NEBRASKA REAL ESTATE COMMISSION

GUIDELINES FOR DEVELOPMENT OF DESIGNATED BROKER POLICY

Neb. Rev. Stat. Section 76-2420 of the Agency Relationships Statute requires every designated broker to adopt a **written** policy which identifies and describes the relationships in which the designated broker and his or her affiliated licensees may engage with any seller, landlord, buyer, or tenant as part of any real estate brokerage activities. The State Real Estate Commission has prepared these guidelines as an aid to designated brokers as they implement policies which meet the requirements of the law. In these guidelines, the Commission has used the words "must" or "shall" to indicate those steps which the statute makes mandatory. The Commission has used the words "may" or "should" to convey Commission suggestions.

The designated broker must first identify which of the allowed agency relationships his or her firm will offer. The designated broker must offer at least one type of agency relationship, but may offer all or any combination of the allowed relationships.

Those relationships allowed under the Statute are:

a) **Buyer limited agency -** A licensee working with a buyer in a particular transaction is considered a buyer's limited agent unless he or she has a written agreement as an agent under c), d), e), or f) **OR** has been appointed by the designated broker as an agent under c), d), e), or f) **OR** the designated broker of the licensee has accepted subagency under c) or d). A written agreement may also be entered into for buyer limited agency, if it is set out in the designated broker's policy. Subagency can only be offered with the written consent of the buyer.

b) **Tenant limited agency** - A licensee working with a tenant in a particular transaction is considered a tenant's limited agent unless he or she has a written agreement as an agent under c), d), e), or f) **OR** has been appointed by the designated broker as an agent under c), d), e), or f) **OR** the designated broker of the licensee has accepted subagency under c) or d). A written agreement may also be entered into for tenant limited agency if it is set out in the designated broker's policy. Subagency can only be offered with the written consent of the tenant.

c) **Seller limited agency** - A designated broker must have a **written** agreement with seller or have accepted subagency in accordance with the designated broker's policy.

d) **Landlord limited agency** - A designated broker must have a **written** agreement with landlord or have accepted subagency in accordance with the designated broker's policy.

e) **Dual limited agency -** A designated broker must have the **written** informed consent of all parties to a real estate transaction in accordance with the designated broker's policy.

f) **Common law agency** - A designated broker must have a **written** agreement with the client in accordance with the designated broker's policy.

Only the designated broker can enter into written agreements or consents with the client, unless the designated broker has authorized in writing some or all affiliated licensees to do so. The designated broker may want to state in the policy that no affiliated licensees have the authority to enter into written agreements and consents on the designated broker's behalf, or the designated broker may want to place written authorizations in the written policy, with such conditions or restrictions as the designated broker chooses. For example, the designated broker may want to state that affiliated licensees do not have authority to enter into consent to dual agency or common law agency agreements without the designated broker's direct approval.

The designated broker may indicate in the written policy whether he or she will accept subagency offered by another designated broker on a client's behalf, and if so, whether the designated broker will accept it only by a written agreement with the other designated broker or whether a unilateral offer of subagency from another designated broker may be accepted by disclosing to the customer that he or she is a subagent of the other designated broker.

Another issue the designated broker may want to set out in his or her policy also deals with subagency, that is, whether or not subagency will be offered by the designated broker on behalf of his or her clients. If so, then the client on whose behalf the subagency is offered **MUST AGREE IN WRITING** to offer subagency and to allow the designated broker to compensate other designated brokers who accept the offer of subagency.

Neb. Rev. Stat. Section 76-2427 authorizes a designated broker to appoint in writing one or more affiliated licensees to act as a limited agent of a client to the exclusion of all other affiliated licensees. The designated broker may want to make some or all of those appointments in the written policy. For example, the designated broker could decide that since both seller and buyer, or landlord and tenant, limited agency relationships are being offered to consumers by his or her company, that **only** the affiliated licensee who, on behalf of the designated broker, entered into the listing agreement with the seller, or the leasing agreement with the landlord, will represent the seller or landlord as that client's limited agent. All other affiliated licensees with the designated broker will represent buyers, or tenants, as their limited agents in any transaction dealing with the subject property.

The statute only requires that the designated broker adopt a written policy which responds to the requirements of the statute. In performance of the designated broker's duty to supervise his or her affiliated licensees, the written policy should be made generally available to all affiliated licensees and should be used as a basis for inservice training.