

COMMISSION COMMENT

Fall

1997

License Suspension Act to Become Law

Effective on September 13, 1997, the Nebraska License Suspension Act will become law.

Passed by the Legislature as LB752 and signed by Governor Nelson, this law suspends the driver's licenses, the recreational licenses, e.g. hunting, fishing, etc. and professional occupational licenses, e.g. real estate licenses, whenever a person with one or more of these licenses is: 1) delinquent in support payments equal to a three month period of time; or 2) is not in compliance with an agreed to payment plan for past-due support.

The licenses will be suspended in a priority order if payment is not made or a payment plan is not entered into. Driver's licenses would be suspended first. (There are exemptions - but very few.) If, within ten days compliance is not met, then recreational licenses

through the Game and Parks Commission are suspended. If after that compliance is not met, professional licenses (which includes real estate licenses) are suspended. Suspension takes place without a hearing before the regulatory board, in our case, the Commission.

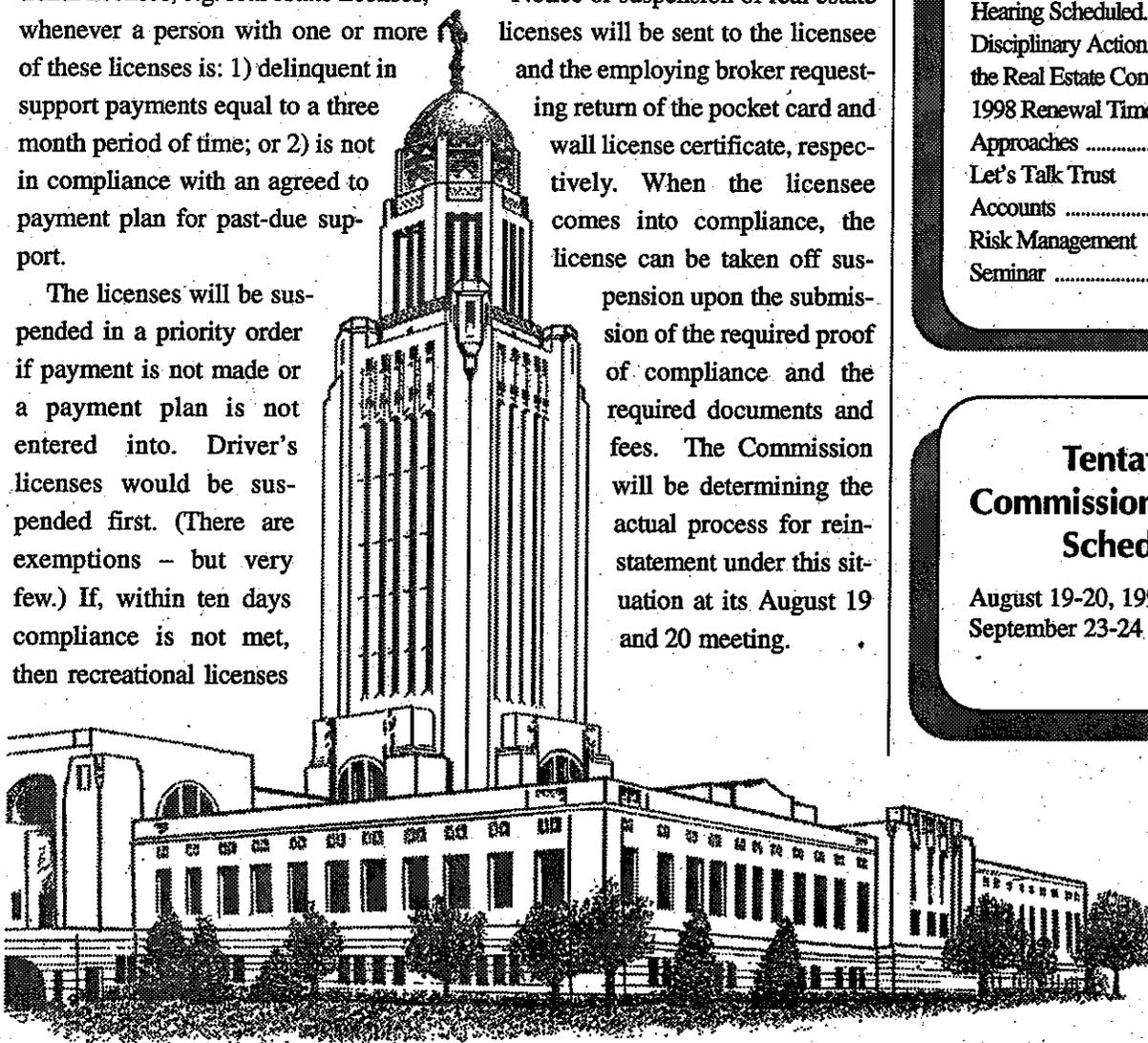
Notice of suspension of real estate licenses will be sent to the licensee and the employing broker requesting return of the pocket card and wall license certificate, respectively. When the licensee comes into compliance, the license can be taken off suspension upon the submission of the required proof of compliance and the required documents and fees. The Commission will be determining the actual process for reinstatement under this situation at its August 19 and 20 meeting.

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Tentative Commission Meeting Schedule

August 19-20, 1997	Omaha
September 23-24	Lincoln



COMMISSION COMMENT

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Nebraska Real Estate Commission
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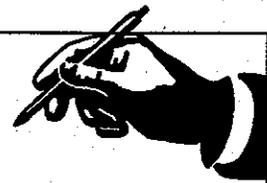
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The Nebraska Real Estate Commission grants permission to reprint articles which appear in this newsletter on condition that recognition of their original publication in the *Nebraska Commission Comment* also appears with the article.

The Nebraska Real Estate Commission often solicits articles from outside experts or reprints articles with permission. While we feel that these articles may offer a broader perspective and will be of interest to the reader, it should be remembered that the views expressed are those of the author and not necessarily those of the Commission.



From the

DIRECTOR'S DESK

Lead-Based Paint Contingency Required

It has come to the Commission's attention that there may be purchase agreement contracts that do not contain, as a provision of the contract or as an addendum to the contract, the contingency language required under the Residential Lead-Based Paint Hazard Reduction Act of 1992 which requirements went into effect in 1996.

Therefore, we are alerting all licensees to review purchase agreements being used for the sale of property built before 1978 to ascertain if either, in the Purchase Agreement or on an addendum thereto, that language similar to the following is included. The following language is "Sample Contract Contingency Language" which was supplied to our office by the Housing and Urban Development Office in Omaha:

Sample Contract Contingency Language

This contract is contingent upon a risk assessment or inspection of the property for the presence of lead-based paint and/or lead based paint hazards at the Purchaser's expense until 9 p.m. on the tenth calendar-day after ratification [insert date 10 days after contract ratification or a date mutually agreed upon]. (Intact lead-based paint that is in good condition is not necessarily a hazard. See the EPA pamphlet Protect Your Family From Lead in Your Home for more information.) This contingency will terminate at the above predetermined deadline unless the Purchaser (or Purchaser's agent) delivers to the Seller (or Seller's agent) a written contract addendum listing the specific existing deficiencies and corrections needed, together with a copy of the inspection and/or risk assessment report. The Seller may, at the Seller's option, within _____ days after Delivery of the addendum, elect in writing whether to correct the condition(s) prior to settlement. If the Seller will correct the condition, the Seller shall furnish the Purchaser with certification from a risk assessor or inspector demonstrating that the condition has been remedied before the date of the settlement. If the Seller does not elect to make the repairs, or if the Seller makes a counter-offer, the Purchaser shall have _____ days to respond to the counter-offer or remove this contingency and take the property in "as is" condition or this contract shall become void. The Purchaser may remove this contingency at any time without cause.

As indicated previously in Commission Comment, any questions with regard to interpretations of the Residential Lead-Based Paint Hazard Reduction Act of 1992 should be made to the Housing and Urban Development Regional Office in Omaha. The telephone number is (402) 492-3100.

Les Tyrrell, Director Nebraska Real Estate Commission

**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 . . .	<i>Susie Willard</i>
Complaint Procedures	<i>Roger Kowalke</i>
Continuing Education History or Inquiries	<i>Janelle Coady</i>
Curriculum Design (Education & Instructor Approval)	<i>Teresa Hoffman</i>
Errors and Omissions Insurance Inquiries	<i>Teresa Hoffman</i>
License Applications Packet Requests	<i>Vera David-Beach</i>
License Applications Process	<i>Sheryl Navrkal</i>
Licensing and Education Requirements	<i>Teresa Hoffman</i>
New Licenses in Process	<i>Sheryl Navrkal</i>
Specialized Registrations	<i>Donna Nickolite</i>
Transfer of License	<i>Nancy Glaesemann</i>
Trust Account Matters	<i>Terry Mayrose</i>
	<i>John Clark</i>
	<i>Bob Arterburn</i>

TELEPHONE NUMBER

(402) 471-2004

ADDRESS:

Nebraska Real Estate Commission
P.O. Box 94667
Lincoln, NE 68509

Revised Seller Property Condition Disclosure Statement To Be Mailed

The revised Seller Property Condition Disclosure Statement which will be required for use on and after October 1, 1997, will be mailed to designated employing, and individual brokers on August 25, 1997. The document will be sent in a camera-ready format for ease of copying.

Licensees are cautioned that any purchaser who enters into a contract on or after October 1, 1997, must be provided with a completed copy of the revised form.

Licensees may provide the revised Statement to sellers for completion prior to October 1 and it may be given to purchasers before October 1, 1997, and be in compliance with State Law, provided

that: 1) the seller agrees to complete the revised form after being advised that it contains additional disclosures; and 2) the seller includes in the Comments Section a statement that Expansive Soil is or is not present OR that the seller does not know if expansive soil is present. On and after October 1, 1997, the seller does not have this option, they must complete the revised Statement and do not have to include a statement regarding "Expansive Soil".

Brokers should establish procedures which assure that the revised Statement is completed by all sellers and provided to purchasers on and after October 1, 1997.

Rule and Regulation Hearing Scheduled

On August 19, 1997, a rule and regulation Public Hearing will be held at 9:30 a.m. in Omaha, Nebraska in the Embassy Room at the Holiday Inn Old Mill, located at 655 N. 108th Ave.

This Hearing will propose the adoption of a new Commission Rule under Title 305, Chapter 4—Rules of Practice and Procedure for Contested Cases. The new Title 305, Chapter 4 is proposed to take the place of current Title 299, Chapter 6 of the Commission's Rules and Regulations—Complaint Procedure, which is, therefore, being proposed to be repealed.

The purpose of the new Chapter is to adopt the Model Rules promulgated by the Attorney General's Office under Neb. Rev. Stat. § 84-909.01 as 53 NAC Chapter 4. There have been some modifications made to the Model Rules in order to account for procedures particular to the Real Estate Commission. The proposed Rules and Regulations will not

in any great degree change the procedures by which the Commission has handled complaints in the past, but will to some degree standardize procedures throughout the various regulatory agencies in State Government.

There is one change proposed of which licensees should be aware. The new Rules will require that a licensee incur some of the expenses of a disciplinary hearing in which the licensee is found to have violated the law. The Commission attempted to negotiate this provision out of the proposed Rule, but to no avail since it is a matter of State Law. If the new rule is adopted and approved by the Attorney General and the Governor, the Commission will determine these costs and licensees will be informed of that decision in a future Commission Comment.

Disciplinary Actions Taken by The Real Estate Commission (Does Not Include Cases on Appeal)

97-002 - Commission vs. Janice Eve Sauer, broker. Stipulation and Consent Order. License suspended 18 months, to be served on probation. As a condition of her probation, the Respondent must not violate the Nebraska Real Estate License Act or laws governing agency, and the Respondent must, within six months of the date of this Order, complete six additional hours of continuing education, with three hours in the area of disclosures and three in the area of trust accounts. (Violated 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: (1) Title 299, NAC, Ch. 3-002 by failing to maintain a bookkeeping system which accurately and clearly discloses full compliance

with the laws relating to the maintenance of trust accounts; (2) Ch. 5-003.10 by failing to identify in writing to the seller, at the time the offer is presented and accepted, those closing costs the seller will be expected to pay at closing, and by failing to obtain seller's signature; (3) Ch. 5-003.11 by failing to identify in writing at the time an offer is written or a counter-offer accepted, those closing costs the buyer will be expected to pay at closing, and by failing to obtain the buyer's signature; (4) Ch. 5-003.24 by failing to obtain the signed receipt of the buyer on the Seller Property Condition Disclosure Statement prior to the buyer entering into a Purchase Agreement. Violated Section 81-885.24(29) by demonstrating negligence, incompetency, or unworthiness to act as a broker.

June 18, 1997

97-007 - Commission vs. Russell Dean Lefever, salesperson (inactive). License Revoked effective July 8, 1997. (Violated Section 81-885.24(26) by violating a rule or regulation adopted and promulgated by the Commission in the interests of the public and consistent with the Nebraska Real Estate License Act to include: (1) Ch. 5-003.01 by preparing a land contract without having it approved by an attorney; and (2) Ch. 5-003.07 and Ch. 5-003.08 by failing to comply with Neb. Rev. Stat. § 76-2418(c)(iv) by failing to advise the buyers to obtain expert advice regarding drafting of a land contract and closings, the expertise which is beyond the expertise of the Respondent. Violated Section 81-885.24(29) by demonstrating negligence, incompetency, or unworthiness to act as a salesperson.) June 18, 1997

1998 Renewal Time Approaches

In September, all persons holding a Real Estate Broker or Salesperson license will receive a renewal notice along with a partially completed renewal form for use in renewing their license for 1998. If you do not receive your renewal within the first two weeks of September, please contact the Real Estate Commission as soon as possible. In order for mail to be deliverable, the Post Office must have the names of all persons receiving mail at that address.

Because November 30, 1997, falls on a Sunday this year, Renewal Application materials for salespersons and brokers, along with the proper fees and, if needed, proof of continuing education and errors and omissions insurance, must be received in the Office of the Nebraska Real Estate Commission, 1200 'N' Street, Suite 402, PO Box 94667, Lincoln, NE 68509, by no later than 5:00 P.M. (CST) the next business day, which will be, Monday, December 1, 1997.

Renewals postmarked on December 1, 1997, will be accepted as meeting the deadline.

LICENSES HELD ON INACTIVE STATUS MUST BE RENEWED EACH YEAR. Renewal forms and renewal instructions specific to inactive licenses will be mailed along with all others and are subject to the same deadlines as described in this article.

NO RENEWALS WILL BE ACCEPTED UNLESS THEY ARE ON THE COMPUTER PREPARED FORMS WHICH HAVE BEEN SUPPLIED, AND ARE FILLED OUT COMPLETELY AND SIGNED BY THE LICENSEE.

Any salesperson or broker who fails to file an application for renewal of a license and pay the renewal fee by the December 1 date, as provided in the Nebraska Real Estate License Act and Neb. Rev. Stat. § 49-1203, may file a late renewal application with all required

information included and must pay, in addition to the renewal fee, the sum of twenty-five dollars for each month, or fraction thereof, beginning with the second day of December; provided that such late application is filed before July 1 of the ensuing year, i.e. by 5:00 P.M. (CDT) June 30, 1998.

Every individual licensee is responsible for the renewal of his or her own license. However, some firms have a practice of holding renewals until they have collected all the renewals of the licensees with the firm and then submitting them to the Commission all together. There are two general approaches to this "bundling" practice. One, all renewals for the firm are collected, with individual checks attached to each renewal, and then all renewals for the firm are sent, under one cover, to our Office. Two, all renewals for the firm are collected with the firm writing one check

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to cover the total amount needed to renew all licenses in the "bundle" and then they are sent, under one cover, to our Office. Both practices can cause situations to occur where late penalty fees can accrue, if the "bundled" renewals are not sent considerably early, to allow for the review and processing to take place prior to December 1.

In the first scenario, the licensee may have turned his/her renewal and check into the firm a month or more in advance. The "bundle" arrives at the Commission Office a day or two before the deadline. In processing, it is found that questions have not been answered; the form is unsigned; proof of continuing education or errors and omissions insurance is needed; and/or an individual licensee's check is not correct. The individual licensee will owe a late penalty fee if the correction cannot be made prior to December 1 at 5:00 P.M.

In the second scenario, the licensee had turned his/her check and form into the firm a month or more in advance and the "bundle" arrives at our Office on or close to the deadline. Again, the review process finds that an individual application, or more than one, is incomplete or proof of continuing education or errors and omissions insurance is needed. This time, however, if the correction cannot be made by the deadline, all renewal applications covered by the single check are late and the late penalty fee accrues to all the renewal applications.

The processing of renewal applications, as the volume of renewals received increases near the deadline, can be as long as a week to ten days. This being the case, the return of the individual application or "bundled" applications, by mail, in and of itself, will cause late penalties to occur. Therefore, we encourage each of you, and those of you who "bundle", to mail your renewals early and not wait until the last minute.

It should also be pointed out that the License Act provides that the issuance of an insufficient funds check may be grounds for denial or revocation of a license - this includes the renewal of a license.

REMEMBER:

LICENSE RENEWAL FEES CANNOT BE COMBINED WITH TRANSFER FEES OR EXAMINATION FEES. PLEASE SEND SUCH REQUESTS AND THE APPROPRIATE FEE UNDER SEPARATE COVER.

RENEW EARLY! MAKE SURE THAT THE APPLICATION IS COMPLETED FULLY AND SIGNED. MAKE SURE YOUR CHECK IS ENCLOSED AND IN THE CORRECT AMOUNT. IF ACTIVE, DO NOT FORGET ABOUT THE ERRORS & OMISSIONS INSURANCE AND CONTINUING EDUCATION.

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 concerns, please contact Terry Mayrose at the Commission office. (402) 471-2004.

CLOSING AGENT REQUIREMENTS

Title 299, Chapter 2-013 states, "A real estate broker, who is not otherwise involved in the real estate transaction before a written agreement has been

entered into for the purchase, sale or exchange of the real estate, may close the real estate transaction as long as the broker complies with all provisions of the Nebraska Real Estate License Act and the Rules of the Commission."

Title 299, Chapter 2-013.01 goes on to state that for the purpose of 013 "... the word close refers to services as an independent party to perform the ministerial actions necessary to complete the transaction, which may include the receipt and disbursement of funds. When providing only the above ministerial actions, the broker shall disclose, in writing, to all parties to the transaction, prior to the closing of the transaction, that the broker is only providing this ministerial service and is not acting as an agent for either party. The disclosure shall be signed by both parties and a copy shall be maintained in accordance with 299 NAC 3-001." [Emphasis added]

Title 299, Chapter 2-013.02 then

states, "Whenever a broker participates in the real estate transaction before a written agreement has been entered into for the purchase, sale or exchange of real estate, the broker must fulfill the applicable obligations of a broker to the seller and the buyer in accordance with the provisions of the Nebraska Real Estate License Act and the Rules of the Commission." [Emphasis added.] This means make all applicable disclosures, enter into agency contract with one or both parties, etc.

Licensees may not reduce the offer to writing if they are acting in the capacity of a "closing agent" only. As previously mentioned, when a broker is acting as a "closing agent", the broker must disclose in writing, to all parties in the transaction, prior to the closing of the transaction, that the broker is only providing a ministerial service and is not an agent for either party in the transaction. The disclosure shall be signed by all parties to

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the contract and a copy shall be maintained in the transaction file for five years following its consumation.

AGENCY AGREEMENTS REQUIRED

All agreements for brokerage services with sellers and landlords must be in writing. Agreements for brokerage services with buyers and tenants may be in writing. All written agreements for brokerage services with a seller, landlord, buyer, tenant and dual agency agreements, must include the licensee's duties and responsibilities and terms of compensation. If, through agency policy, subagency is offered and accepted, the written agreement for brokerage services with any seller, landlord, buyer, or tenant must specify whether an offer of subagency may be made to any other designated broker. The licensee's duties and responsibilities are listed in the "Agency Relatns" section of the License Law Manual on pages AR - 3 through 7, i.e. Section 76-2417 for seller/landlord, Section 76-2418 for buyer/tenant and Section 76-2419 for dual agents.

The License Law Manual also provides a copy of an EXCLUSIVE RIGHT-TO-SELL LISTING CONTRACT which may be used by licensees and provides the duties and responsibilities of a seller's limited agent, terms of compensation and whether an offer of subagency may be made to any other designated broker. Refer to the "Sample Agrmts" section of the License Law

Manual, pages ERL-1 through 5. If dual agency is a possibility, the applicable threshold disclosure language and instructions for inclusion in the Listing Agreement is set forth in this section, as well.

The trust account examiners will be reviewing transaction files to assure that written agreements, where required, are on file and being maintained in accordance with statute and rule and regulation.

DUAL AGENCY

Trust account examiners have indicated that licensees, in certain situations, have disclosed through the Brokerage Relationships Acknowledgement Pamphlet, that they are acting as a Dual Agent on first substantial contact with a seller, landlord, buyer, or tenant, when in reality the licensee is acting as a seller, landlord, buyer, or tenant agent with the possibility of dual agency occurring.

Licensees are reminded that they must disclose to any seller, landlord, buyer or tenant via the Brokerage Relationships Acknowledgement Pamphlet, the agency relationship the licensee is presently in, not the agency relationship that may or may not happen at some later point in time.

Brokerage Relationships Acknowledgement Pamphlets only need to be completed on first substantial contact with any seller, landlord, buyer, or tenant unless the licensee is going from a seller or landlord agent to a buyer or tenant agent. Then a new Brokerage Relationships Acknowledgement Pam-

phlet needs to be completed. When going from seller or landlord agent status or buyer or tenant agent status to dual agent status, or from offering to act as a limited seller's agent to acting as a limited seller's agent and is providing services to me as a client, a new Brokerage Relationships Acknowledgement Pamphlet need not be completed as long as the applicable written agreement, i.e. listing or dual, is entered into by the party or parties.

Designated brokers should review these situations with their licensees and ensure that dual agent status alone, is not disclosed on first substantial contact unless both seller and buyer or landlord and tenant have signed and dated a "Consent To Dual Agency Agreement."



Risk Management Seminar Offered Week of October 6, 1997

As a part of the services provided by Williams Underwriting Group, Inc., the Program Administrator for the Errors and Omissions Insurance Program offered through the Real Estate Commission, a series of five seminars, open to all licensees, will be conducted on the topic of Risk Management as it applies to real estate licensees. The sessions will be held

the week of October 6, 1997.

The Risk Management Seminar will be conducted by Dick Williams, Ph.D., CPCU, who is Chairman of Williams Underwriting Group, Inc.

At the end of each session, when Mr. Williams has concluded, time will be available for licensees to ask questions of Commission Director Les Tyrrell with

regard to issues relating to the License Act and other laws administered by the Commission. As available, Members of the Commission will also be in attendance at the sessions.

The sessions will offer preventive strategies for use by licensees in reducing risk. Topics include:

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- Types of Risk and Methods to Address Them
- Elements of a Risk Management Program
- Risk Management Loss Control Techniques
- Errors and Omissions Claim Procedures

There is no charge for attending these information sessions. We would, however, request that the Registration Form located below be completed and returned so that we can have enough seating available for those who wish to attend. Continuing education credit will not be available for these sessions.

For those licensees who have their errors and omissions insurance with St. Paul Fire and Marine Insurance Company through the Commission-offered Plan, these seminars are an

added benefit of your premium payments. For those licensees who carry equivalent coverage with other errors and omissions insurance carriers, the information provided will be applicable and beneficial to you as well.

Each session will begin at 9:00 a.m. and will end at approximately 12:00 noon, depending upon the number of questions. *Except in North Platte where the session will be from 1:00 - 4:00 p.m.*

The sessions are scheduled as follows:

► **October 6, 1997-Scottsbluff**
Western NE Community College
1601 East 27th Street, Bishop Room

► **October 7, 1997-North Platte**
Mid-Plains Community College,
McDonald-Belton Campus, Theater
(Directions: I-80 & Hwy 83-at the North Platte Interchange then 1 mile south and 1/4 mile west)

► **October 8, 1997-Grand Island**
Central Community College
3134 Hwy 34 West, Seminar Rooms

► **October 9, 1994-Lincoln**
Quality Inn
5250 Cornhusker Hwy, Holiday Room

► **October 10, 1997-Omaha**
Holiday Convention Centre
3321 So. 72nd Street, Omaha Room

The Commission would like to have licensees take advantage of these information sessions. The sessions should be of great assistance to brokers, associate brokers and salespersons as they transact real estate business in Nebraska. We hope to see you at one of the sessions.



cut line

REGISTRATION FORM

Risk Management Seminar

October 6-10, 1997

Please check the box in front of the date and location you plan to attend:

- October 6 - Scottsbluff
- October 7 - North Platte
- October 8 - Grand Island

- October 9 - Lincoln
- October 10 - Omaha

Name: _____

Return by September 23, 1997 to:

Address: _____

Nebraska Real Estate Commission
P.O. Box 94667
Lincoln, NE 68509

(This form may be duplicated.)

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 1997-98

<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>
August 16, 1997	July 1, 1997	July 14, 1997	July 28, 1997	August 1, 1997	August 5, 1997
September 20, 1997	August 5, 1997	August 18, 1997	September 2, 1997	September 5, 1997	September 9, 1997
October 18, 1997	September 2, 1997	September 15, 1997	September 29, 1997	October 3, 1997	October 7, 1997
November 15, 1997	September 30, 1997	October 14, 1997	October 27, 1997	October 31, 1997	November 4, 1997
January 17, 1998	December 2, 1997	December 15, 1997	December 29, 1997	January 2, 1998	January 6, 1998
February 21, 1998	January 6, 1998	January 20, 1998	February 2, 1998	February 6, 1998	February 10, 1998
March 21, 1998	February 3, 1998	February 17, 1998	March 2, 1998	March 6, 1998	March 10, 1998

Nebraska Real Estate Commission
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