

## CHAPTER 5-003.20 - FAILURE TO DISCLOSE ADVERSE MATERIAL FACT

VIOLATION	COMPLAINT	DATE OF ORDER	PENALTY
Section 81-885.24(22) by making a substantial misrepresentation; Title 299, Ch. 5-003.17 failure to disclose to a buyer, a material fact regarding condition of parcel of real estate of which he has knowledge; Title 299, Ch. 5-003.19 failure to supervise associate Brokers or Salespersons; and 81-885.24(29) by demonstrating negligence and unworthiness to act as a Broker.	89-067, 89-069, 90-020, 90-026 - Schaeffer Petersen, Bastemeyer, Hathaway & Ammerman vs. Ralph Heavrin and Gerald Fischer	September 24, 1990	<u>Heavrin</u> : Suspend 6 months. <u>Fischer</u> : Suspend 3 months.
Section 81-885.24(29) and Title 299, Ch. 5-003.17 by failing to disclose to a buyer a material fact regarding the condition of a parcel of real estate of which the Salesperson had knowledge.	92-070 - Commission vs. Daniel Alan Spence	February 18, 1993	Stipulation and Consent Order. License censured.
Ch. 5-003.17 by failing to disclose to a buyer a material fact regarding the condition of a parcel of real estate of which she had knowledge; and by said act, violated 81-885.24(29) by demonstrating incompetency.	92-061 - Tina Kilpatrick vs. Kae L. Myers	April 13, 1993	Suspend 90 days with said suspension stayed and served on probation.
299 NAC 5-003.16 by failing to disclose material facts to purchasers of which he had knowledge; and 81-885.24(29) by committing acts demonstrating negligence.	93-040 - Michael Mattison and Julie C. Walstrom vs. Larry Geiger	March 30, 1994	License suspended 30 days, with suspension stayed and served on probation.
299 NAC 5-003.19 by failing to disclose an adverse material fact in writing to a buyer.	95-009 - Commission vs. Larry A. Geiger	May 9, 1995	Stipulation and Consent Order. License censured.
Section 81-885.24(26) by violating a regulation adopted and promulgated by the Commission in the interest of the public inconsistent with the Nebraska Real Estate License Act, to wit: Title 299, Ch. 5-003.20 by failing to disclose, in writing, to a buyer, at or prior to the time the buyer signs an offer to purchase, an adverse material fact regarding the condition of a parcel of real estate of which the broker has knowledge and failing to have said written disclosure signed by the buyer and a copy of the signed disclosure maintained in the transaction file.	97-035 - James Bollman vs. Frederick C. Renner	March 18, 1998	Stipulation and Consent Order. License suspended for 6 months, with last 5 months following the first 30 days stayed and served on probation, plus an additional 6 hours of continuing education to include 3 hours in disclosures and 3 hours in agency.

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<p>Section 81-885.24(26) by violating a rule or regulation adopted and promulgated by the Commission in the interest of the public and consistent with the Nebraska Real Estate License Act, specifically Title 299, N.A.C., Ch. 5-003.20 by failing to disclose, in writing, to a buyer, at or prior to the time the buyer signs an offer to purchase, an adverse material fact.</p>	<p>1999-032 - Diane &amp; Larry Overman vs. Douglas Emory Forbes</p>	<p>January 19, 2000</p>	<p>Stipulation and Consent Order. License censured; plus an additional 3 hours of continuing education in the area of disclosures.</p>
<p>Section 81-885.24(26) by violating a rule or regulation adopted and promulgated by the Commission in the interest of the public and consistent with the Nebraska Real Estate License Act, to wit: Title 299, N.A.C., Ch. 5-003.20 by failing to disclose an adverse material fact, in writing, prior to the time the Buyers signed the Offer to Purchase; 81-885.24(29) by demonstrating negligence to act as a salesperson.</p>	<p>1999-031 - Robert L. &amp; Charlotte A. Hester vs. Betty Wilda Bates and Nancy Karel Hernandez</p>	<p>March 24, 2000</p>	<p><u>Hernandes</u>: Dismissed. <u>Bates</u>: Stipulation and Consent Order. License suspended for 6 months from April 1, 2000 through September 30, 2000, with first 21 days of said suspension served and the remaining time stayed and served on probation; plus an additional 6 hours of continuing education, including 3 hours in the area of agency and 3 hours in the area of disclosure to be completed by September 23, 2000.</p>
<p>Title 299, N.A.C., Ch. 5-003.20 of the Commission Rules and Regulations in effect as of January 28, 1997, by failing to disclose, in writing, to a Buyer, at or prior to the time the Buyer signs an Offer to Purchase, an adverse material fact regarding the condition of a parcel of real estate of which a salesperson has knowledge.</p>	<p>2000-019 - Kathleen A. Barnes vs. Scott Roger Cundall</p>	<p>August 24, 2000</p>	<p>Stipulation and Consent Order. License censured plus 3 hours of additional continuing education in the area of disclosures to be completed by February 23, 2001.</p>
<p><u>G. Barnard</u>: Section 76-2421 by failing, at the earliest practical opportunity during or following the first substantial contact with sellers who have not entered into a written agreement for brokerage services with the designated broker, to disclose in writing to those persons the types of brokerage relationships that the designated broker and affiliated licensees are offering to the persons or disclose in writing to the persons which party the licensee is representing; 81-885.24(26) by violating a rule or regulation adopted and promulgated by the Commission in the interest of the public and consistent with the Nebraska Real Estate</p>	<p>2001-001, 2001-002, 2001-029 - Ronald E. &amp; Julie A. Belding vs. Gary A. Barnard; Ronald P. &amp; Vicki A. Hasley vs. Gary A. Barnard &amp; Kerri Ann Barnard; Kevin Patrick McNenny &amp; Frances Morrisette McNenny vs. Gary A. Barnard</p>	<p>December 18, 2001</p>	<p><u>G. Barnard</u>: Stipulation and Consent Order. License suspended for one (1) year from December 19, 2001, through December 18, 2002, with the first thirty (30) days served and the remainder served on probation; plus an additional twelve (12) hours of continuing education including three (3) hours in the area of disclosure, six (6) hours in the area of agency, and three (3) hours in the area of property exchanges to be completed by</p>

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<p>License Act, specifically, Title 299, NAC, Ch. 5-003.10 by failing to identify in writing at the time the offers were presented and accepted, those categories of cost the seller will be expected to pay at closing and by failing to prepare a written estimate of cost the seller will be expected to pay, to the extent the necessary cost information is reasonably available; Ch. 5-003.20 by failing to inform a buyer of zoning restrictions that might apply to certain real estate and could have an adverse impact upon Belding's intended use of the property; 81-885.24(29) by demonstrating incompetency to act as a broker by failing to exercise reasonable skill and care for his client Belding, failing to inform Belding of the zoning restrictions that might apply to property he purchased and which could have an adverse impact upon Belding's intended use of the property, and by failing to disclose a buyer knowledge of a lawsuit regarding the title to property owned by the Hasleys.</p> <p><u>Barnard Swoboda</u>: Section 81-885.24(22) when Respondent made the representation that she was a Limited Buyer's Agent rather than a Limited Seller's Agent; 81-885.24(26) by violating a rule or regulation promulgated by the Commission in the interest of the public, specifically, Title 299, NAC, Ch. 5-003.23, by failing as an agent of the seller to deliver a copy of the Seller Property Condition Disclosure Statement to the purchaser before the effective date of any contract entered into which binds the purchaser to purchase the real estate; 81-885.24(29) by demonstrating negligence.</p>	<p>2001-001, 2001-002, 2001-029 - Ronald E. &amp; Julie A. Belding vs. Gary A. Barnard; Ronald P. &amp; Vicki A. Hasley vs. Gary A. Barnard &amp; Kerri Ann Barnard; Kevin Patrick McNenny &amp; Frances Morrisette McNenny vs. Gary A. Barnard</p>	<p>June 17, 2002.</p>	<p><u>Barnard Swoboda</u>: Stipulation and Consent Order. License censured; plus an additional six (6) hours of continuing education in the area of agency to be completed by June 17, 2002.</p>
<p>Title 299, Ch. 5-003.20, for failing to disclose, in writing, to a buyer, at or prior to the time the buyer signs an Offer to Purchase, an adverse material fact regarding the condition of a parcel of real estate of which a broker has knowledge; Ch. 5-003.25, for failure by a licensee, who knows of an error, inaccuracy or omission in a Seller Property Condition Disclosure Statement completed pursuant to 76-2, 120, to disclose the error, inaccuracy or omission, in writing, to a potential purchaser and the seller. Such disclosure shall be attached to the Seller Property Condition Disclosure Statement; 81-885.24(29) by demonstrating negligence to act as a broker.</p>	<p>2002-033 - Earl &amp; LeeAnn Stueve vs. Carolyn Van Horne</p>	<p>January 29, 2003</p>	<p>Stipulation &amp; Consent Order. License censured; plus an additional 6 hours of continuing education, including 3 hours in the area of license law and 3 hours in the area of disclosure, to be completed by May 29, 2003.</p>

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<p>Section 76-2417(3)(a) by failing, as a seller's agent, to disclose in writing to the buyer all adverse material facts actually known by the licensee; Title 299, N.A.C., Ch. 5-003.20 by failing to disclose, in writing, to a buyer, at or prior to the time the buyer signs an Offer to Purchase, an adverse material fact regarding the condition of a parcel of real estate of which a broker or salesperson has knowledge. Said written disclosure shall be signed and dated by the buyer, and a copy of the signed and dated disclosure shall be maintained in the transaction file on that parcel of real estate; Ch. 5-003.25, failure by a licensee who knows of an error, inaccuracy, or omission in a Seller Property Condition Disclosure Statement completed pursuant to 76-2, 120 to disclose the error, inaccuracy, or omission, in writing, to a potential purchaser and the seller. Such disclosure shall be attached to the Seller Property Condition Disclosure Statement; 81-885.24(29) by demonstrating negligence, incompetency, or unworthiness to act as a broker.</p>	<p>2003-051 - Anthony W. &amp; Barbara J. Bartram vs. Curtis Alan Spilker, Broker.</p>	<p>March 3, 2004</p>	<p>Stipulation &amp; Consent Order. License suspended for one hundred fifty (150) days, with the first sixty (60) days served on suspension and the remainder of the period stayed and served on probation, from March 5, 2004, through August 1, 2004; plus an additional nine (9) hours of continuing education, including three (3) hours in the area of disclosures, three (3) hours in the area of ethics, and three (3) hours in the area of license law, to be completed by August 1, 2004.</p>
<p>Section Title 299 Chapter 5-003.20, Failure to disclose, in writing, to a buyer, at or prior to the time the buyer signs an Offer to Purchase, an adverse material fact regarding the condition of a parcel of real estate of which a broker or salesperson has knowledge. Said written disclosure shall be signed and dated by the buyer, and a copy of the signed and dated disclosure shall be maintained in the transaction file on that parcel of real estate in accordance with 299 NAC 3-001. An adverse material fact is one which significantly affects the desirability or value of the property, and which is not reasonably ascertainable or known to the buyer; Neb. Rev. Stat. § 81-885.24 (22) Making any substantial misrepresentations; and Neb Rev. Stat § 81-885.24 (29) Demonstrating negligence, incompetency, or unworthiness to act as a broker by failing to disclose, in writing, that the subject property had liens filed against the property and representing that the property was free and clear of liens or encumbrances.</p>	<p>2006-076 Kirk Helmink, Nebraska Dirtworks, Inc vs. Ronald James Perry</p>	<p>June 28, 2007</p>	<p>Stipulation and Consent Order dated June 28, 2007. License suspended for a period of one (1) year, to commence on July 6, 2007, and to continue through July 6, 2008; plus an additional three (3) hours of continuing education in the area of ethics to be completed by December 25, 2007.</p>

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<p><u>Boyer and Young</u>: Section 76-2417 (3)(a) A licensee acting as a seller's or landlord's agent owes no duty or obligation to 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; and Title 299 Chapter 5-003.20 Failure to disclose, in writing, to a buyer, at or prior to the time the buyer signs an Offer to Purchase, an adverse material fact regarding the condition of a parcel of real estate of which a broker or salesperson has knowledge. Said written disclosure shall be signed and dated by the buyer, and a copy of the signed and dated disclosure shall be maintained in the transaction file on that parcel of real estate in accordance with 299 NAC 3-001. An adverse material fact is one which significantly affects the desirability or value of the property, and which is not reasonably ascertainable or known to the buyer. Boyer and Young failed to disclose a known adverse material fact to the buyers, in writing, regarding the "risk of damage due to differential settlements" of the soil.</p>	<p>2007-005 Charles E. and Janet S. Petersen vs. Mark Allen Boyer and Timothy William Young</p>	<p>January 24, 2008</p>	<p>Hearing held January 24, 2008. Commission's decision appealed to the District Court on March 21, 2008. Commission's decision affirmed by the District Court on November 10, 2008. Both real estate licenses suspended for a period of six (6) months with the entire suspension period served on probation. The suspension period served on probation commenced on March 23, 2008, and continued through September 19, 2008; plus an additional three (3) hours of continuing education in the area of disclosures to be completed by September 19, 2008.</p>
<p>Section Title 299 Chapter 2 Section 003 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. All advertising shall be under the direct supervision of the broker, and in the name the broker is conducting business as recorded with the Commission. Advertising which is contrary to Sections 003 to 006 of these regulations shall constitute misleading or inaccurate advertising under Section 81-885.24(2) of the</p>	<p>2008-040 Commission vs. Dorothy Mae Haws</p>	<p>January 22, 2009</p>	<p>Stipulation and Consent Order. License suspended for a period of thirty (30) days, with the entire suspension period stayed and served on probation, which commenced on January 28, 2009, and continuing through February 26, 2009; plus an additional nine (9) hours of continuing education to include three (3) hours in the area of license law, three (3) hours in the area of disclosures and three</p>

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<p>Nebraska Real Estate License Act; 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; and Title 299 Chapter 5-003.20 Failure to disclose, in writing, to a buyer, at or prior to the time the buyer signs an Offer to Purchase, an adverse material fact regarding the condition of a parcel of real estate of which a broker or salesperson has knowledge. Said written disclosure shall be signed and dated by the buyer, and a copy of the signed and dated disclosure shall be maintained in the transaction file on that parcel of real estate in accordance with 299 NAC 3-001. An adverse material fact is one which significantly affects the desirability or value of the property, and which is not reasonably ascertainable or known to the buyer. Haws prepared and distributed a flyer on the subject property that included only a phone number and not the name of her designated broker's real estate company; failed to disclose, in writing, to a buyer, at or prior to the time the buyer signs an Offer to Purchase, an adverse material fact regarding the condition of a parcel of real estate of which a broker or salesperson has knowledge; and failed to disclose the code violations, in writing, to the buyer, at or prior to signing an Offer to Purchase.</p>	<p>2008-040 Commission vs. Dorothy Mae Haws</p>		<p>(3) hours in the area of ethics must be completed by July 21, 2009.</p>

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