



COMMISSION COMMENT

Use of Unlicensed Assistants



There was a time when unlicensed assistants almost exclusively worked in brokerage offices, working daily under the direct supervision of the broker. However, in recent years more and more team and even salespersons and associate brokers have their own assistants to help them carry out various tasks related to their real estate activity.

While there is no law prohibiting any licensee from hiring an assistant, it should be remembered that such assistants cannot conduct activity requiring a real estate license. The Commission has specifically interpreted the License Act to enumerate what an unlicensed assistant can and can't do, a recent update has been added to clarify that, while assistants can be used to set appointments with existing clients or people calling in, assisting in procuring prospects (potential clients) for brokerage activities requires a real estate license. The new language added to clarify this in the Commission guidance document is *italicized below*:

“Activities which can be performed by unlicensed persons who, for example, act as personal assistants, clerical support staff, closing secretaries, etc., include, but are not necessarily limited to:

1. Answer the phone and forward calls to licensees.
2. Transmit listings and changes to a multiple listing service.
3. Follow up on loan commitments after a contract has been negotiated.
4. Assemble documents for closings.
5. Secure documents, i.e. public information, from courthouse, sewer district, water district, etc.
6. Have keys made for company listings.
7. Write and prepare ads, flyers and promotional information and place such advertising.
8. Record and deposit earnest money and other trust funds.
9. Type contract forms under direction of licensee.
10. Monitor licenses and personnel files.
11. Compute commission checks.
12. Place and remove signs on property.
13. Order items of routine repair as directed by licensee and/or supervising broker.
14. Act as courier service to deliver documents, pick up keys, etc.
15. Schedule appointments.
16. Measure property, if measurements are verified by the licensee.
17. Hand out objective written information on a listing, other than at functions such as open houses, kiosks, and home show booths or fairs.

Activities which cannot be performed by unlicensed persons who, for example, act as personal assistants, clerical support staff, closing secretaries, etc., include, but are not necessarily limited to: *(Continued on page 6)*

On the Inside

Director's Desk	page 2
Disciplinary Summary	page 3
Prizes and Inducements.....	page 5
Lets Talk Trust Accounts.....	page 5

Commission Meeting Schedule

August 16-17.....	Lincoln
September 20-21.....	Lincoln
October 18-19.....	Lincoln
November 15-16.....	Lincoln

COMMISSION COMMENT

Official Publication of the
Nebraska Real Estate Commission
301 Centennial Mall South
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

Jim R. Titus
4645 Normal Blvd., 3272
Lincoln, NE 68506
(402) 434-52000

SALESPERSON MEMBER

Ann Dover
1000 Norfolk Ave.
Norfolk, NE 68701
(402) 371-0200

BROKER MEMBERS

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

Andy Alloway
17117 Burt St.
Omaha, NE 68118
(402) 491-0100

Sharon "Sheri" Kay Bourne
111 Halligan Dr.
North Platte, NE 69101
(308) 532-1810

Darlene Starman
7141 A Street
Lincoln, NE 68510
(402) 432-2647

DIRECTOR

Greg Lemon
301 Centennial Mall South
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.

DIRECTOR'S DESK

Advertising (Again)

Although we have covered the new advertising rules in this newsletter a number of times, the Commission continues to hear reports of advertising which does not meet the new "broker prominence" regulations which went into effect last year. The rules are fairly simple, all advertising must include the name the designated broker for your brokerage firm does business under. The broker name must be equal to or greater in prominence than the affiliated licensee or team name on the advertising, the two names should also be adjacent or reasonably close in proximity on the advertising.



Director Greg Lemon

Please remember, advertising isn't just print, it includes web pages, tweets, Facebook, yard signs, and other social media posts, as well as the more traditional outlets like television and radio.

If you have questions about new advertising you are considering, you may contact our office before you start using it we will be glad to review and give you an OK or tell you what needs to be fixed.

Two Strikes and Your Out

The Commission is now taking a "two strike" policy on non-compliant ads. First notice will be a warning with a note to correct or pull the non-compliant ad, if further violations are discovered a formal complaint will be filed.

Greg Lemon, Director
Nebraska Real Estate Commission



Disciplinary Actions Taken by the Real Estate Commission

(Does Not Include Cases on Appeal)

2016-001 - Timothy A. Ogle vs. Z Z Moaveni; Salesperson; Omaha, NE. Hearing held January 18, 2018. License was put on probation for a period of two (2) years. Probation begins on February 25, 2018 and continues through February 25, 2020; plus pay hearing fees of \$320.00 due February 25, 2018; plus pay a civil fine of \$1,500.00 due February 25, 2018; plus complete an additional three (3) hours of continuing education in the area of License Law by July 26, 2018. [Moaveni violated Neb. Rev. Stat. § 81-885.24(22) Making any substantial misrepresentations, she made a substantial misrepresentation by saying the key to the Property was "safe" when it was not in her possession, custody, or control; 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 providing the key to the buyer prior to closing without having seller's consent to do the same.]

2016-016 - Greg Wayman vs. Duane Joseph Safarik Sr.; Broker; LaVista, NE. Stipulation and Consent Order entered April 19, 2018. License suspended for a period of nine (9) months with the entirety stayed and served on probation. Probation commences on May 19, 2018 and continues through February 19, 2019; plus pay a civil fine of \$500.00 due May 19, 2018; plus complete and additional three (3) hours of continuing education in the area of License Law by October 19, 2018. [Safarik 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, when Safarik advertised, or caused to be advertised, on the MLS the following statement, "Seller will not accept Foundation 2 Rooftops as home inspector/inspection" when said statement was not true.]

2017-024 - Commission vs. Ryan Basye; Salesperson; Omaha, NE. Stipulation and Consent Order entered April 19, 2018. License suspended for a period of one (1) year with the entirety stayed and served on probation. Probation commences on May 19, 2018 and continues through May 19, 2019; plus pay a civil fine of \$1,500.00 due May 19, 2018; plus complete and additional six (6) hours of continuing education with three (3) hours each in the areas of Agency and License Law by October 19, 2018. [Basye violated Neb. Rev. Stat. § 76-2422(4) 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, by failing to include his duties and responsibilities, to both the seller and buyer; violated Neb. Rev. Stat. § 81-885.24(16) Violating any provision of sections 76-2401 to 76-2430 when he failed to include his duties and responsibilities to both buyer and seller; violated Neb. Rev. Stat. § 81-885.24(22) Making any substantial misrepresentations when he represented to the Parties he was a dual agent, and when he represented his duties and responsibilities to the Parties; 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 when (a) Mr. Basye failed to enter into and/or obtain

(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 *Jenny Schabert*
jenny.schabert@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

Trust Account Matters *John Clark*
john.clark@nebraska.gov

Webmaster *Monica Rut*
monica.rut@nebraska.gov

WEBSITE: www.nrec.ne.gov

TELEPHONE NUMBER

(402) 471-2004

FAX NUMBER

(402) 471-4492

ADDRESS:

Nebraska Real Estate Commission

301 Centennial Mall South

P.O. Box 94667

Lincoln, NE 68509-4667

(Continued from page 3)

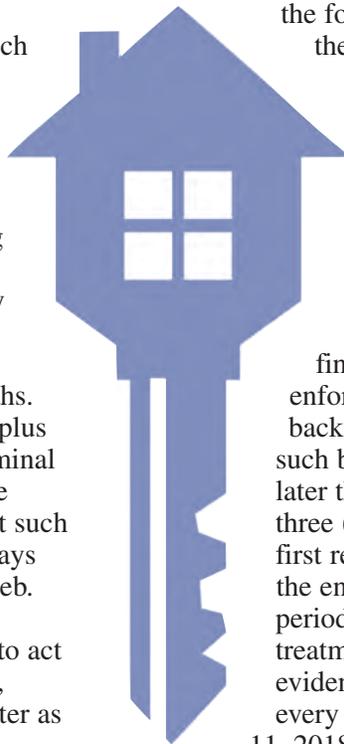
written consent permitting him to serve as a dual agent as described by Neb. Rev. Stat. § § 76-2422(4) and 76-2419; (b) Mr. Basye did not list the licensee's duties and responsibilities as required; (c) Mr. Basye did not confirm in writing the party or parties responsible for paying any compensation prior to or at the time a contract to purchase the Property was entered; and (d) Mr. Basye made substantial misrepresentations about his role in the transaction.]

2018-004 - Commission vs. Eric Joseph Carraher; Salesperson; Omaha, NE. Stipulation and Consent Order entered May 24, 2018. License suspended for a period of three (3) years with the first thirty (30) days served on suspension, and the remainder to be stayed and served on probation. Suspension begins June 23, 2018, and continues through July 22, 2018. Probation commences on July 23, 2018 and continues through June 23, 2021; plus pay a civil fine of \$2,000.00 due June 23, 2018; plus submit to a yearly criminal background check, by having his fingerprints captured by anyone qualified to take finger prints and submitting the fingerprint cards to the appropriate law enforcement authority, paying the cost of such background check, and submitting the results of such background check to the Commission no later than February 28th of each year during the three (3) year Suspension/Probation period. The first report is due February 28, 2019; plus during the entire three (3) year Suspension/Probation period attend monthly alcohol/substance abuse treatment or group and provide documentary evidence of such attendance to the Commission every 3 months. The first report is due September 23, 2018; plus If charged with or convicted of, another criminal offense at any time during the entirety of the three (3) Suspension/Probation period report such offense to the Commission within five (5) days following the incident. [Carraher 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 being convicted of driving under the influence on three separate occasions.]

2018-005 - Commission vs. Luz Elena Janzen; Salesperson; Albion, NE. Stipulation and Consent Order entered May 24, 2018. License was censured; plus pay a civil fine of \$500.00 is due June 23, 2018; plus do additional continuing education of three (3) hours in License Law due November 24, 2018 [Janzen violated 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 omitting, on her 2017 Renewal Application her conviction of "driving under suspension, before reinstated-state", a Class 3 Misdemeanor. Because the Commission has the right in the first instance to deny and/or refuse a license to an applicant who has made a false statement of material fact on an application, the Commission may impose discipline on a licensee on the same basis; Janzen 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 omitting on her 2017 Renewal Application, her conviction of "driving under suspension, before reinstated-state", a Class 3 Misdemeanor.]

2018-003 - Commission vs. Christopher Alan Coleman; Salesperson; Omaha, NE. Stipulation and Consent Order entered June 11, 2018. License suspended for a period of three (3) years with the forty-five (45) days served on suspension, and the remainder to be stayed and served on probation. Suspension begins July 11, 2018, and continues through August 25, 2018. Probation commences on August 26, 2018 and continues through July 11, 2021; plus pay a civil fine of \$1,250.00 due July 11, 2018; plus submit to a yearly criminal background check, by having his fingerprints captured by anyone qualified to take finger prints and submitting the fingerprint cards to the appropriate law enforcement authority, paying the cost of such background check, and submitting the results of such background check to the Commission no later than February 28th of each year during the three (3) year Suspension/Probation period. The first report is due February 28, 2019; plus during the entire three (3) year Suspension/Probation period attend monthly alcohol/substance abuse treatment or group and provide documentary evidence of such attendance to the Commission every 3 months. The first report is due October 11, 2018; plus If charged with or convicted of, another criminal offense at any time during the entirety of the three (3) Suspension/Probation period report such offense to the Commission within five (5) days following the incident. [Coleman 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 being convicted of driving under the influence on three separate occasions.] 





Promotions and Giveaways

The Commission is often asked about the meaning of Neb. Rev. Stat. §81-885.24(17), which prohibits “Soliciting, selling or offering for sale real estate by offering free lots or conducting lotteries for the purpose of influencing a purchaser of real estate”. This section of law was actually written to outlaw the proverbial “Swampland in Florida” schemes that were prevalent in the early to mid-part of the last Century. From the December, 1957, Commission Comment:

“Undoubtedly you, someone in your family, or someone you know has received a letter advising that the recipient has been selected to receive a “Free Lot” in some new development—generally residential or recreational in nature..you have probably found that the lot that has been allotted to you was not suited for building purposes.”

The article goes on to explain that these are, of course, scams, and the fees associated with acquisition of the lot will exceed the lot, and or the developer or offeror will try to sell you another better lot when you discover the one you “won” is unsuitable for development.

That was the type of thing the unfair trade practice identified above was designed to prevent, but the language must still be taken on face value when interpreting the provision. The law clearly prohibits soliciting, offering or selling real estate by offering free lots, but the second por-

tion “or conducting lotteries for the purpose of influencing purchasers of real estate” is where interpretation comes into play.

While this is broad language that could be interpreted to mean any sort of prize giveaway by a licensee is being conducted for the purposes of “influencing purchasers of real estate” (after all you are in business to make money) the Commission does not interpret the provision quite that broadly.

Conducting a lottery or prize give away for the purpose of directly influencing a purchaser of real estate is prohibited by the law—“enter a drawing for a chance to win \$1000 off your next house” “enter a lottery for a chance to win \$500 off our agent’s commission.” Simple giveaways not tied directly to influencing real estate purchases or services are permissible “Come to our spring parade of open houses and enter your name for a chance to win a free meal at the Dew Drop Inn.”

However, when offering prizes and giveaways the rules regarding inducements and payment of referral fees to unlicensed persons must always be observed. It is also generally permissible to offer inducements to clients, rebates, discounts, services, etc., but no such inducement can be offered to unlicensed persons for referrals. Likewise a prize giveaway should only be used to generate publicity, attendance or good will, it cannot be used to generate referrals, “Give us five names for a chance to win an Instant Pot” for example. 



Let’s Talk Trust Accounts

The new agency brochure requirements.

They are not just for teams.

by John Clark, Senior Trust Account Examiner

In my travels across the state examining trust accounts, there seems to be a recurring problem of assuming the new changes in the agency disclosure form do not apply to all brokerages. Although it does address the team situations, it also provides for contact information for the licensee and for the managing and/or designated broker. It also discloses to the client, that only their agent represents them unless they are a customer or the agency policy does not offer designated agency. If your company does not have teams, the sections pertaining to teams does not need to be completed. The contact information for the agent and the broker must be completed by all licensees. Ignorance is no excuse. 

Return Service Requested

PRSR STD
U.S. POSTAGE
PAID
STATE OF
NEBRASKA

(Continued from page 1)

1. Host open houses, kiosks, home show booths or fairs, or hand out materials at such functions.
2. Show property.
3. Answer any questions on listings, title, financing, closing, etc.
4. Discuss or explain a contract, agreement, listing, or other real estate document with anyone outside the firm.
5. Be paid on the basis of real estate activity, such as a percentage of commission, or any amount based on listings, sales, etc.
6. Negotiate or agree to any commission, commission split or referral fee on behalf of a licensee.
7. *Assist in procuring prospects for the listing, sale, purchase, exchange, renting, leasing, or optioning of any real estate*

Employing brokers, whether they are employing unlicensed persons or whether licensees under their supervision are using unlicensed persons as personal assistants or the like, are responsible for assuring that such unlicensed persons are not involved in activities which require a license and/or activities which violate this policy. Brokers should establish guidelines for the use of unlicensed per-

sons and procedures for monitoring their activities. It is the responsibility of the employing broker to assure that unlicensed persons, either directly employed or contracted, or employed or contracted by licensees under his or her supervision, are not acting improperly.

This policy does not include unlicensed persons who are acting under the exemption related to management of property as set forth in 81-885.04(4).”

An unlicensed assistant may set appointments with existing clients or if someone calls in, but may not solicit clients or leads, which is procuring prospects and specifically defined as an activity requiring a license. If the Commission hears of such violations they may be pursued against all parties involved, including but not limited to civil fines of up to \$1000 a day for activity conducted without the appropriate license. 

