marilyn Masters*  
marilyn.masters@nebraska.gov

Licensing Requirements . . . . . *Monica Rut*  
monica.rut@nebraska.gov

New Licenses in Process . . . . . *Patricia Menousek*  
patricia.menousek@nebraska.gov

Specialized Registrations . . . . . *Monica Rut*  
monica.rut@nebraska.gov

Transfer of License . . . . . *Patricia Menousek*  
patricia.menousek@nebraska.gov

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## Disciplinary Action (Cont'd)

when he did not have a listing agreement with the owner of the property; 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, by posting an online advertisement for a property he did not have a listing agreement for; violated Neb. Rev. Stat. § 76-2422(2) Before engaging in any of the activities enumerated in subdivision (2) of section 81-885.01, a designated broker intending to establish a single agency relationship with a seller or landlord shall enter into a written agency agreement with the party to be represented; violated Neb. Rev. Stat. § 81-885.24(16) Violating any provision of sections 76-2401 to 76-2430; violated 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 his actions detailed above.]

**2015-002 - Commission vs. Sonya Kaye Paxton;** Broker; Stuart, NE. Hearing held March 17, 2016. License suspended for one (1) year with the entire one (1) year period stayed and served on probation. Probation commences on April 23, 2016 and continues through April 23, 2017; plus pay a civil fine of \$500.00 due April 23, 2016; plus pay hearing cost in the amount of \$320.00 by April 23, 2016; plus complete an additional six (6) hours of continuing education with three (3) hours each in the areas of Agency and Contract Law by September 24, 2016. [Paxton violated Neb. Rev. Stat. § 76-2422(2) Before engaging in any of the activities enumerated in subdivision (2) of section 81-885.01, a designated broker intending to establish a single agency relationship with a seller or landlord shall enter into a written agency agreement with the party to be represented. The agreement shall include a licensee's duties and responsibilities specified in section 76-2417, the terms of compensation, a fixed date of expiration of the agreement, by entering into a

Rental Management Contract with the client that did not have a fixed date of expiration; violated Title 299 NAC 5-006.17 Failure to produce any document, book, or record in the licensee's possession, or under his or her control, concerning any real estate transaction under investigation by the Commission, Paxton failed to provide documents in her possession or under her control concerning a real estate transaction under investigation by the Commission.]

**2015-038 - Commission vs John Hardy;** Salesperson; Omaha, NE. Stipulation and Consent Order entered April 26, 2016. License censured; plus pay a civil fine of \$1,500.00 by June 25, 2016; plus complete an additional three (3) hours of continuing education in the area of Contracts by October 26, 2016. [Hardy violated 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, Hardy failed to notify Sandra Turner that Buyers did not sign under the "I/We accept the above counter offer," but Buyers did sign under "BUYER RECEIPT OF ACCEPTED CONTRACT" section on April 18, 2014, also for the acceptance of counter offer, and for failing to request Sandra Turner to have Buyers sign under "I/We accept the above counter offer" section.]

**2015-038 - Commission vs Sandy Turner;** Broker; Omaha, NE. Stipulation and Consent Order entered April 21, 2016. License censured; plus pay a civil fine of \$1,500.00 by June 20, 2016; plus complete an additional three (3) hours of continuing education in the area of Contracts by October 21, 2016. [Turner violated 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 for failing to have Buyers sign for the acceptance of the counter offer.]

**2015-039 - Commission vs. Steven Randolph Wiley;** Broker; Lincoln, NE. Stipulation and Consent Order entered April 21, 2016. License suspended for one (1) year with the first thirty (30) days served on suspension, and the re-

mainder stayed and served on probation. Suspension commenced on May 4, 2016 and continues through June 4, 2016. Probation begins June 5, 2016 and continues through May 4, 2017; plus pay a civil fine of \$1,500.00 by May 21, 2016; plus complete an additional three (3) hours of continuing education in the area of License Law by October 21, 2016. [Wiley violated 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 allowing the Owners and Buyers to receipt for a fully executed purchase agreement when the Owners' signatures were not notarized as required by Neb. Rev. Stat. § 40-104 (as then in effect), The homestead of a married person cannot be conveyed or encumbered unless the instrument by which it is conveyed or encumbered is executed and acknowledged by both spouses; violated 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 allowing Buyer's and Seller's to receipt for a fully executed purchase agreement when the Buyer's Purchase Agreement was not complete due to the signatures of the Owners not being notarized, also by making false assertions that notarization was no longer required by the Nebraska Real Estate Commission by failing to have any purchase agreements in either transaction notarized, and representing that he was no longer involved in the transaction when in fact Wiley was working with both the Buyers and Owners on the Purchase Agreement.]



# Establishing Proof of Prior Insurance If You Have a Claim

Williams Underwriting Group

*The Commission is pleased to announce effective January 1, 2017 the Nebraska's real estate licensee group errors and omissions ("E&O") insurance program will be administered by Williams Underwriting Group, A Division of AssuredPartners NL, LLC ("WUG"). The following article, authored by WUG, provides basic information about filing claims and maintaining continuity of coverage.*

Williams Underwriting Group (WUG) will offer coverage for acts, errors, and omissions that occurred prior to the date of the current policy ("prior acts coverage") under certain conditions. Prior acts coverage is determined by your retroactive date. Your retroactive date is the date you first obtained, and from which you have continuously maintained, real estate E&O coverage. It is very important that you maintain continuous coverage in order to preserve your retroactive date. A claim involving prior acts may be considered for coverage if the alleged act, error, or omission occurred after your retroactive date.

Zurich American Insurance Company (Zurich), is the insurance provider for the group program. If you have a claim, you must send documentation of your claim to Zurich or to WUG. Complete details will be in the renewal information sent to you in September. Whether or not the claim involves an act, error, or omission that occurred after your retroactive date affects the coverage determination. If you have been continuously insured with Zurich since the date of the alleged act, error, or omission, WUG will be able to verify your retroactive date. If you were insured by an insurance provider other than Zurich between the time of the alleged act, error, or omission and the time the claim was first made, then you will need to send proof of prior coverage with your claim documents.

Proof of prior coverage must contain all of the following information:

- Policyholder name
  - Policy number Retroactive Date if available
  - Identification of previous carrier
  - Policy period (effective and expiration dates)
  - Prior limits of liability
  - Type of coverage (must be real estate E&O coverage)
- 
- Policyholder name
  - Policy number
  - Retroactive Date if available
  - Name of previous insurance company
  - Policy effective and expiration dates
  - Prior limits of insurance
  - Coverage must be for real estate E&O

If you do not have proof of your prior coverage, you may request it from your previous insurance provider. If you were insured by the group program's previous provider, Continental Casualty, then you may send copies of your "Certificates of Insurance" from that provider going back to the date of the claim. (i.e. if the claim is from 2015 we will need proof of continuous coverage back to 2015). The Certificate of Insurance will provide the required information. If the alleged act, error, or omission giving rise to the claim occurred on or after the retroactive date (if shown) on the Certificate of Insurance or the certificates provided, then the Certificate of Insurance will satisfy proof of your prior coverage. If you do not have evidence of such coverage, you may request a copy from the company that provided your insurance during that time period.

If you were previously insured by a provider other than Zurich or the prior group program provider, then you may contact your previous insurance agent

or provider for proof of prior coverage. Proof of prior coverage may be a certificate of coverage (preferred) or other documentation, including a letter or email, from the insurance provider or agent with the information listed above. Insurance providers frequently receive requests for proof of coverage and typically provide this information quickly and easily. It is important to know what information will be needed in the event of a claim, so that proper documentation can be readily obtained and help move the claim process along.

It is a good idea to keep records of your prior insurance coverage. You are not required to send proof of prior coverage to WUG if you do not have a claim. However, if you would like WUG to have proof of your prior coverage on file, you may send the information to us at the following address: Williams Underwriting Group, 2211 River Road, Louisville KY 40206 or you can email it to [wug@wugio.com](mailto:wug@wugio.com). If you have questions regarding proof of prior coverage or claims in general, please call us at 1-800-222-4035.

**DISCLAIMER:** Insurance underwritten and coverage(s) provided by Zurich American Insurance Company. ("Zurich"), an individual member company of Zurich in North America. The descriptions herein are summaries only. They do not in any way amend any coverage(s) you may have purchased from Zurich or any other member companies of Zurich in North America, and do not include all terms, conditions and/or exclusions of the policy(ies) described herein. Please refer to the actual Nebraska policy(ies) for full terms, conditions, and exclusions and complete details of coverage(s).



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## 2016 Instructor Development Workshop

On June 30, 2016, the Nebraska Real Estate Commission sponsored an Instructor Development Workshop at Southeast Community College's Continuing Education Center in Lincoln, NE. The event targeted all educators and administrators providing real estate instruction for Pre-licensing, Continuing Education, and Broker-Approved Training activities.

Over 40 instructors attended the workshop, presented by Mark Barker, Distinguished Real Estate Instructor (DREI) and owner of Career Education Systems Inc., the largest real estate school in the Mid-West. After offering these workshops on a two year cycle for a number of years, the Commission decided last year it would be beneficial to offer these no tuition "educate the educators" workshops on an annual basis. Evaluations reflect the workshop was a great success. 🏠



*Mark Barker conducts class at the Instructor Development Workshop*