



# COMMISSION COMMENT

## Commissioners Dover and Titus Retire

A joint retirement dinner for Commissioners Ann Dover and Jim Titus was held on August 19, 2021, at the Hillcrest Country Club in Lincoln. Last year’s retirement dinner was cancelled due to Covid restrictions.



*Jim Titus Receives his Commission Resolution from Chairperson Evnen*

Commissioner Dover, from Coldwell Banker Dover Realtors of Norfolk, was the salesperson at large member of the Commission and served from 2014 to 2020. Commissioner Dover’s service was recognized at the dinner and also in the Spring 2021 edition of the Commission Comment.

Commissioner Titus is the public at large member and has served from 2015 to present. As of this writing a replacement for Commissioner Titus has not been appointed, and he holds over in the position until a successor is named. The Commission would like to take this opportunity to thank Commissioner Titus for his service. Jim had a background in administrative law as well as contracts and real estate, and his knowledge and contributions to the Commission were invaluable. As a public member, not active in the industry, the contribution provided through his years of service and countless hours of work put in is greatly appreciated. 



## Social Media and Advertising

The Commission has created new guidelines and tips for using social media in real estate advertising. The Commission’s regulations define advertising as “all forms of identification, representation, promotion, and solicitation disseminated in any manner and by any means to the public for any purpose related to licensed real estate activity” (N.A.C.T. 299, Chapter 2, Sec. 003). Basically, if you are promoting yourself as an agent or broker, your brokerage, your services, or a property or properties for sale or lease, it is advertising.

The basic advertising rules are that the advertising be under the direct supervision of your broker (check to see if your broker has a social media policy), not be misrepresentative or deceptive, that it be done with the permission of the owner if listing property, and, the one we are  
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### Commission Meeting Schedule

October 21-22 .....	Lincoln
November 18-19 .....	Lincoln

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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

## Clash of Cultures

The Commission has been receiving more calls recently about how to properly handle escrow funds. The rules state that is be deposited in the selling agent's (buyer's agent) trust account, then transferred to the listing broker's trust account within 72 hours, or before the end of the next banking day. More detail in the Summer, 2013, Commission Comment. The rule also states that this procedure may be modified by specific agreement of the parties, typically done in the purchase agreement, and typically bypassing the trust account and having the check go straight to a title company for closing. In Lincoln and Omaha it is common practice to bypass the trust account. Many other parts of the state still follow the broker to broker transfer procedures found in the Trust Account Manual.



Director Greg Lemon

Brokers who have been approved for the new trust account waiver do not have a trust account to pass the money through, so may only act as broker in transactions where the contract specifically calls for the trust account to be bypassed. With the waiver provision, and more companies doing business across the state, it is more important than ever to note the escrow provisions in the contract. From the Commission's viewpoint either way is fine, but if the account is to be bypassed the procedures should be clearly stated. We would also note that if there are different practices among cooperative brokers that the situation be worked out between those brokers, as it is not something we would like to see delaying a smooth transaction for the buyer and seller.

## Email Addresses

With the implementation of the new Commission Licensee database last year, the Commission is relying on e-mail more than ever for important communications and notifications for licensees. Please make sure we have your correct email address on file and that you keep it current with us should it change. You can check and change your email address through the Commission's licensee portal. When you complete your license renewal you will also want to check that your email address is current and update it if needed. There is more information on accessing your licensee portal in the renewal article found in this issue.

Greg Lemon, Director  
Nebraska Real Estate Commission





# Disciplinary Actions Taken by the Real Estate Commission

*(Does Not Include Cases on Appeal)*

**2020-034 Commission vs. Michele Torrence;** Broker; Omaha, NE. Stipulation and Consent Order entered February 24, 2021. License is Suspended for a period of five (5) years. Suspension begins March 26, 2021 and continues thru March 26, 2026; plus complete and additional six (6) hours of continuing education in course #0003-Developing Professional Conduct and Ethical Practices by January 25, 2026; plus pay a civil fine of \$1,500.00 by March 26, 2021. [Torrence violated Neb. Rev. Stat. §76-2417 Seller's agent or landlord's agent; powers and duties; confidentiality; immunity; disclosures required. (1) A licensee representing a seller or landlord as a seller's agent or a landlord's agent shall be a limited agent with the following duties and obligations: (a) To perform the terms of the written agreement made with the client; (b) To exercise reasonable skill and care for the client; (c) To promote the interests of the client with the utmost good faith, loyalty, and fidelity, including: (i) Seeking a price and terms which are acceptable to the client, except that the licensee shall not be obligated to seek additional offers to purchase the property while the property is subject to a contract for sale or to seek additional offers to lease the property while the property is subject to a lease or letter of intent to lease, (ii) Presenting all written offers to and from the client in a timely manner regardless of whether the property is subject to a contract for sale or lease or a letter of intent to lease; (iii) Disclosing in writing to the client all adverse material facts actually known by the licensee; and (iv) Advising the client to obtain expert advice as to material matters about which the licensee knows but the specifics of which are beyond the expertise of the licensee; (d) To account in a timely manner for all money and property received; (e) to comply with all requirements of sections 76-2401 to 76-2430, the Nebraska Real Estate License Act, and any rules and regulations promulgated pursuant to such sections or act; and (f) to comply with any applicable federal, state, and local laws, rules, regulations, and ordinances, including fair housing and civil rights statutes and regulations. (2) A licensee acting as a seller's or landlord's agent shall not disclose any confidential information about the client unless disclosure is required by statute, rule, or regulation or failure to disclose the information would constitute fraudulent misrepresentation. No cause of action for any person shall arise against a licensee acting as a seller's or landlord's agent for making any required or permitted disclosure. (3) (a) A licensee acting as a seller's or landlord's agent owes no duty or obligation to

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## 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 . . . *Paige Polacek*  
paige.polacek@nebraska.gov

Complaint Procedures. . . . . *Antwan Montague*  
antwan.montague@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. . . . . *Samantha Bell*  
samantha.bell@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*  
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a buyer, a tenant, or a prospective buyer or tenant, except that a licensee shall disclose in writing to the buyer, tenant, or prospective buyer or tenant all adverse material facts actually known by the licensee. The adverse material facts may include, but are not limited to, adverse material facts pertaining to: (i) Any environmental hazards affecting the property which are required by law to be disclosed; (ii) the physical condition of the property; (iii) any material defects in the property; (iv) any material defects in the title to the property; or (v) any material limitation on the client's ability to perform under the terms of the contract. (b) A seller's or landlord's agent owes no duty to conduct an independent inspection of the property for the benefit of the buyer, tenant, or prospective buyer or tenant and owes no duty to independently verify the accuracy or completeness of any statement made by the client or any independent inspector. (4) A seller's or landlord's agent may show alternative properties not owned by the client to prospective buyers or tenants and may list competing properties for sale or lease without breaching any duty or obligation to the client. (5) (a) A seller or landlord may agree in writing with a seller's or landlord's agent that other designated brokers may be retained and compensated as subagents. (b) Any designated broker acting as a subagent on the seller's or landlord's behalf shall be a limited agent with the obligations and responsibilities set forth in subsections (1) through (4) of this section, when she removed funds from her broker trust account without proper authorization; violated Neb. Rev. Stat. §76-2418 Buyer's agent or tenant's agent; powers and duties; confidentiality; immunity; disclosures required. (1) A licensee representing a buyer or tenant as a buyer's or tenant's agent shall be a limited agent with the following duties and obligations: (a) To perform the terms of any written agreement made with the client; (b) To exercise reasonable skill and care for the client; (c) To promote the interests of the client with the utmost good faith, loyalty, and fidelity, including: (i) Seeking a price and terms which are acceptable to the client, except that the licensee shall not be obligated to seek other properties while the client is a party to a contract to purchase property or to a lease or letter of intent to lease; (ii) Presenting all written offers to and from the client in a timely manner regardless of whether the client is already a party to a contract to purchase property or is



already a party to a contract or a letter of intent to lease; (iii) Disclosing in writing to the client adverse material facts actually known by the licensee; and (iv) Advising the client to obtain expert advice as to material matters about which the licensee knows but the specifics of which are beyond the expertise of the licensee; (d) To account in a timely manner for all money and property received; (e) To comply with all requirements of sections 76-2401 to 76-2430, the Nebraska Real Estate License Act, and any rules and regulations promulgated pursuant to such sections or act; and (f) To comply with any applicable federal, state, and local laws, rules, regulations, and ordinances, including fair housing and civil rights statutes or regulations. (2) A licensee acting as a buyer's or tenant's agent shall not disclose any confidential information about the client unless disclosure is required by statute, rule, or regulation or failure to disclose the information would constitute fraudulent misrepresentation. No cause of action for any person shall arise against a licensee acting as a buyer's or tenant's agent for making any required or permitted disclosure. (3) (a) A licensee acting as a buyer's or tenant's agent owes no duty or obligation to a seller, a landlord, or a prospective seller or landlord, except that the licensee shall disclose in writing to any seller, landlord, or prospective seller or landlord all adverse material facts actually known by the licensee. The adverse material facts may include, but are not limited to, adverse material facts concerning the client's financial ability to perform the terms of the transaction. (b) A buyer's or tenant's agent owes no duty to conduct an independent investigation of the client's financial condition for the benefit of the customer and owes no duty to independently verify the accuracy or completeness of statements made by the client or any independent inspector. (4) A buyer's or tenant's agent may show properties in which the client is interested to other prospective buyers or tenants without breaching any duty or obligation to the client. This section shall not be construed to prohibit a buyer's or tenant's agent from showing competing buyers or tenants the same property and from assisting competing buyers or tenants in attempting to purchase or lease a particular property. (5) (a) A client may agree in writing with a buyer's or tenant's agent that other designated brokers may be retained and compensated as subagents. (b) Any designated broker acting as a subagent on the

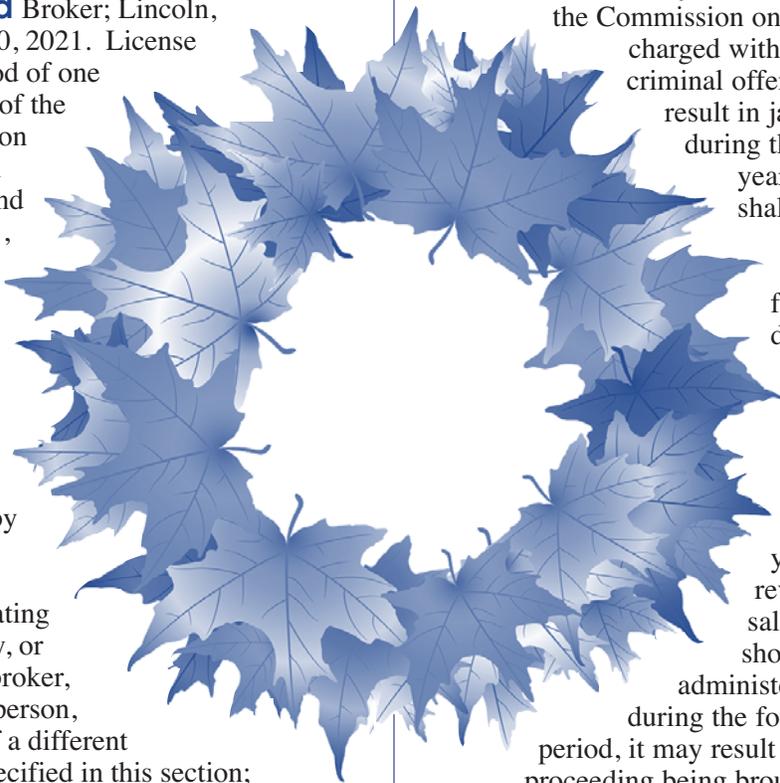
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buyer's or tenant's behalf shall be a limited agent with the obligations and responsibilities set forth in subsections (1) through (4) of this section, when she removed funds from her broker trust account without proper authorization; violated Neb. Rev. Stat. § 81-885.24(4) Commingling the money or other property of his or her principals with his or her own, when she removed funds from her broker trust account without proper authorization; 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 she removed funds from her broker trust account without proper authorization.]

**2020-002 – Ryan & Heather Linden vs. Angela Joy Berthold**

Broker; Lincoln, NE. Hearing held May 20, 2021. License was suspended for a period of one (1) year with the entirety of the period stayed and served on probation. Probation will begin on July 11, 2021, and continues through July 11, 2022; plus pay hearing fees of \$1,897.77 by July 11, 2021; plus complete an additional six (6) hours of continuing education with three (3) hours each in the areas of Ethics and License Law by June 11, 2022[Berthold 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 she failed to fully disclose one or more easements and/or title conditions/restrictions/disputes regarding a property.]



**2021-004 – Commission vs. Leslie Sue Petersen**

Salesperson; Bennington, NE. Stipulation and Consent Order entered May 20, 2021. License was suspended for a period of four (4) years with the first eighteen (18) months served on suspension and the remainder of the period stayed and served on probation. Suspension begins June 19, 2021, and continues through December 19, 2022. Probation will begin on December 20, 2022 and continues through June 19, 2025; plus pay a civil fine of \$1,500.00 by June 19, 2021; plus submit to a yearly criminal background check, by having her 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 four (4) year Suspension/Probation period. The first report is due February 28, 2022; plus during the entire four (4) year Suspension/Probation period attend bi-weekly AA meetings for the first six (6) months of the suspension and provide documentary evidence of such attendance to the Commission on a quarterly basis, or bi-weekly meetings with a licensed counselor. The first report is due September 19, 2021. Following the six (6) month period you shall attend monthly AA meetings or monthly sessions with a licensed counselor for the remainder of the suspension period providing

documentary evidence of such attendance to the Commission on a quarterly basis; plus if charged with or convicted of another criminal offense that would likely result in jail time at any time during the entirety of the four (4) year suspension period, she shall report such charges and/or convictions to the Commission within five (5) days following the date of the charges being filed and/or conviction; plus if convicted of any DUI or failure to submit to a chemical test during the suspension period of four (4) years she has agreed to a revocation of her salesperson license; plus should she violate any law administered by the Commission during the four (4) year suspension period, it may result in a Show Cause proceeding being brought against her by the Commission, in which case her salesperson's license may be suspended for the remainder of the suspension period; plus should she violate any law administered by the Commission during the entirety of her probationary period it may result in a new disciplinary complaint proceeding being brought against her by the commission. [Petersen 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 she failed to report to the Commission the DUI convictions during the renewal of her salesperson license.]

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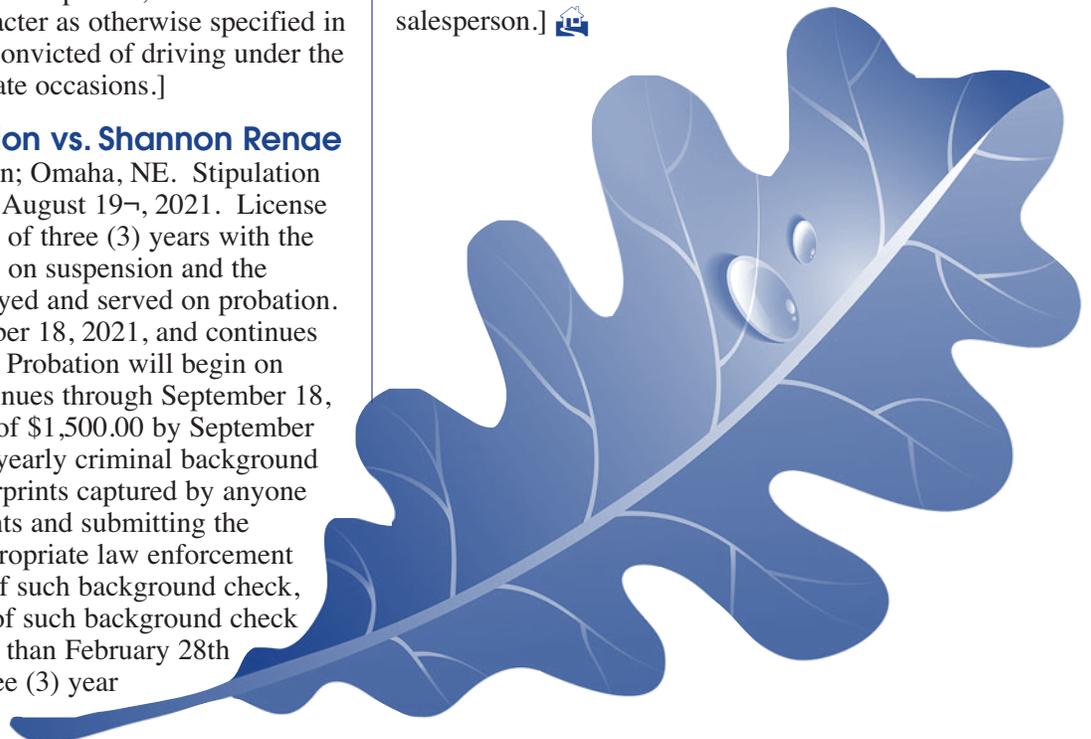
### **2021-003 – Commission vs. Terrance Bryan Hoffman – Salesperson; North Sioux City, SD.**

Stipulation and Consent Order entered June 17, 2021. License suspended for a period of three (3) years, with the first forty-five (45) days served on suspension and the remainder stayed and served on probation. Suspension begins July 24, 2021, and continues thru September 6, 2021. Probation begins September 7, 2021, and continues thru July 24, 2024; plus pay a civil fine of \$1,500.00 by July 24, 2021; plus submit to a yearly criminal background check, by having his fingerprints captured by anyone qualified to take fingerprints 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, 2022; plus during the entire three (3) year Suspension/Probation period attend monthly alcohol/substance abuse groups and provide documentary evidence of such attendance to the Commission on a quarterly basis. The first report is due October 24, 2021; plus if charged with another criminal offense at any time during the entirety of the three (3) year suspension and probation period, he shall report such charges and/or convictions to the Commission within five (5) days following the date of the incident giving rise to the charge; plus if convicted of any DUI or failure to submit to a chemical test during the suspension period of four (4) years she has agreed to a revocation of her salesperson license; [Hoffman 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 he was convicted of driving under the influence on four (4) separate occasions.]

### **2021-001 – Commission vs. Shannon Renae Mesenbrink**

Salesperson; Omaha, NE. Stipulation and Consent Order entered August 19<sup>th</sup>, 2021. License was suspended for a period of three (3) years with the first thirty (30) days served on suspension and the remainder of the period stayed and served on probation. Suspension begins September 18, 2021, and continues through October 17, 2021. Probation will begin on October 18, 2021 and continues through September 18, 2024; plus pay a civil fine of \$1,500.00 by September 18, 2021; plus submit to a yearly criminal background check, by having her fingerprints captured by anyone qualified to take fingerprints 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, 2022; plus during the entire three (3) year Suspension/Probation period attend monthly AA meetings and provide documentary evidence of such attendance to the Commission on a quarterly basis. The first report is due December 18, 2021; plus if charged with or convicted of another criminal offense that would likely result in jail time at any time during the entirety of the three (3) year suspension/probation period, she shall report such charges and/or convictions to the Commission within five (5) days following the date of the incident giving rise to the charge and/or conviction; plus if convicted of any DUI or failure to submit to a chemical test during the suspension/probation period of three (3) years she has agreed to a revocation of her salesperson license; plus should she violate any law administered by the Commission during the three (3) year suspension/probation period, it may result in a Show Cause proceeding being brought against her by the Commission, in which case her Nebraska Real Estate salesperson's license may be suspended for the remainder of the suspension/probation period; plus should she violate any law administered by the Commission during the entirety of her probationary period it may result in a new disciplinary complaint proceeding being brought against her by the commission. [Mesenbrink 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 her actions and convictions of DUI on three (3) different occasions, and her statements and/or omissions on her application constitute negligence, incompetency, or unworthiness to act as a salesperson.] 



# 2022-2023 License Renewal Instructions

Last year, the Commission implemented their new licensee database and portal. Hopefully many of you reading this have already created an account in the new portal. However, if you haven't, please follow the instructions on the link below. We have a new process for the online renewal of your real estate license.

**DON'T HAVE YOUR NEW NREC ACCOUNT YET? CREATE ONE HERE:**

<https://nrec.nebraska.gov/licensing-forms/logininfo.html>

We are urging all licensees required to renew their license this year to renew online, it is fast, convenient, and more user-friendly than ever. You can renew from any computer with internet access, or someone else's internet connected device if you don't have one.

The new system will only complete your renewal if you have met all the renewal requirements. We recommend that you check your licensee portal to see if you have met your continuing education requirements for this year and your errors and omissions insurance requirements for next year before you begin the renewal process. Please note that it can sometimes take a few days for certificates of insurance and education to be uploaded into the system. If you start your renewal and

requirements have not been met, the system will stop you from going any further, but will save your information so that you can complete the process when all requirements are met. Login to your new NREC Account and click on "RENEW NOW" to get started.

As always, the Commission strongly recommends that you begin your renewal process early, license renewals are due on November 30, and delinquent on January 1. Renewals received after November 30, or submitted or attempted to have been submitted prior to November 30, but without all renewal requirements having been met, will be subject to an additional \$25 dollar a month administrative fee for each month they are late.

Additional renewal instructions can be found when you login to your NREC Account, and also at: <https://nrec.nebraska.gov/licensing-forms/renewalprocedures.html>. 

**LOGIN TO YOUR NEW NREC ACCOUNT AND CHECK YOUR EMAIL ADDRESS NOW!**

**The Commission will rely on email more than ever to send out important notifications and reminders. Our email list is only as good as the information you provide, so make sure your email is current and correct, and update if it changes.**

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focusing on here, that the advertising displays the name the brokerage does business under and that name is adjacent to and as or more prominent than any affiliated salesperson, associate broker, or team name used in the advertising.

To meet the broker prominence the brokerage name should be in the first public facing page or display of the advertising when used in social media, there is no "one click away" rule in Nebraska.

Go to <https://nrec.nebraska.gov/whatsnew.html> for examples and tips for advertising compliance on social media. 



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## Creating Contracts By Text or E-mail

*“Your scientists were so preoccupied with whether or not they could, that they didn’t stop to think if they should”*

Dr. Ian Malcolm (Jeff Goldblum) Jurassic Park

Over the years there has been much discussion in the industry over whether a real estate contract may be executed via a text message or an email. There are court cases that say you can, one such case is *St. John’s Holdings, LLC v. Two Electronics, LLC* (No 16 MISC 000090 (RBF) (2016)). In *St. John’s* the Massachusetts court held that a text message, when analyzed in context with other communications about a real estate transaction, was a signed provision in writing and could be used to create an enforceable contract.

While this case shows that you can create an enforceable real estate contract via an informal communication, this article explores whether you should.

There were multiple parties/offers in *St. John’s*, and they ended up in court to determine which contract was binding, the one memorialized created in part via text message, but never signed on paper (or e-signature) by all parties, or a later offer and acceptance that seller chose to accept on their assumption that the text acceptance of the first offer and terms was not legally binding.

The Commission recognizes that negotiation may often take place verbally or via text or email, but strongly recommends that all real estate contracts and addenda are executed in a traditional written document signed by both parties (paper or electronic). You don’t want to end up in court, you don’t want your client to end up in court. What can you do to avoid the uncertainty of text negotiations being considered part of a real estate contract? You may want to establish intent when you first start negotiating, a statement or disclaimer that any verbal statements, text messages or emails shall not be considered binding until memorialized in a contract executed by all parties. Also consider your answers to an informally sent provision or offer, you may indicate a likelihood of agreement to the provision and a directive to get it into a contract or addendum for signature as soon as possible. So instead of “done” or “that works”, something like “That should be agreeable to my client, please get the addendum (or contract) written up ASAP”.

The Commission understands that, especially in the current market, there is pressure to get things done as quickly as possible, but some simple steps and practices can be used to avoid transactions that open the door for it to come back and bite you. 🐊