

COMMISSION COMMENT

Summer

1996

Lead Alert

HUD and EPA Move to Protect Children from Lead-Based Paint Poisoning

(Editor's note: In the Spring issue of Commission Comment we printed the Press Release issued as HUD No. 96-53, by the U.S. Department of Housing and Urban Development (HUD) and the Environmental Protection Agency (EPA). These two agencies also developed the following article, which we have reprinted, here, with their permission. We believe that you will find this article, and the disclosure forms which follow it, of further benefit to you in understanding the Residential Lead-Based Paint Hazard Reduction Act of 1992.)

Summary of Requirements for Disclosure of Lead-Based Paint Hazards in Housing

The Environmental Protection Agency (EPA) and the Department of Housing and Urban Development (HUD) are helping to ensure that the public has the information it needs to prevent lead-based paint poisoning. Home buyers and renters will be given the information by sellers and landlords to protect their families, especially young children, in housing built before 1978 when lead-based paint was still widely used. Practical, low-cost tips on identifying and controlling lead-based paint hazards are contained in a pamphlet that will be distributed at sales and leasing transactions. The effort also ensures that information on lead hazards is transmitted from buyer to seller and from landlord to tenant.

Lead-Based Paint in Housing

Approximately three-quarters of the nation's housing stock built before 1978 (approximately 64 million dwellings) contain some lead-based paint. When properly maintained and managed, this paint poses little risk. However, 1.7 million children have blood lead levels

above safe limits, mostly due to exposure to lead-based paint hazards.

What does lead poisoning do to children?

Lead poisoning causes permanent damage to the brain and many other organs and also causes reduced intelligence and behavioral problems. For example, recent research has linked lead exposure to juvenile delinquency. Lead can also cause abnormal fetal development in pregnant women.

Background

To protect families from exposure to lead in paint and the contaminated dust and soil it generates, Congress passed the Residential Lead-Based Paint Hazard Reduction Act of 1992. Section 1018 of this law directed EPA and HUD to require the disclosure of known information on lead-based paint and lead-based paint hazards before the sale or lease of most housing built before 1978.

What Is Required

Before ratification of a contract for sale or lease:

- * Sellers and landlords must disclose known lead-based paint and lead-based paint hazards and provide available reports to buyers or tenants.
- * Sellers and landlords must give buyers and renters the EPA/CPSC/HUD pamphlet titled Protect Your Family From Lead in Your Home
- * Home buyers will get a 10-day period to conduct a lead-based paint inspection or risk assessment at their own expense if desired. The number of days can be changed by mutual consent.

- * Sales contracts and leasing agreements must include certain language to ensure that disclosure and notification actually take place.
- * Sellers, lessors and real estate agents share responsibility for ensuring compliance.

What the Rule Does Not Require

- * No testing, removal or abatement of lead-based paint is required.
- * This law does not invalidate leasing and sales contracts.

What type of housing is covered?

Most private housing, public housing, federally-owned housing and housing receiving federal assistance.

(Continued on page 3)

On The Inside:

Let's Talk Trust Accounts	page 10
Transfer Fee Reduced	page 13
FDIC Protection for Trust Accounts	page 13

Tentative Commission Meeting Schedule

June 18-19	TBA
August 20-21	TBA
September 18-19	TBA

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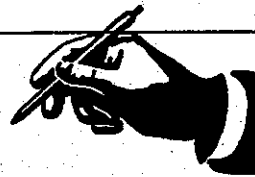
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From the

DIRECTOR'S DESK



Brokerage Relationships Pamphlet

After receiving a number of telephone calls and being asked questions at meetings of licensees, the Commission has become concerned that, at best, some licensees have not yet been informed that disclosure of agency relationships held or to be offered are not being made, as required by law. These licensees are not making the proper disclosures and are not having the Acknowledgment page of the brokerage relationships pamphlet signed by the consumer during or following, as soon as practicable, the first substantial contact with an unrepresented buyer, tenant, seller or landlord.

This lack of compliance with statute, as reported, is taking place predominately in commercial transactions. But, there have also been similar reports regarding residential transactions.

As indicated earlier this is, at best, lack of knowledge. However, based on some reports, it appears that some licensees have decided simply to not comply. Eventually, hopefully sooner than later, these flagrant non-compliers will be revealed through a formal complaint or consumer inquiry. At such time, appropriate disciplinary action will be taken by the Commission.

Those of you who were unaware or just not complying, should take time to review the statute and other information which has been made available over the past two years and come into compliance immediately.

Should you need assistance in determining how to comply with law, contact your designated broker or our office for such assistance.

Compliance is better than the alternative.

Les Tyrrell, Director Nebraska Real Estate Commission

(Continued from page 1)

Which housing is NOT covered?

- * Housing built after 1977
- * Zero-bedroom units, such as efficiencies, lofts and dormitories
- * Leases for less than 100 days, such as vacation houses or short-term rentals
- * Housing exclusively for the elderly (unless there are children living there)
- * Housing for the handicapped (unless there are children living there)
- * Rental housing that has been inspected by a certified inspector and found to be free of lead-based paint
- * Houses being sold because of foreclosure

Why isn't housing built after 1977 included?

Congress chose not to cover post-1977 housing because the Consumer Product Safety Commission banned the use of lead-based paint for residential use in 1978

When does this take effect?

Owners of more than 4 dwellings:
September 6, 1996

Owners of 4 or fewer dwellings:
December 6, 1996

How many will be affected and how much will it cost?

This law will help inform about 9 million renters and 3 million home buyers each year. The estimated cost associated with learning about the requirements, obtaining the pamphlet and other materials and time to perform disclosure is about \$6 per transaction.

What is the effect on states and local governments?

Those States and local jurisdictions that already require disclosure and notification will be largely unaffected, since the Federal law complements existing requirements. For example, States can use their own hazard information pamphlets approved by EPA. Enforcement will be carried out jointly by EPA and

HUD and therefore will not burden local resources.

Where can the pamphlet and other information be obtained?

From the National Lead Information Center
800-424-LEAD
TDD (800) 526-5456 (hearing impaired)
fax: 202-659-1192
Internet: <http://www.nsc.org/nsc/ehc/ehc.html>

Materials Available:

- * Sample Disclosure Forms
- * Individual Pamphlets (free)
- * Camera-ready copies of the pamphlet
- * Copies of the Regulation

From the Government Printing Office: 202-512-1800

- * Bulk copies of Pamphlet (\$26.00/50 copies)
Stock No. 055-000-00507-9

The pamphlet is in the public domain and can be reproduced by anyone. Currently available in English and Spanish.

What should I do if I'm selling?

- * Give buyers the pamphlet
- * Give buyers a 10-day opportunity to test for lead, if desired
- * Disclose all known lead-based paint and lead-based paint hazards in the house (and provide buyers with any available reports)
- * Include standard warning language as an attachment to the contract
- * Complete and sign statements verifying completion of requirements
- * Retain the signed acknowledgment for 3 years

What should I do if I am a landlord renting out a dwelling?

- * Give renters the pamphlet
- * Disclose all known lead-based paint and lead-based paint hazards in the dwelling unit (and provide renters with any available reports)
- * Include standard warning language in the lease or as an attachment

- * Complete and sign statements verifying completion of requirements
- * Retain the signed acknowledgment for 3 years.

Do I have to give the pamphlets to all my existing tenants?

No. But the pamphlet must be provided when the lease is renewed, as is the case for new tenants.

What about non-English speaking buyers or renters?

The disclosure has to be in the same language as the contract.

Do I have to check my house for lead before I sell it?

No, but you do have to give buyers a 10-day opportunity to have a test done if desired.

Do I have to correct any lead hazards that are found?

No. Nothing in the law requires an owner to remove lead paint or correct hazards. The law also does not prevent the two parties from negotiating hazard reduction as a contingency. This will be handled in the same way as any other housing defect.

Where can lead-based paint inspection services be found?

The pamphlet provides phone numbers of State agencies that can help identify certified inspectors or risk assessors. County, city and other local health and environmental agencies may also have such lists.

State-certified lead-based paint inspectors and risk assessors must be used to qualify for an exclusion from this regulation. Over 21 States now have such certification laws. If your State does not currently have a certification program, you can use a certified inspector or risk assessor from another State. EPA will issue final regulations on certification of inspectors, risk assessors and abatement contractors within the next few months.

Agent Responsibilities

Agents must ensure that:

- * Sellers and landlords are aware of their obligations
- * Sellers and landlords disclose the proper information to buyers and tenants
- * Sellers give buyers the 10-day opportunity to conduct an inspection (or another mutually-agreed upon period)
- * Leases and sales contracts include proper disclosure language and proper signatures.

What is the agent's responsibility if the seller or landlord fails to comply with the law?

Agents must comply with the law if the seller or landlord fail to do so. However, the agent is not responsible if an owner conceals information or fails to disclose the information.

Do I have to get a lead test if I'm buying a house?

No. This law only gives you the right to have one if you want. If you get a test, you must pay for it (or negotiate with the seller on who will pay for it).

Can the 10-day inspection period be waived?

Yes. The buyer and seller can choose any time period they want, as long as it is by mutual consent, or the buyer may waive the 10-day opportunity altogether.

If I am renting, do I also have the right to test for lead?

No. The 10-day inspection period is limited to sales transactions. But nothing in the law prevents the renter from negotiating an inspection or risk assessment with the landlord or lessor before rental.

What happens if sellers, landlords, lessors or agents fail to comply with the law?

Under the law, they can be sued for triple the amount of damages. They may also be subject to civil and criminal penalties. By clarifying the duties of all

parties, this law helps to prevent misunderstandings about who is supposed to do what and makes sure that parents have the information they need to protect their children.

Title X (Sect. 1018) Real Estate Lead-Based Paint Disclosure Regulations

I. SUMMARY OF SECTION 1018 OF TITLE X:

Section 1018 of Title X of the Residential Lead-Based Paint Hazard Reduction Act regulates disclosure of lead-based paint in sales and lease transactions involving properties built before 1978. In cases where a seller or lessor utilizes the services of a real estate agent, the agent has the responsibility to inform the seller/lessor of their obligations under the Act and to ensure compliance. The basic requirements of Section 1018 are that:

1. Sellers and lessors of most residential properties built before 1978 must disclose the presence of known lead-based paint and/or lead-based paint hazards in the housing;
2. Sellers and lessors must provide purchasers and lessees with copies of any available records or reports pertaining to the presence of lead-based paint and/or lead-based paint hazards;
3. Sellers and lessors must provide purchasers and lessees with a federally approved lead hazard information pamphlet;
4. Sellers must provide purchasers with a period of up to 10 days prior to becoming obligated under the purchase contract during which the purchaser may conduct a risk assessment or inspection for the presence of lead-based paint and/or

lead-based paint hazards. The purchaser may agree to waive that testing opportunity.;

5. Sales and lease contracts must include specified disclosure and acknowledgment language;

II. EFFECTIVE DATES:

- A. Owners of more than 4 residential dwellings: Six months after date of publication in the Federal Register (around Sept. 6, 1996).
- B. Owners of 1 to 4 residential dwellings: Nine months after date of publication in the Federal Register (around Dec. 6, 1996).

III. WHERE TO OBTAIN COPIES OF THE RULE, LEAD PAMPHLETS, DISCLOSURE / ACKNOWLEDGMENT FORMS, ETC.

Call the National Lead Information Clearinghouse toll free at (800)424-LEAD to obtain a free copy of the federal lead-based paint disclosure regulation, a brief explanatory document and one copy of the lead hazard information pamphlet ("Protect Your Family From Lead in Your Home") that must be distributed under the rule. (Note: Agents can Xerox the pamphlet for use in their transactions. The regulation does not require original copies be distributed.) The information pamphlet is also available on the World Wide Web at <http://www.nsc.org/nsc/ehc/ehc.html>.

IV. COMPLIANCE QUESTIONS WITH TITLE X

Q1: In what types of transactions do the regulations apply?

A1: The regulations apply to so-called "target housing," which is residential housing constructed prior to 1978. Certain exceptions apply, as described further below.

Q2: If these obligations are imposed on sellers and lessors, what obligations do real estate agents have?

A2: The listing agent must advise the seller or lessor of his obligations under the regulations. Any agent involved in the transaction, except "buyer's agents" who are compensated solely by the buyer, must insure that the seller/lessor satisfies his obligations. For practical purposes, in most cases this probably means that the agent(s) involved in the transaction will be performing the duties required by the regulations.

Q3: What must the seller/lessor, or his agent, do during the typical sales or lease transaction?

A3: The seller/lessor or his agent must do the following information to be in compliance:

*Distribute a lead hazard information pamphlet developed or approved by EPA: The purchaser/lessee must be provided with a copy of the federal pamphlet "Protect Your Family From Lead in Your Home." States that already distribute disclosure pamphlets (e.g., California) can apply to EPA or HUD for approval to substitute their pamphlet for the federal one.

* Give notice of the presence of known lead-based paint or lead-based paint hazards: Sellers/lessors must disclose, based on their actual knowledge, whether the property contains lead-based paint or lead-based paint hazards. The regulations make it clear that so long as the agent has informed the seller/lessor of their obligations to disclose, that the agent will not be held liable for the failure to disclose to a purchaser or lessee the presence of lead-based paint and/or lead-based paint hazards known by a seller or lessor but not disclosed to the agent.

* Provide all test results available to

the seller/lessor: If any prior testing has been done, the seller/lessor must provide to the purchaser / lessee copies of all testing results and records. For large multi-family properties, the regulations require that even if the unit in question has actually not been tested lessors must disclose that lead was found in other units in the building or complex. Lessors must also disclose if any lead has been found in common areas on the property (e.g., hallways, playgrounds, etc.)

* Provide purchasers a period of up to 10 days to have the property tested: The law requires that sellers provide potential purchasers ten days to have the property tested for lead before they become obligated under the contract. EPA and HUD anticipate that disclosure and testing for lead paint will operate similar to existing market procedures for home inspection contingencies, where the purchaser can void the transaction if he discovers unacceptable amounts of lead-based paint and the seller refuses to remove it. Purchasers may agree to a shorter time to perform that testing, or may even agree to waive their opportunity to test altogether.

* Include the lead warning statement and acknowledgment language as an attachment to the sales or lease contract: Sales contracts and leases must contain specified warning language on a separate sheet of paper and an acknowledgment that the purchaser/lessee has received all the relevant disclosure information. For purchasers, the sheet must also include a section acknowledging that they were provided a 10-day opportunity to conduct a lead test or that they agreed to a shorter testing period or waived it completely. Agents must also certify in writing that the seller/lessor was advised of his obligations and that they are aware of their duty to insure the seller/lessor's compliance with the disclosure requirements.

In an effort to be flexible, EPA and HUD are not mandating the use of a particular federal form. Sellers, lessors and real estate agents can develop and use their own forms so long as they include the federal warning language and the basic elements listed above. This will allow states that already have disclosure forms in use to merely incorporate the federal language into their own forms and will avoid duplication. The regulations include a standard disclosure form that can be used (see attachment I).

Q4: To whom do you have to make the disclosure?

A4: The disclosure must be made to the purchaser or the lessee. The regulations define a "purchaser" as any entity that enters into an agreement to purchase, and "lessee" is defined as any entity that enters in an agreement to lease, rent or sublease. The regulations make it clear that the rule does not require mass disclosure to all prospective purchasers or lessees, regardless of their degree of interest. Only the actual purchaser or lessee must receive the information, subject to the timing requirements set forth below.

Q5: When should the disclosure occur and the pamphlet be distributed?

A5: For sales transactions the disclosure must occur *prior* to the seller's acceptance of the purchaser's written offer to purchase. If the potential purchaser makes an offer before the requisite disclosures are provided, the seller **may not** accept that offer until the disclosure activities are completed and the potential purchaser has had an opportunity to review the information and consider whether to amend his offer prior to becoming obligated under the contract.

For lease transactions the lessor must provide the information and complete the disclosure portions of the lease before he accepts the lessee's

offer, and likewise must provide the lessee an opportunity to review the disclosed information and the chance to amend his lease offer.

Q6: How will the 10-day testing period work?

A6: While the regulations do not prescribe any particular method of satisfying this requirement, what they envision and allow is for the potential purchaser and seller to include in the sales contract home inspection contingency language similar to that already in common use. The only specific requirement is that the purchaser must be given up to 10-days to have the testing done. The purchaser can demand his opportunity to test even if the seller has already had the property tested. The parties can mutually agree to a longer or shorter time frame.

Typical contingency language will provide the purchaser with the right to cancel the contract if test results show unacceptable amounts of lead in the home. The contingency language may also provide the seller the right to remove the lead and correct the problem, in which case the purchaser will be bound by the contract. As noted, the purchaser can also simply waive the right to test, as long as it is in writing. While there is no mandatory federal contingency language, the regulations include a suggested format. The parties are free to create whatever other contingencies concerning the starting and ending time for the testing, each party's responsibilities if lead is found as a result of the test, the disposition of earnest money, and other matters.

Q7: Which transactions involving pre-1978 properties are exempt from these regulations?

A7: While the Title X law applies to all pre-1978 properties, EPA and HUD have exempted certain properties from compliance under the regulations. Specifically exempted are the

following types of properties:

*Properties sold at foreclosure;

*Rental properties that have been found to be lead-based paint free by an inspector certified under Federal certification program or a federally accredited State program. Note that the exemption only applies to lead-free leased properties not sales properties;

*Properties that are leased for 100 days or less, where no lease renewal or extension can occur. (For example, this would cover most summer beach rental properties.);

*Renewals of existing leases where disclosure has already taken place and no subsequent testing or information has become available. (i.e., for renewal of annual leases you would only have to disclose when the lease is originally signed, not every year.);

*The purchase, sale or servicing of mortgages; * Sale or lease of 0-bedroom dwellings where the sleeping area is not separated from the living area. This covers studio apartments, efficiencies, dormitories, military barracks, and rental of individual rooms in residential dwellings;

*Housing for the elderly or disabled where children under the age of 6 are not expected to reside.

Note: Under the proposed rule informal rental agreements (e.g. oral leases) were also exempt. They are covered, however, under the final rule.

Q8: Which agents must comply with the regulations?

A8: The regulations define agent as "any party who enters into a contract with a seller or lessor, including any party who enters into a contract with a representative of the seller or lessor for the purpose of selling or leasing target housing."

This means that listing agents, selling agents, and buyer agents (if paid by the seller through a cooperative brokerage agreement with the listing agent) are "agents" and are responsible for ensuring compliance under the rule.

Q9: How will the federal regulations affect the need to comply with lead paint disclosure, testing or abatement rules imposed under states or local law?

A9: While EPA and HUD cannot delegate the enforcement and administration of Title X to the states, they have tried to avoid duplication and to allow for the incorporation of the federal requirements into existing state laws. If state law already requires use of a disclosure pamphlet that addresses lead pain, the state may apply to EPA for approval to have that document used in lieu of the federal pamphlet. Compliance with these federal requirements does not, however, satisfy or otherwise eliminate any obligations of sellers, lessors or agents to comply with any lead-based paint disclosure, testing or remediation requirements under state or local law.

Q10: How long will agents have to keep their transaction records?

A10: Three years from "completion date of the sale" (i.e., the closing date) or three years from the commencement of the leasing period.

Q11: How much lead may be found in paint for rental housing to qualify as "lead-based paint free housing"?

A11: Pre-1978 housing that has been found to be free of paint or other surface coatings that are in excess of 1.0 milligram per square centimeter or 0.5 percent by weight. The only way to tell whether the paint meets these requirements is to have it tested by a state or federally-certified licensed lead testing firm.

Q12: What are the penalties for non-compliance?

A12:The regulations give the federal agencies the flexibility to issue warnings (without penalties) as appropriate to let people know they are out of compliance and to give them an opportunity to come into compliance. However, the federal penalties are severe for non-compliance. Civil penalties can range up to \$10,000 for each violation. In addition, in habitual cases of non-compliance those who knowingly and willfully violate the law can be subjected to criminal penalties of \$10,000 for each violation and imprisonment for up to one year, or both. These penalties are in addition to any traditional claims under state law for failure to disclose a material hazardous condition. Finally, the seller, lessor or agent may be liable for treble damages for any injuries sustained by the purchaser or lessee.

Q13: Will the failure to comply with these requirements of Title X give a purchaser or lessee the right to void the sales or lease transaction?

A13:No. Both Title X and the regulations expressly provide that noncompliance can't be used to void or nullify the contract after ratification and cannot void any transfer of real estate. The only remedies open to the purchaser or lessee are for damages as discussed in Question 12 above.

Q14: What are the benefits of lead-based paint disclosure?

A14:* In most states, it is already the broker's and sales associate's duty to advise buyers of known material defects in a property. An estimated two-thirds of all lawsuits against real estate professionals in the United States allege misrepresentation or failure to disclose property defects. Title X is expected to operate in congruence with existing state disclosure laws and will

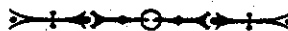
provide another layer of protection to all parties in the transactions involving properties with lead-based paint. The protection comes in the form of the completed disclosure acknowledgment form which will provide proof that the seller (lessor) and purchaser (lessee) were provided with the necessary information required by law.

* Many state laws now require, and most state REALTOR associations encourage, the use of seller disclosure forms to ensure all parties involved in a real estate transaction are satisfied with the result. States that already have seller disclosures report that buyers are usually happier with their purchase and that makes them more likely to be

repeat customers.

* Title X, like most states with seller disclosure laws places the onus to reveal material property defects on the seller. Title X makes it clear that agents cannot be held liable for information withheld from the agent by the seller or lessor.

* Finally, if the seller or lessor has already tested the property and it is found to be free of lead-based paint or lead-based paint hazards, that information can be used by the agent as a positive marketing tool. This is especially true in cases where they are trying to sell or rent a property to a family with young children.



Additional Information

Questions from the public about lead may be directed to the National Lead Information Center (NLIC), funded in part by HUD, EPA and other federal agencies: **1-800-424-LEAD**. Pamphlets (in English or Spanish), sample disclosure forms, a copy of the regulation, a Fact Sheet on the law, and practical, low-cost tips on how to prevent lead poisoning may also be obtained by calling the NLIC.

SINGLE COPIES:

NLIC
TDD
or via World Wide Web
or

1-800-424-LEAD
1-800-526-5456
<http://www.epa.gov>
<http://www.hud.gov>

BULK COPIES:

Govt. Printing Office
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(\$26/package of 50 copies)

(202) 512-1800

Note: The "Sample Disclosure format for target housing sales disclosure of information on lead-based paint and lead-based paint hazards" and the "sample disclosure format for target housing rentals and leases disclosure of information on lead-based paint and lead paint hazards" forms are printed on pages 8 and 9 for your convenience. These forms may be copied from this newsletter and used for compliance with the residential lead-based paint hazard reduction act.

Sample Disclosure Format for Target Housing Sales
Disclosure of Information on Lead-Based Paint and Lead-Based Paint Hazards

Lead Warning Statement

Every purchaser of any interest in residential real property on which a residential dwelling was built prior to 1978 is notified that such property may present exposure to lead from lead-based paint that may place young children at risk of developing lead poisoning. Lead poisoning in young children may produce permanent neurological damage, including learning disabilities, reduced intelligence quotient, behavioral problems, and impaired memory. Lead poisoning also poses a particular risk to pregnant women. The seller of any interest in residential real property is required to provide the buyer with any information on lead-based paint hazards from risk assessments or inspections in the seller's possession and notify the buyer of any known lead-based paint hazards. A risk assessment or inspection for possible lead-based paint hazards is recommended prior to purchase.

Seller's Disclosure (initial)

___ (a) Presence of lead-based paint and/or lead-based paint hazards (check one below):

Known lead-based paint and/or lead-based paint hazards are present in the housing (explain).

Seller has no knowledge of lead-based paint and/or lead-based paint hazards in the housing.

___ (b) Records and reports available to the seller (check one below):

Seller has provided the purchaser with all available records and reports pertaining to lead-based paint and/or lead-based paint hazards in the housing (list documents below).

Seller has no reports or records pertaining to lead-based paint and/or lead-based paint hazards in the housing.

Purchaser's Acknowledgment (initial)

___ (c) Purchaser has received copies of all information listed above.

___ (d) Purchaser has received the pamphlet *Protect Your Family from Lead in Your Home*.

___ (e) Purchaser has (check one below):

Received a 10-day opportunity (or mutually agreed upon period to conduct a risk assessment or inspection for the presence of lead-based paint hazards; or

Waived the opportunity to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards.

Agent's Acknowledgment (initial)

___ (f) Agent has informed the seller of the seller's obligations under 42 U.S.C. 4582(d) and is aware of his/her responsibility to ensure compliance.

Certification of Accuracy

The following parties have reviewed the information above and certify, to the best of their knowledge, that the information provided by the signatory is true and accurate.

Seller	Date	Seller	Date
Agent	Date	Agent	Date
Purchaser	Date	Purchaser	Date

**Sample Disclosure Format for Target Housing Rentals and Leases
Disclosure of Information on Lead-Based Paint and Lead-Based Paint Hazards**

Lead Warning Statement

Housing built before 1978 may contain lead-based paint. Lead from paint, paint chips, and dust can pose health hazards if not taken care of properly. Lead exposure is especially harmful to young children and pregnant women. Before renting pre-1978 housing, landlords must disclose the presence of known lead-based paint and lead-based paint hazards in the dwelling. Tenants must also receive a Federally approved pamphlet on lead poisoning prevention.

Lessor's Disclosure (initial)

____(a) Presence of lead-based paint and/or lead-based paint hazards (check one below):

Known lead-based paint and/or lead-based paint hazards are present in the housing (explain).

Lessor has no knowledge of lead-based paint and/or lead-based paint hazards in the housing.

____(b) Records and reports available to the lessor (check one below):

Lessor has provided the lessee with all available records and reports pertaining to lead-based paint and/or lead-based paint hazards in the housing (list documents below).

Lessor has no reports or records pertaining to lead-based paint and/or lead-based paint hazards in the housing.

Lessee's Acknowledgment (initial)

____(c) Lessee has received copies of all information listed above.

____(d) Lessee has received the pamphlet *Protect Your Family from Lead in Your Home*.

Agent's Acknowledgment (initial)

____(e) Agent has informed the lessor of the lessor's obligations under 42 U.S.C. 4582(d) and is aware of his/her responsibility to ensure compliance.

Certification of Accuracy

The following parties have reviewed the information above and certify, to the best of their knowledge, that the information provided by the signatory is true and accurate.

Lessor	Date	Lessor	Date
Lessee	Date	Lessee	Date
Agent	Date	Agent	Date

Let's Talk Trust Accounts

This column of the "Commission Comment" provides educational information which pertains to the License Act and Rules and Regulations and the Trust Account Manual. All licensees are encouraged to discuss this information at office meetings and share this information with the appropriate non-licensed personnel within the office so that any questions concerning policy or procedures can be eliminated prior to a visit by the Trust Account Examiner. If there are questions or comments, please contact Terry Mayrose at the Commission office. (402) 471-2004.

Thank You

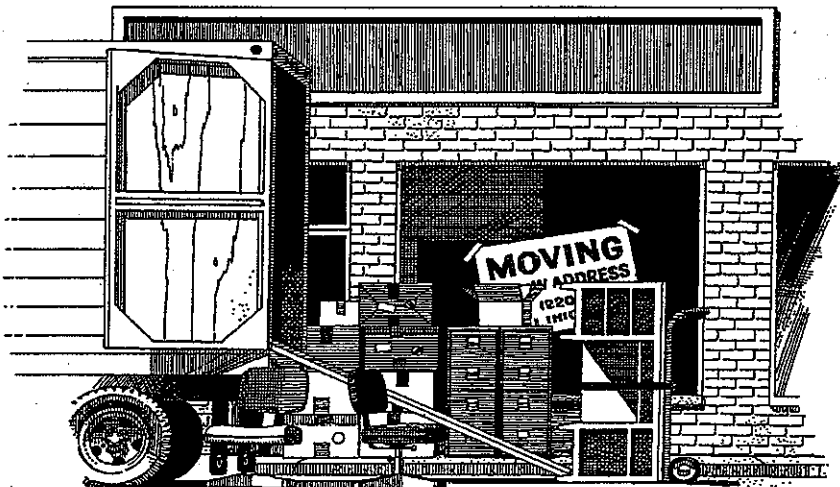
Recently, in this column, trust account examiners requested that transaction files be organized so that pertinent documents relating to the transaction are placed at the top of the file. We have received a very positive response to our request. We wish to thank those individuals responsible for organizing the transaction files within the brokerage offices. For a list of these pertinent documents see the "Let's Talk Trust Accounts" article in the Winter 1995 Edition of the Commission Comment.

Name/Address Changes?

When informing the Real Estate Commission of a name and/or address change, please be sure to indicate whether you currently receive information as any of the following:

- 1) a salesperson
- 2) a broker
- 3) an applicant for licensure
- 4) a subscriber of notices and agendas and/or proceedings from Commission Meetings
- 5) a subscriber of licensing examination candidate lists
- 6) an instructor of either pre-license or continuing education programs
- 7) a school administrator
- 8) a continuing education provider

Alerting us to the various capacities in which you serve allows us to more effectively note these changes and communicate with you.



Agency Concerns

This edition of "Let's Talk Trust Accounts" pertains to the laws of "Agency" and the trust account examiners' observations. We've also included statutory references and suggestions on the proper handling of various situations.

EXAMINER'S OBSERVATIONS:

The designated broker has not adopted a written agency policy.

STATUTORY REFERENCE: Neb.

Rev. Stat. 76-2420 states "(1) Every designated broker shall adopt a written policy which identifies and describes the relationships in which the designated broker and affiliated licensees may engage with any seller, landlord, buyer, or tenant as part of any real estate brokerage activities.

(2) A designated broker shall not be required to offer or engage in more than one of the brokerage relationships enumerated in section 76-2416."

SITUATIONS & SUGGESTIONS:

A designated broker whose license is on active status is required to have a written agency policy, whether active in real estate activities that require the holding of the real estate license or not. The examiners have reported that, in some cases, when they request to see the written agency policy of a firm they are provided the "Office Procedures Manual", which does not contain the agency policy, or a copy of the brokerage disclosure pamphlet instead of the agency policy required by Neb. Rev. Stat. 76-2420. After reviewing these items, it is usually determined that they do not contain the elements necessary to qualify as an agency policy. It has also been reported that some agency policies identify the agency relationship(s) offered but fail to describe the agency relationship(s) offered.

An agency policy must do the following:

- 1) The policy must clearly identify and describe all of 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. In the License Manual, Section "Agency Relatns", Page GDLNS-1, the licensee is provided with the appropriate terminology in identifying and describing the agency relationship(s) offered. You may also refer to the Summer 1995, edition of the Commission Comment.

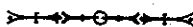
The statute only requires that the designated broker adopt a written policy which contains the information described above. In performance of the designated broker's duty to supervise his or her affiliated licensees, the written policy should be made generally available to all affiliated licensees and should be used as a basis for in-service training. The following items must be set out in writing somewhere. Because of the agency policy's value as a training and reference source and because it allows for all necessary instructions to be included in one document, the designated broker is encouraged to include the following items in the policy so that these issues may be clarified for affiliated licensees and made a part of their training as well.

- 2) Unless the broker sets out in writing to the contrary, only the designated broker can enter into written agreements, i.e. listings and management agreements, with a client. If the designated broker authorizes others to enter into these agreements the designated broker may place restrictions and conditions on this authority.
- 3) The policy may indicate whether the broker will accept subagency offered by another designated broker on a client's behalf and, if so, whether the broker will accept it only by a written agreement with the other designated broker or whether a unilateral offer of subagency may be accepted. The policy may, further, indicate whether the designated broker will offer subagency and compensate the subagent **WITH THE AGREEMENT, IN WRITING, OF HIS OR HER CLIENT.**
- 4) The Statute authorizes a designated broker to appoint, in writing, one or more affiliated licensees to act as a limited agent of a client to the exclu-

sion of all other affiliated licensees. The policy may indicate whether this option to make such appointments will be exercised and how it will be exercised.

If a Broker does not avail him/herself of the appointment option as in #4 above, then all brokerage relationship agreements will bind the broker and all of his/her affiliated licensees to the client. Therefore, when a licensee takes a listing or a management agreement, every affiliated licensee with that broker represents the seller or the owner. When a buyer agency relationship is entered into, either in writing or through implication, every affiliated licensee with that broker is so bound, also.

Each designated broker is required to have a written agency policy. There are no exemptions to the law. Take time to understand the agency statute. There are many ways to draft an agency policy so that the law can work to everyone's benefit. The agency policy is to be kept at the designated broker's office of record and to be used and referenced in the training of affiliated licensees. Examiners may request to see this document. It is not required that the policy be sent to the Real Estate Commission office. If you have questions about the law or your policy, contact the Commission office, we will be happy to assist you.



EXAMINER'S OBSERVATION: Brokerage disclosure pamphlets are not completed or are not completed in full.

STATUTORY REQUIREMENT: Neb. Rev. Stat. 76-2421 requires a licensee to provide to the person (seller, landlord, buyer, or tenant), who has not entered into a written agreement for brokerage services with a designated broker, a copy of the current brokerage disclosure pamphlet which has been prepared and approved by the Commission. The licensee must also disclose, in writing, the types of brokerage relationships the designated broker and affiliated licensees

are offering or disclose, in writing, which party the licensee is representing. These requirements must be completed at the earliest practicable opportunity during or following the first substantial contact with a seller, landlord, buyer, or tenant.

SITUATIONS & SUGGESTIONS:

The Commission has been told of situations where the licensee has been showing properties to prospective buyers or tenants and failed to provide the prospective buyer or tenant with the brokerage disclosure pamphlet. This is a clear violation of the license law and could result in disciplinary action being taken against the licensee. See the "Director's Desk" on page 2.

The trust account examiners have reported that, in some cases, the client or customer failed to sign and date the pamphlet, (the client and customer cannot sign the same pamphlet, a separate pamphlet must be completed for the client and the customer), and/or the licensee has failed to sign and date the pamphlet at the time of disclosure to the seller or to the Landlord, or with all unrepresented prospective buyers or tenants that are shown the property. Therefore, it cannot be verified that the licensee complied with the statute by providing a copy of the pamphlet at the earliest practicable opportunity during or following the first substantial contact.

The acknowledgement section of the pamphlet, signed by the seller, buyer, landlord or tenant, who entered into a contract, must be maintained in the broker's transaction file. The acknowledgement section of the pamphlet, for those parties who did not enter into a contract, can be maintained in a separate file. Remember that if a party refuses to sign the Acknowledgement of the pamphlet, the licensee should indicate this fact, in writing, and sign and date the acknowledgement page.

The examiners are also reporting that the brokerage disclosure pamphlet, in some cases, is not completed in full. For example: the client or customer classification is not checked or the agency relationship is not checked or is checked improperly. While the disclosure of the types of brokerage relationships the

(Continued on page 12)

Disciplinary Actions Taken by The Real Estate Commission

(Does Not Include Cases on Appeal)

95-048, 96-005 - Patrick and Rebecca Burns vs. Alvina Becker; Commission vs. Alvina Marie Becker, broker. Stipulation and Consent Order. License suspended for two-years, with said suspension being served on probation from April 30, 1996 through April 29, 1998; plus two additional sets of 12 hours of continuing education to be completed by October 30, 1996 and April 29, 1998. (Violated Chapter 5-003.23 by failing to assure that a copy

of the seller property condition disclosure statement is delivered to the purchaser, or to the agent of the purchaser; Chapter 5-003.11 and 5-003.10 by failing to provide the purchaser a written estimate of the costs the purchaser will be expected to pay at closing when the necessary cost information was reasonably available, by failing to obtain a buyer or seller signature, and further, by failing to maintain evidence of such records in her transaction file in accor-

dance with NAC 3-001; Section 81-885.24(29) by demonstrating negligence to act as a broker.) April 30, 1996

95-052, 96-018 - Gary Dominguez vs. Rex Blakely; Commission vs. Rex Nelson Blakely, broker. Stipulation and Consent Order of Censure. (Violated Section 81-885.24(29) by demonstrating negligence, unworthiness, and incompetency by encouraging buyers to void an offer to purchase.) April 29, 1996.

(Continued from page 11)

designated broker and affiliated licensees are offering and which party the licensee is representing may be denoted elsewhere, because of the pamphlet's design efficiency and reference source, the designated broker is encouraged to make these disclosures in this pamphlet. If another format for these disclosures is chosen, that format will need to be maintained in the transaction file.



EXAMINER'S OBSERVATION:

Dual Agency relationships are commencing without the parties involved in the transaction entering into a "Consent To Dual Agency" agreement.

STATUTORY REQUIREMENT:

Neb Rev. Stat. 76-2422 (4) reads "Before engaging in any of the activities enumerated in subdivision (2) of section 81-885.01, a designated broker intending to act as a dual agent shall obtain the written agreement of the seller and buyer or landlord and tenant permitting the designated broker to serve as a dual agent in the proposed transaction. The agreement shall include a licensee's duties and responsibilities specified in section 76-2419 and the terms of compensation."

SITUATION & SOLUTIONS: The key, here, is to be certain that prior to engaging in any licensed activity as a dual agent, a written agreement be obtained from both the seller and the

buyer or the landlord and the tenant consenting to the licensee acting in this capacity. That agreement must contain the information mandated in Neb. Rev. Stat. 76-2422 as cited above.



EXAMINER'S OBSERVATION:

A list of "tasks" is not provided to the unrepresented party in the real estate sale or property management transaction.

STATUTORY REQUIREMENT:

Neb. Rev. Stat. 76-2421(3) states: "Before engaging in any of the activities enumerated in subdivision (2) of section 81-885.01, a licensee working as an agent or subagent of the seller or landlord with a buyer or tenant who is not represented by a licensee shall provide a written disclosure to the customer which contains the following:

- (a) a statement that the licensee is an agent for the seller or landlord and is not an agent for the customer; and
- (b) a list of "tasks" that the agent acting as a seller's or landlord's agent or subagent intends to perform with the customer."

Neb. Rev. Stat. 76-2421 (4) sets out the same but "buyer or tenant" is substituted for "seller or landlord".

SITUATION & SOLUTIONS: The "statement" as identified in Neb. Rev. Stat. 76-2421(3)(a) and (4)(a), must be

made to the unrepresented party in a transaction. Again, because the brokerage disclosure pamphlet must also be provided to this party, one may wish to consider including this "statement" in the current brokerage disclosure pamphlet. If this "statement" is provided elsewhere, it should be maintained in the transaction file if a transaction results or in a general file if no transaction results.

With regard to Neb. Rev. Stat. 76-2421(3)(b) and (4)(b), indicated above, the trust account examiners have reported that, in some cases, the licensee involved in a sale or property management transaction is not providing the unrepresented party in the transaction with a list of "tasks" as required. For example: In a property management situation, the licensee must first have the prospective tenant complete and sign a "Brokerage disclosure." pamphlet and, if the tenant is unrepresented, provide the tenant with the list of "tasks" to be performed for the unrepresented tenant.

The Commission has encouraged brokers to personalize the brokerage disclosure pamphlet so that it can serve as both the disclosure tool and the reference for the tasks to be performed for unrepresented parties. Please refer to the Summer 1995, edition of Commission Comment. Please remember that whether done in the pamphlet or by a separate document this disclosure must be made.



Transfer Fee Reduced

Beginning on July 1, 1996, the real estate license transfer fee charged by the Commission will be reduced from \$50.00 to \$25.00 on all license transfers. Any license transfer request that is complete and requests transfer to be effective prior to July 1, 1996 will be charged a \$50.00 transfer fee. Any license transfer request that is requested effective or is not complete (and not transferable) until July 1, 1996, or after, will be charged a \$25.00 fee.

Following is a description of the license transfer process:

Materials Required to Process a Transfer

1. Release from current broker. This is evidenced by either: A) a copy of a letter from the licensee to the current employing broker requesting release as of an effective date and that their wall license be forwarded to the Commission; OR B) the wall license of the licensee, itself (if the wall certificate cannot be found, then a lost wall certificate form must be completed and sent). Please remember that associate brokers and salespersons may not handle wall certificates.
2. Transfer fee; \$50.00 for transfers effective prior to July 1, 1996,

\$25.00 for transfers effective July 1, 1996 or after.

3. Pocket card of licensee transferring (if the pocket card cannot be found then a lost pocket card form must be completed).
4. Letter from the new broker agreeing to employ licensee on an effective date.
5. Letter from licensee requesting transfer to the new broker on an effective date.

***4 and 5 can be addressed through the use of the "Notice and Application to Transfer License" form signed by both the new broker and the licensee. See the note below regarding the revision of this form.

6. Appropriate verification/certification of Errors and Omissions Insurance coverage if the licensee has other than Individual Errors and Omissions Insurance coverage.

When is the Transfer Effective?

Effective dates need to correspond. If a break is indicated, the license will be transferred to Inactive Status for the interim period.

When all materials required to transfer are mailed under one cover, requesting an immediate transfer, the transfer is effective as of the postmark. In those

instances where there is no postmark, the date of the latter letter (either that of licensee requesting license be returned to the Real Estate Commission or that of the new broker wishing to hire the licensee) or the date indicated on the "Notice to Transfer..." form will become the effective date of transfer. If materials are hand-carried into the office, the transfer, if an immediate transfer request, is effective as of Commission datestamp.

In the event that transfer materials are incomplete, the transfer will not be effective until all materials are received and datestamped in the Commission Office.

Note: The Real Estate Commission has revised the "Notice and Application to Transfer License" form. This form can be of significant assistance in addressing and organizing the information set out in 1 through 6 above. A copy of the revised "Notice and Application to Transfer License" form is printed on page 14 for your convenience. This form may be copied from this newsletter and used for future transfers.

Form on page 14.

Proper procedures ensure FDIC protection for your trust accounts

(Editor's Note: This article was reprinted with permission from the Winter 1995 issue of the North Carolina Real Estate Commission Real Estate Bulletin. This article has been altered slightly, where indicated, to reflect Nebraska requirements that these be trust accounts held in banks. These changes make this article particularly applicable to Nebraska licensees and should be of interest to our licensees.)

**By: Thomas R. Miller
Special Deputy Attorney General**

Introduction

Until recently, the possibility that anyone might lose money due to the failure or default of a bank or savings and loan seemed too remote to justify a study of deposit insurance rules. However, during the late 1980s and early 1990s, an unprecedented number of banks and savings institutions failed, and the Federal Savings and Loan Insurance

Corporation (FSLIC) was swamped with claims from depositors.

As part of a complete overhaul of the federal banking and savings regulatory process, Congress transferred all insurance responsibilities from the FSLIC to the Federal Deposit Insurance Corporation (FDIC), which adopted strict regulations governing insurance eligibility and coverage limitations. In light of the savings and loan problems,

(Continued on page 15)

TRANSFER FEE \$25.00

(\$20.00 Processing Fee Charged For All Returned Checks)

NEBRASKA REAL ESTATE COMMISSION

P.O. BOX 94667

LINCOLN, NEBRASKA 68509

NOTICE AND APPLICATION TO TRANSFER LICENSE

A. SALESPERSON - ASSOCIATE BROKER

I hereby request that my real estate salesperson's or associate broker's license be transferred from the office of _____ to the office of _____ located at _____ such transfer to become effective on _____.

My present residence address is _____.

I have given written notice to my prior broker that I am transferring from him or her and a copy of said notice is attached hereto. (NOTICE! Failure to notify prior broker constitutes a false application to transfer which could result in disciplinary action against the transferee.)

Errors and Omissions Insurance: (Please check the applicable blank below)

___ My Errors and Omissions Insurance Coverage is under the Commission-offered Plan.

___ On _____ I made application for enrollment in the Commission-offered Errors and

Omissions Insurance Plan.

___ I have attached the "Certificate of Equivalent Coverage" for independent Errors and Omissions Insurance Coverage.

(Signature of Salesperson or Associate Broker Employee)

(Phone Number)

B. NEW EMPLOYING BROKER - AGREEMENT TO EMPLOY

I hereby agree to employ _____, real estate salesperson or associate broker, such employment to begin and become effective _____.

Chapter 2-001 of the Rules and Regulations of the Nebraska Real Estate Commission provides as follows:

"It shall be presumed that a duly licensed broker whose principal business is other than that of a real estate broker is unable to supervise licensed employees and said broker shall not be allowed to employ a real estate salesperson or associate broker until such presumption is overcome by satisfactory evidence to the contrary."

I hereby certify that I have read and understand the above rule and that:

___ My principal business is that of a real estate broker.

___ My principal business is not that of a real estate broker, but I have obtained authorization from the Real Estate Commission to employ real estate salesperson or associate brokers.

(Signature of Employing Broker or Associate Broker
authorized to sign for the firm)

(Phone Number)

(Name of Firm)

(Address of Firm or Employing Broker)

THE FILING OF THIS TRANSFER FORM IS PURSUANT TO SECTION 81.885.20(2) OF THE NEBRASKA REAL ESTATE LICENSE ACT.

OFFICE USE ONLY

Transfer Date _____ Transfer No. _____

(Continued from page 13)

proper insurance of client trust monies has taken on renewed importance for real estate brokers.

The North Carolina Real Estate Commission has adopted rules governing the use and management of brokerage trust accounts designed to complement the FDIC regulations and maximize insurance coverage available to clients and customers of real estate brokers. The Real Estate License Law requires every broker to deposit and maintain "...in a trust...account in an insured bank...all money received by him as a real estate broker acting in that capacity...." Of course, the purpose of this requirement is to ensure that the money which citizens entrust to real estate brokers is protected by the FDIC against the possible failure or default of the depository institution.

Deposit insurance in general

The FDIC will insure funds up to \$100,000 per individual at a single insured depository institution. If the individual has more than \$100,000 on deposit at the same institution, insurance coverage is limited to \$100,000, whether the funds are in one account or separate accounts. For example, if a person had on deposit in First National Bank \$60,000 in a checking account and \$75,000 in a savings account (\$135,000 total), only \$100,000 would be insured. But, if the person were to withdraw \$35,000 from First National Bank and deposit it at another FDIC-insured bank, all of the \$135,000 would be insured, because deposits at each bank are insured separately.

Treatment of funds in trust accounts

When a real estate broker deposits money belonging to a client or customer into a trust account, FDIC regulations permit the money to be insured to the same extent as if it had been deposited by the client/customer himself or herself in his or her own name. Therefore, if the trust account contains funds belonging to more than one client or customer, the FDIC will insure the funds for each client and customer up to \$100,000.

For example, assume that a broker is holding in his trust account \$85,000 in rents for one client and a \$45,000 earnest money deposit from another customer. The broker keeps \$100 of his own money in the account to cover occasional bank fees. How much insurance coverage will the FDIC permit for the broker's trust account? Even though the total in the account exceeds \$100,000, all of the money is covered because FDIC regulations treat the money as though it were deposited individually in each person's own name.

Brokers should caution their customers and clients that if they have personal accounts at the same bank where brokers are holding their trust monies, the accounts will be subject to the \$100,000 limit. As an example, assume that the client who has \$85,000 in rents in the broker's trust account has a checking account containing \$22,000 in the same bank (i.e., \$107,000 total). Under FDIC regulations, the client would be insured for only \$100,000 - the limit per individual per depository.

Recordkeeping

To obtain FDIC coverage for their trust accounts, brokers must strictly comply with FDIC and Real Estate Commission trust account recordkeeping requirements. To do so, the account records of the bank or depository institution must clearly indicate a fiduciary relationship between the broker who deposited the money and the broker's client who owns the money. By Commission rule, the broker must designate their trust accounts as ...a "trust account" on the official name of the account, as well as on checks, deposit slips, and bank statements. Compliance with the Commission rule will satisfy the disclosure requirement of the FDIC.

But mere disclosure of the broker's fiduciary capacity in the account designation is not enough to assure separate insurance for the owners of the funds in the account. FDIC regulations also require that the bank's records or broker's records contain details concerning the broker's relationship to clients and customers and the broker's interest in the funds in the trust account. Since it

is impractical to expect banks or depository institutions to maintain detailed records of real estate brokers' fiduciary relationships with their clients and customers, the evidence necessary to satisfy this FDIC requirement must come directly from the brokers themselves. To satisfy the FDIC, the records must be accurate, kept in good faith and in the regular course of business.

Again, the broker who carefully complies with the Commission's trust account recordkeeping rules also will satisfy this FDIC requirement. When the broker's records are inadequate to distinguish trust account funds belonging to one customer or client from funds belonging to another, the FDIC will not separately insure the funds, which may result in considerable financial loss in the event of bank failure.

Conclusion

The recent national failure of the savings and loan industry will underscore the need for real estate brokers to fulfill the obligations imposed by the License Law to safeguard the funds they hold for others, including the requirement to deposit trust monies in an insured bank or savings and loan association. Whether brokers properly discharge these obligations depends in significant measure upon the degree of care with which they comply with the Commission's trust account rules and guidelines.

**Continuing
Education
Lists available
upon request.**

**Contact
Commission
office.**

Future Real Estate Examinations

The following is the schedule of the dates on which the real estate licensing examinations are administered in Nebraska and the deadline dates for filing of broker and salesperson original applications, retake applications, proof of education and examination cancellation requests for the applicable Examination Date.

Examinations for both salesperson and broker applicants are administered eleven times a year as set out on this schedule. The examination is adminis-

tered in Lincoln, North Platte and Omaha on each Examination Date and in Scottsbluff on only the January, May and September Examination Dates. All applicants for a particular examination will receive notice of the time and place of the examination approximately one week prior to that Examination Date.

Applications, proof of education, and cancellation requests are due on the date of the deadline!

The Examination Date and the deadlines are subject to change by order of

the Nebraska Real Estate Commission. Affected applicants will be notified of any changes in a timely manner.

Applications and other pertinent information regarding the real estate licensing and examination process may be obtained from the Nebraska Real Estate Commission, P. O. Box 94667, Lincoln NE 68509-4667. Telephone Number: (402) 471-2004. TDD users may use the Nebraska Relay System at (800) 833-7352.

Real Estate Examination Schedule 1996

PLEASE NOTE: THIS IS A CORRECTED SCHEDULE FROM PREVIOUS PUBLICATION.

<u>Examination Date</u>	<u>Broker Original Application</u>	<u>Salesperson Original Application</u>	<u>Education Deadline</u>	<u>All Retake Applications</u>	<u>Cancellation Deadline</u>
June 15, 1996	April 30, 1996	May 13, 1996	May 28, 1996	May 31, 1996	June 4, 1996
July 20, 1996	June 4, 1996	June 17, 1996	July 1, 1996	July 5, 1996	July 9, 1996
August 17, 1996	July 2, 1996	July 15, 1996	July 29, 1996	August 2, 1996	August 6, 1996
September 21, 1996	August 6, 1996	August 19, 1996	September 3, 1996	September 6, 1996	September 10, 1996
October 19, 1996	September 3, 1996	September 16, 1996	September 30, 1996	October 4, 1996	October 8, 1996
November 16, 1996	October 1, 1996	October 15, 1996	October 28, 1996	November 1, 1996	November 5, 1996

Nebraska Real Estate Commission
PO Box 94667
Lincoln, NE 68509-4667

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