



# COMMISSION COMMENT

Winter

1997

## Governor Appoints Paul Landow to Commission

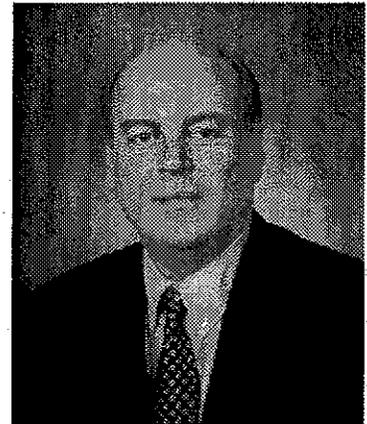
Governor Ben Nelson appointed Paul Landow to a six-year term on the Real Estate Commission. Commissioner Landow will serve as the Public Member on the Commission.

Paul is a Ph.D. candidate in political science with an emphasis in American government and public administration. He is a Graduate Instructor of political science at the University of Nebraska on both the Lincoln and Omaha campuses and an Instructor of public administration on the Omaha campus, as well.

Paul's education has been advanced by his professional experience. From service in the Army National Guard to a foundation in managing all aspects of several small businesses during 1971-1988, he became the Finance Director for Hoagland for Congress in 1988. Later, from 1989-95, Paul served as District Manager to Congressman Peter Hoagland. After that, he was the Executive Director of the Nebraska

Democratic Party in 1995-1996 and a Campaign Consultant in 1996-1997. He has recently completed work as a Family Support Specialist in the Family Preservation Unit of the Nebraska Department of Health and Human Services.

Paul Landow and his wife, Susie, make their home in Elkhorn. Paul contributes to his community extensively. His public service has included, in part, serving as Chairman of the Board for The Hudson Center for Community Counseling and Mental Health; Member of the Nebraska Highway Commission, the Douglas County Waste Advisory Board, and the Omaha Public Library Board.



Commissioner Paul Landow



Paul Landow and Chairperson Moore



L to R: Back Row; Forrest Pollard, Fred Fletcher, Jerry Schleich, John Hansen  
Front Row; Scott Moore, Paul Landow, Joan Nigro

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### Commission Meeting Schedule

January 21-22, 1998      Omaha  
February 26-27              TBA

Nebraska Real Estate Commission  
**COMMISSION COMMENT**

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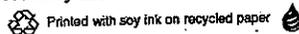
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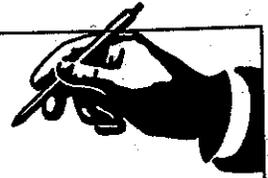
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The Nebraska Real Estate Commission often solicits articles from outside experts or reprints articles with permission. While we feel that these articles may offer a broader perspective and will be of interest to the reader, it should be remembered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



From the  
**DIRECTOR'S DESK**



**Clarification on Lead-Based Paint Contingency**

In the "Directors Desk" of the last *Commission Comment* (Fall 1997), which was mailed to licensees in August, an advisory appeared regarding the lead-based paint contingency in a Purchase Agreement or an addendum thereto.

We have received from the Housing and Urban Development (HUD) Office in Omaha a clarification of what had been previously reported. It is as follows:

"Some purchasers may choose to waive the opportunity for a risk assessment or inspection. If the purchaser chooses to waive the evaluation opportunity, the purchaser is still obligated to acknowledge receipt of the evaluation opportunity on the Disclosure Form under Purchaser's Acknowledgment (ii), waived the opportunity to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards. If this option is selected by the purchaser(s) no further action is required.

Some purchasers may choose to exercise the opportunity to conduct a risk assessment or inspection, on the Disclosure Form under Purchaser's Acknowledgment (i), received a 10-day opportunity (or mutually agreed upon period) to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards. That being the case, the parties will develop and incorporate into the contract mutually agreeable terms for the conduct and completion of the evaluation opportunity.

The final rule provides sellers and purchasers with broad flexibility to develop terms for performing the risk assessment or inspection. The Sample Contract Contingency Language was furnished for optional use and guidance on creating contract language. It is frequently incorporated into contracts as an addendum." (See Fall 1997 *Commission Comment* for Sample Contract Contingency Language.)

I would like to thank Ms. Dee Boston of the HUD Office for her cooperation in preparing this clarification for Nebraska licensees.

For more on this topic, see article on page 5.

**ANONYMOUS INQUIRIES**

We recently have received a number of anonymous letters in which licensees have reported what appeared to them to be violations of the License Act. One of those received contained an advertisement which had appeared in a newspaper.

The letter complained that the licensee in the advertisement was offering financial breaks and other "perks" to buyers and sellers to work with this licensee. It went on to request that something be done to stop this licensee from offering inducements over the \$25.00 limit.

As you can see, this matter could have been dealt with immediately had this letter been signed. We could have explained to the person making the inquiry that the prohibition against inducements was repealed effective October 26, 1996.

With this inquiry having been received in late August, it has been over three months that the inquirer has been under the impression that the Commission has done nothing and allowed the License Act to be violated. In this particular situation, had the author identified him/herself, a possible erroneous negative opinion of the Commission could have been avoided and the inquirer could have been educated as to the current status of the law.

Therefore, I am, again, requesting that you include in any inquiries a way for Commission staff to contact you either to correct a misconception or to attain additional information if it is necessary. We would appreciate your cooperation.

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

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## GREETINGS,

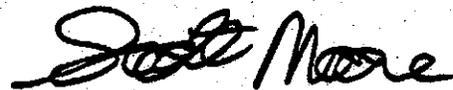
As the year draws to a close we usually find ourselves spending time looking back on the year's events and accomplishments. Instead of doing that in this letter I would like to take a moment to explore the future. The new millennium is right around the corner and will bring many changes with it.

At the Nebraska Real Estate Commission we are preparing for the new century by looking forward and trying to adapt how we do business with our licensees by implementing new technologies. One of the improvements we have already begun working on is moving the licensee record management program, which presently resides on the state mainframe computer, and putting it on a P.C. network. By implementing this new software program we will be able to manage our information in-house. This will allow us to capture and retain information like we have never been able to do before. We will be able to maintain a history of our licensees and hope to be able to create customized mailing lists for people that want to contact only certain types of licensees in specific areas of the State.

In the upcoming year we plan to establish a Commission website on the Internet that will give us a modern method of communicating with license holders and the public. This new "citizen-friendly" approach would never have been possible before we implemented our new record management program. We are also looking for ways to implement computerized testing of the real estate exam that will allow us to offer tests more frequently.

By implementing these new technologies we will be better able to offer convenient services to all Nebraskans whether they live in Scottsbluff, O'Neill, McCook or Omaha.

I am sure that some of you may be tired of hearing about technology and the Internet. But the fact is that if we are to be successful in the next century as an industry and as a regulatory agency we must change our ways. The members of the Real Estate Commission and its staff are committed to taking steps now that will allow us to help you well into the next century.



Scott Moore  
Secretary of State - Chairperson  
Nebraska Real Estate Commission

# Disciplinary Hearing Expenses to be Assessed

In our last issue of the Commission Comment, an article appeared announcing a Hearing on the proposed adoption of a new Commission Rule under Title 305, Chapter 4—Rules of Practice and Procedure for Contested Cases. The Hearing was held and Title 305, Chapter 4 has been approved by the Attorney General and the Governor. It became effective on November 19, 1997.

As explained in the previous article, the purpose of the new Chapter is to adopt the Model Rules promulgated by the Attorney General's Office. The article alerted licensees to the fact that while the Commission was able to modify the Model Rules in order to account for procedures particular to the Real Estate Commission, they were not successful in negotiating out a provision that requires that a licensee incur some of the expenses of a disciplinary hearing in which the licensee is found to have violated the law. The issue of licensees paying these expenses is a matter of State Law.

The previous article promised that licensees would be informed of the Commission's determination with regard to identifying these costs in a future issue. At the October 30, 1997, meeting of the Real Estate Commission, the following Resolution was adopted:

## RESOLUTION OF THE STATE REAL ESTATE COMMISSION OF THE STATE OF NEBRASKA

IT APPEARING before the State Real Estate Commission of the State of Nebraska that it would be in the best interest of the Commission if a policy is adopted outlining the specific costs the party or parties against whom a final decision is rendered shall pay pursuant to Title 305, N.A.C., Chapter 4-007.05, and NEB. REV. STAT. § 84-914(1) (Reissue 1994).

BE IT HEREIN RESOLVED that the costs the party or parties against whom a final decision is ren-

dered shall pay, pursuant to Title 305, N.A.C., Chapter 4-007.05 and NEB. REV. STAT. § 84-914(1) (Reissue 1994), any and all charges for an appearance by the court reporter and any and all witness fees, including mileage and the cost of serving any witness.

BE IT FURTHER RESOLVED that the Commission shall determine the time frame for payment of the costs on a case-by-case basis, however, in all cases the failure to pay the costs pursuant to the payment schedule shall result in the automatic suspension of the licensee's real estate license, if the licensee was the party against whom a final decision is rendered.

Currently, the appearance fee for a court reporter is approximately \$125.00 per half-day and the witness fees are \$25.00/in-town witness and \$20.00/out-of-town witness plus \$.30 per mile.

## Internet Advertising and Broker Risk

*(Editor's Note: The following article was reprinted with permission from the September, 1997, issue of the Oregon Real Estate News-Journal. We chose to reprint this article because, while there may be some slight variance in our license laws, the discussion and cautions in reviewing Internet advertising are pertinent to Nebraska real estate licensees as well.)*

Real estate licensees are discovering the advantages of promoting their services and products on the Internet with a "web page." But according to Garry Hays, Designated Broker of RE/MAX Executives in Portland, this relatively new capability comes with new challenges for brokers to supervise their licensees' real estate activities. The OREN-J recently interviewed Hays, who has an extensive background in information technology, and graduate degrees in Computer Science and Management Science.

Hays said that web pages essentially consist of written and "audio" advertising and information. The same statutes and rules in place today for print, televi-

sion and radio advertising also apply to web pages. Brokers should review any web page advertising whether it is a web page sponsored by the brokerage or a privately designed web page for the business.

Hays urges brokers to develop office policies on Internet activity including web pages. Those who don't may leave themselves vulnerable to violation of Oregon Real Estate License Law and federal regulations. Potential violations include misrepresentation, deception, untruthfulness, failure to use broker's name, using a name different from the one under which the licensee is licensed; publishing a single telephone number that is not answered in the broker's name; and trademark infringements such as the unauthorized use of the REALTORS trademark. Improperly worded ad copy could trigger a complaint concerning federal fair housing laws.

Hays also urges brokers to preview licensees' web pages. In-house procedures should require licensees to submit any new web page for broker approval before it is available to general public access, as well as prior approval of any

changes made to an existing web page. It is also important to make external web page developers aware of advertising laws and requirements.

Hays believes that use of computers in the real estate industry is limited only by one's imagination (and available funds). He predicts that licensees will in the future have the ability to send documents electronically to their clients for signature "on-line," and offer presentations via laptop computers with video capability will be common place in the near future.

According to Hays, applicable laws must be reviewed and revised accordingly to maintain pace with new technology and practices. In the meantime, licensees must abide by the current advertising laws. That is why he believes, "Having appropriate policies in place for Internet activity and web pages will reduce the risk brokers face in the new era of real estate electronic commerce."

Garry Hays' Internet address is: [hays@worldstar.com](mailto:hays@worldstar.com).

# Commission and Appraiser Board Work Together to Resolve Concerns

*(Editor's Note: The following article was written by Marilyn Hasselbalch, Director of the Real Estate Appraiser Board.)*

Concerned that some real estate licensees are breaking the law by charging a fee for market analysis, Lloyd Hinkley, member of the Nebraska Real Estate Appraiser Board and past member of the Nebraska Real Estate Commission, proposed a meeting between representatives of the Real Estate Commission and the Appraiser Board to discuss the problem. The Real Estate Commission appointed Commission Director Les Tyrrell, who met with Appraiser Board Chair Lynne Heiden.

At the onset of the October 15 meeting it was agreed that allowing real estate licensees to charge for a market opinion is a breach of a principle element of the appraiser law. When the appraiser law was written prior to 1974, real estate licensees, appraisers, legislators agreed that real estate licensees would not be paid for putting a value on property for listing purposes. If the philosophy of this law is subject to change, certain factors need to be considered. First, is the state going to license and certify some people to perform appraisals and not license and certify others? Second, will some people who perform appraisals be required to comply with professional standards while others are not? Third, will some of the people who appraise real property be subject to disciplinary action for violation of professional standards while others are not? Who will protect the public from unethical practitioners? Will unregulated practices endanger the safety and soundness of lending institutions?

Heiden proposed that the mandatory

element of Nebraska's law, as well as the exemption clause and fee restriction on opinions of value by real estate licensees, should be retained. Expressing concern that the Real Estate Commission does not have procedures nor authority to enforce and regulate the evaluation component of real estate transactions, Chairman Heiden suggested that real estate licensees inclined to charge a fee for market opinions could do so within the law by becoming Registered appraisers. Acknowledging that the Appraiser Act already establishes in law the minimum standards for evaluations and procedures for enforcement, Tyrrell agreed that offering real estate licensees the option of appraiser registration is a logical solution to the problem. It was noted that if a real estate licensee violates this process, the Appraiser Board should notify the real estate licensee and the Commission. Failure to cease and desist could result in the Appraiser Board filing a complaint with the County Attorney, whose action could impact the license of the real estate licensee.

Following discussion of these questions, Lynne Heiden, real estate broker in Central Nebraska and Certified General appraiser, reviewed requirements for Registration, determining that a minimum 75 classroom hours would include a 30-hour fundamental appraisal course, another 30-hour real estate course, and the Uniform Standards. Referring to high overlap in offerings and education completed, Heiden noted the 30-hour Real Estate Principles and Practices course is now approved for appraisal education. Most real estate licensees who are performing BPOs and CMAs and are interested in valuing property have already completed a 30-hour appraisal funda-

mentals course. The 15-hour Uniform Standards course would be, in many cases, the only additional course requirement. In addition, an exam would be required. The Appraiser Board would continue to be responsible for enforcement. The Commission would continue to accept appraisal continuing education to meet most Commission requirements.

Conferees agreed this was a logical solution to the immediate problem. Real estate licensees who are Registered appraisers could provide market valuations for a fee without breaking the law. They will have completed the basic education and demonstrated understanding of the appraisal process. To comply with the federal mandate appraisals and evaluations for purposes of mortgages will continue to be performed by appraisers whose appraisal education and experience have been demonstrated. The public is protected because those who are trained and regulated are subject to effective supervision. Heiden referred to a recent comment by Paul Quinlan, author of the 1974 Nebraska legislation to regulate appraisers. Quinlan reflected that he had often thought if other states had followed Nebraska's lead at that time, the whole Savings and Loan crisis, which has cost the taxpayers over 150 billion dollars, might have been avoided.

Director Tyrrell, who was the NARELLO liaison in the process of development of the federal appraisal law in 1989 and 1990, presented the proposal to the Commission at their October meeting. The Commission accepted the report and the recommendation of the Appraiser Board.

## HUD/EPA letter

### FINDING OF LEAD-BASED PAINT MAY NOT KILL DEAL

*(Editor's note: The following article is reprinted with permission from the November, 1997, edition of the "Agency Law Quarterly Real Estate Intelligence Report".)*

The EPA and HUD have sent a letter to the National Association of Realtors that says the discovery of lead-based paint in a home may not automatically mean a homebuyer can walk away from the deal, suggesting that even families with small children may be tied to the

transaction if they are not careful about how the purchase agreement is worded.

In response to the letter, at least one major provider of buyer representation education--Dianna Brouthers' Real Estate Training Institute--has directed attorneys to craft model language to protect buyers who are concerned about lead-based paint.

The HUD/EPA letter was in response to questions from NAR President Russell Booth. It acknowledges that list-

ing agents could require homebuyers to honor other terms of the agreement, even if an inspection finds toxic lead. . . .

Recently adopted federal rules state that buyers who are worried about the existence of lead-based paint in a home must be given at least 10 days to test the property. Many agents and brokers have interpreted that clause to mean that if LBP is found, the buyer may walk away from the deal.

The new statement, however, indi-

*(Continued on page 9)*

# Development and Scoring of the Nebraska Real Estate Licensing Examinations

*(Editor's Note: Having received inquiries regarding licensing examination development methods, we invited Dr. Larry Fabrey to contribute the following article. Dr. Fabrey is Vice President of Measurement Research at Applied Measurement Professionals (AMP), the company with whom we contract to administer the licensing examination. We are fortunate in that Dr. Fabrey is the Program Director for Nebraska's Real Estate Licensing Examination.)*

## Background

Because licensing examinations are primarily intended to assist in the protection of the public interest, the content of the examinations used for real estate licensure should measure competencies that are required for the appropriate practice of real estate. To ensure that an examination measures job-related competencies, three major steps are needed: 1) a job analysis, 2) examination specifications (or a content outline) based on that job analysis, and 3) examination questions (items) written to address the specifications. In this way, individual examination items are linked directly to the job competencies required for real estate salespersons and brokers.

Applied Measurement Professionals, Inc. (AMP) has conducted two real estate job analyses since 1989 and will be conducting a third beginning in 1998. The process of a job analysis involves reviewing published materials and preparing and pilot testing a survey instrument that consists of an extensive and detailed list of tasks that may be performed by real estate licensees. The survey instrument is then distributed to experienced members of the real estate industry who rate each task in terms of its significance to real estate practice. Data analyses are performed on returned surveys, and results are reviewed with an Advisory Committee to develop examination specifications. For the national portion of the real estate examinations, the Advisory Committee establishes decision rules regarding the task ratings to ensure that **only those tasks that were judged to be clearly significant to practice were retained as eligible for assessment, and therefore, included on the test specifications.**

The primary intent of the state supplement examinations is to assess unique aspects of real estate practice in

Nebraska, and in particular, the state laws and rules regulating real estate practice. Therefore, the content outline for the state supplement examination directly reflects the laws and rules, and those aspects of practice that were indicated by the national job analysis to be unique in Nebraska.

## How Questions are Developed

Examination items are added to the item banks on a continuous basis, with the largest number of new items being added following each job analysis. **Item writers have included real estate practitioners, instructors, former instructors, and others with knowledge of real estate content.** AMP professionally edits the items prepared by the item writers, and maintains strict quality control and security procedures for the item bank. Key staff at AMP have completed real estate pre-licensing courses, and are experienced in simplifying technical language to ensure that reading requirements are appropriate. Other aspects of the AMP professional editing and psychometric review process include a review for item format, style, grammar, sensitivity, susceptibility to test wiseness, and potentially biased or inflammatory language.

Before items are considered for use on an examination, they must pass all steps in a rigorous review process, including unanimous agreement on the following key factors by a committee of real estate experts:

- 1) Can the item be directly related to the task for which it was written?
- 2) Is it appropriate material to include on the examination?
- 3) Is the level of knowledge (cognitive level) required for a response appropriate for the intended candidate group (e.g., salesperson or broker)?
- 4) Is the key correct and worded properly?
- 5) Is the question (or stem) concise and worded properly, at an appropriate reading level?
- 6) Are the distractors reasonable, but clearly wrong?
- 7) Is the item free from all potentially offensive language?

Upon successful completion of this review, all items are reviewed by representatives of each state in which the examination is to be administered. **The successful completion of this review is required before use on an examination. The result of this review process**

**is that all items are technically correct from both a content and psychometric standpoint, and all used language represents an appropriate reading level and is free from bias.**

## How Examination Forms are Constructed

Every examination exactly matches the appropriate examination specifications to ensure a reasonably thorough coverage of the practice of real estate. An item related to every task identified by the job analysis cannot be included on every examination, rather, items are selected to reasonably sample the domain of real estate practice. In addition to exactly matching a specified number of items in each major content area, AMP's test developers simultaneously consider several item selection rules. Of primary importance is the requirement that the collection of items on each form matches a fixed average *p*-value, or proportion correct, based on previously collected data on first time candidates. Matching the target *p*-value is one of the most important aspects of ensuring both the comparability of examination forms from one administration to the next and the appropriateness of the passing point on each examination form. **In general, items tend to be of moderate difficulty, and individual items having *p*-values above .90 or below .50 are rarely selected.**

Items are also selected to maximize the average item discrimination (or point-biserial correlation). In measurement, item discrimination is a good quality; it shows the relationship between performance on an item and the test as a whole. In addition, items with better point-biserial correlations serve to increase the reliability, or accuracy, of the overall examination scores. Finally, items are selected to broadly sample content within each major content area, to include an appropriate number of calculation items, and to include a minimum number of negatively-worded items.

**These methods ensure comparability of various examination forms and the scores obtained on them. These procedures foster fairness and equivalency of test results; ensuring that all candidates have an equal opportunity to achieve a score on the examination that represents their level of knowledge, regardless of the particular form of the examination taken. When assembling the examinations, AMP follows**

*(Continued on page 7)*

(Continued from page 6)

these procedures carefully, to ensure that the various versions of the examinations are as comparable as possible, both from a qualitative and quantitative perspective.

#### Post-Examination Analysis

The examinations are administered in a standardized way to ensure that all candidates have an equal opportunity to display their knowledge of real estate. Following administration, several quality control procedures are implemented to verify the accuracy of answer sheet scanning. AMP conducts a preliminary item analysis (PIA) immediately following scanning of answer sheets. The PIA provides a summary of important item statistics (e.g., *p*-value and point-biserial correlation), which along with a review of candidate comments regarding individual items, provides content experts with a way to evaluate the quality of the items. Conducting this key validation check provides one last opportunity prior to generation of score reports to make

adjustments to the answer key, for example, by providing credit for more than one answer as correct, if appropriate. On occasions when a scoring anomaly is suspected, AMP will consult with content experts and/or representatives of the licensing jurisdictions to determine if a key adjustment appears appropriate and necessary.

#### In Conclusion

The score reports issued to candidates serve two purposes. For candidates who do not pass the examination, the score report provides diagnostic information about their areas of strengths and weaknesses. Scores for each of the major content areas of the examinations are provided so that candidates can review the content outlines included as a part of the Candidate Handbook to determine the topics for which further study is warranted. For a passing candidate, the score report serves to provide documentation for the Real Estate Commission that the candidate's level of knowledge exceeds that associated with minimal compe-

tence. This should also provide an assurance to the public that the licensee possesses the knowledge to function effectively as a real estate professional.

LJF 11/10/97

*(Editor's Note: The Real Estate Commission reviews the statistics specific to Nebraska candidates after every examination administration. We are pleased to be able to report that Nebraska candidates consistently perform 3.26-6.17 percentage points higher on the National portion of the examination than the national average of all candidates taking the same examination. The statistics on the State specific portion of the examination correlate very well with the overall performance of the candidates. This level of performance confirms our confidence in the examination and in the pre-license education delivery system. We believe that they, both, contribute to preparing licensees to capably serve the public interest.)*

## **Disciplinary Actions Taken by The Real Estate Commission**

(Does Not Include Cases on Appeal)

97-022 - Commission vs. Paul E. Busch, salesperson (inactive). License Revoked. (Violated Section 81-885.12 by having made a false statement of material fact on his Application for License as a Real Estate Salesperson and his Application for Annual Renewal of Real Estate License; Section 81-885.24(22) by making substantial misrepresentation on his Application for License as a Real Estate Salesperson and his Application for Annual Renewal of Real Estate License; Section 81-885.24(29) by demonstrating negligence, incompetency, or unworthiness to act as a real estate salesperson.) August 20, 1997

97-036 - Commission vs. Glenda Harders, broker. Stipulation and Consent Order. License suspended two years from August 31, 1997 through August 30, 1999; plus six hours additional continuing education, three hours in agency law and three hours in trust accounts to be completed by August 31, 1999. (Violated Section 81-885.24(19) by violating a rule or regulation adopted and promulgated by the Commission; (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

maintaining of trust accounts, (2) Ch. 5-003.07 by failure to comply with Section 76-2410 through 76-2430 in the following: (a) 76-2421 by failing to properly complete and retain an "Agency Acknowledgment Disclosure Pamphlet", (b) 76-2420 by failing to adopt a written policy which identifies and describes the relationships in which the designated broker and affiliated licensees may engage regarding the duties of a limited seller's agency, (3) Ch. 5-003.08 by failing to make a written disclosure regarding dual agency in accordance with 76-2422(4) by failing to 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 transactions, (4) Ch. 5-003.10 by failing to identify to the seller, in writing, at the time the offer is presented and accepted, those categories of cost that the seller will be expected to pay at closing, failing to prepare a written estimate of the cost the seller will be expected to pay at closing and failing to obtain the signature of the seller on said written document, (5) Ch. 5-003.11 by failing to identify to the prospective purchaser, in writing, at the time the offer is written by the purchaser or a counterof-

fer is accepted by the purchaser, those categories of cost the purchaser will be expected to pay at closing, by failing to prepare a written estimate of the cost the purchaser will be expected to pay at closing, and by failing to obtain the signature of the purchaser on said document, (6) Ch. 5-003.14 by failing to deposit any funds received as an earnest money deposit within 48 hours or before the end of the next banking day after an offer is accepted, (7) Ch. 5-003.22 by failing to supervise her associate brokers and salespersons, (8) Ch. 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 for that purchaser before the effective date of any contract entered into which binds the purchaser to purchase the residential real property, (9) Ch. 5-003.24 by failing to assure that a copy of the "Seller Property Condition Disclosure Statement" is delivered to the purchaser on or before the effective date of any contract and to obtain the signed receipt of the purchaser, (10) Section 81-885.24(29) by demonstrating negligence, incompetency, or unworthiness to act as a broker.)

August 19, 1997

(Continued on page 8)

(Continued from page 7)

97-025 - Lincolnland Realty Co. vs. Rosemary Horner, broker - License Censured. (Violated Section 81-885.24(29) by demonstrating negligence, incompetency, or unworthiness to act as an associate broker.)

October 30, 1997

97-032 - Nikki Sheppard vs. Steve Amos, broker - License Censured. (Violated Title 299, Ch. 5-003.25 by being aware of an error, inaccuracy or omission in a Seller Property Condition Disclosure Statement and failing to disclose the error, inaccuracy or omission,

in writing, to a potential purchaser and the seller.)

October 31, 1997

## 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.

This article will discuss bookkeeping and the requirements for maintaining the bookkeeping system. The Commission receives many inquiries concerning the format for bookkeeping systems, especially computerized bookkeeping systems, and it should be emphasized, here, that the Real Estate Commission cannot endorse or recommend a specific computer product for brokers to use. The basic requirements for the computerized bookkeeping system are outlined in this article and more fully explained in the "Trust Account Manual." The designated broker is encouraged to review the requirements prior to investing in a computerized bookkeeping system which may not comply with Commission guidelines. Trust Account Examiners will issue the broker a deficiency on bookkeeping systems that do not comply with the Trust Account Manual and the designated broker may be requested to invest in another computerized bookkeeping system in order to bring the bookkeeping system into compliance.

The trust account bookkeeping system is based on a cash in/cash-out basis and the requirements for the bookkeeping system, both real estate sales and property management, both manually posted and computerized, are the same.

Each bookkeeping system must consist of a General Ledger and individual Sub-Ledgers.

The General Ledger records the

chronological sequence in which trust funds are received and disbursed by the broker on behalf of all parties. This is commonly referred to as a "checkbook register."

On real estate sales transactions, the bookkeeping entries posted to the General Ledger must include the following information: 1) the date of the deposit or disbursement; 2) the remitter's name or the payee's name; 3) the property address, unit identification number or form number for which the funds were received or disbursed; 4) check number; 5) the dollar amount of the deposit or disbursement; and 6) a running balance after each bookkeeping entry.

The Sub-Ledger records the chronological sequence in which trust funds are received or disbursed by the broker on behalf of a seller and buyer or a landlord and tenant, as related to a single real estate transaction. Each Sub-Ledger must identify the seller's or landlord's name, the buyer's or tenant's name and the property address of the property sold or managed by the broker.

On real estate sales transactions, the bookkeeping entries posted to the Sub-Ledger must include the following information: 1) the date of the deposit or disbursement; 2) the name of the party from whom the funds were received or to whom the funds were disbursed; 3) the property address, unit identification number or form number for which the funds were received or disbursed; 4) check number; 5) the dollar amount of the deposit or disbursement; and 6) a running balance after each bookkeeping entry.

As recommended by the Commission, and on page 42 of the "Trust Account Manual," security deposits, when maintained by the broker in the real estate trust account, should be identified on a separate Sub-Ledger apart from the Sub-Ledger that records the income and expenses on behalf of the property owner. The Sub-Ledger should identify the property owner's name, the tenant's

name and the property address. The bookkeeping entries posted to this Sub-Ledger must include: 1) the date of the deposit or disbursement; 2) the remitter's name or the payee's name; 3) check number; 4) the dollar amount of the deposit or disbursement; and 5) a running balance after each bookkeeping entry.

It must be emphasized that checks, when written, must be issued in numerical order, and only one series of check numbers per bank account number is allowed. Receipts and disbursements must be posted in chronological order to both the General Ledger and the applicable Sub-Ledger at the time at which they occur. The posting of receipts and disbursements several days after the activity occurs is an unacceptable accounting practice. (Reference: "Trust Account Manual," p.16 through 28 and p.32 through 46.)

Trust Account Examiners have reported that many financial institutions across the State of Nebraska have changed to a system that no longer returns the original deposit slips or canceled checks with the bank statement. Instead, the bank returns a reduced-size, photo-copy of the original document. Because of this reduced-size, it has become extremely important that the information recorded on the deposit slip or check (i.e. seller/landlord and buyer tenant name; address of property sold or managed, etc.) is legible and that there is sufficient information provided that would allow the funds to be traced to a specific real estate transaction. The designated broker is encouraged to discuss this issue with appropriate office personnel.

If you have questions pertaining to trust account issues and would like those answers published, you are encouraged to send your questions to: Nebraska Real Estate Commission, Attn: Terry Mayrose, PO Box 94667, Lincoln, Nebraska 68509-4667.

(Continued from page 5)

cates that may not be the case.

The letter say[s] the federal rule only allows for the discovery of LBP, but does not tell parties to the contract what to do about it.

The letter recommends that sellers and buyers agree in advance how they would handle a finding of LBP.

The letter does, however, insist that sellers make that 10-day discovery period available to all potential buyers. It says homes may not be marketed with the condition that no lead tests be performed.

Brouthers, whose RTI has awarded some 4,000 Certified Buyer Representative (CBR) designations nationwide, said her lawyers were crafting contract language to be inserted into the purchase agreement that would help protect buyers.

"It should be provided as an option," Brouthers said. "Not all buyers are worried about lead-based paint. But for the ones who are worried, there needs to be a way that they can be sure they can walk away from the property."

There was no immediate indication whether the Real Estate Buyer's Agent Council, another large provider of buyer agency education, would amend its course work to teach agents to provide additional protection to buyers.

The HUD/EPA letter was sent to the NAR last April. It was the focus of an article in the fall edition of the NAR's legal bulletin "Letter of the Law."

RTI may be contacted at: 803 329-9665.

#### HUD/EPA letter

Lead-based paint may not be deal killer

*Editor's Note: This is the letter from EPA and HUD to the NAR regarding how sellers, by use of contract clauses, may keep homebuyers in the deal even if lead-based paint is discovered in a home.*

April 15, 1997

Mr. Russell K. Booth  
President  
National Association of Realtors  
700 Eleventh Street, NW  
Washington, D.C. 20001-4507

Dear Mr. Booth:

This letter is the official response of the Department of Housing and Urban Development (HUD) and the Environmental Protection Agency (EPA) to issues raised recently by the National Association of Realtors (NAR) regarding the lead-based paint disclosure regulations

jointly issued by HUD and EPA to implement Section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992.

In a letter dated December 19, 1996, to then Secretary Cisneros and Administrator Browner, and another on January 30, 1997, NAR requested HUD's and EPA's opinion on two issues:

Whether a seller may decline to accept an offer from a prospective purchaser that otherwise contains terms and conditions acceptable to the seller but requests a lead inspection or risk assessment; and

Whether sellers may decline to agree to make a contract contingent on the results of the lead inspection and are not obligated to allow purchasers to cancel or otherwise modify a contract based on the results of a test.

First, with respect to whether sellers may decline to accept offers that request a lead inspection, section 1018 and the implementing regulations published in the Federal Register on March 6, 1996, at page 9064, are clear that the seller is required to provide a potential purchaser with an opportunity to conduct a lead inspection or risk assessment before the purchaser becomes obligated under a contract to purchase target housing. A party selling target housing, therefore, may not offer or advertise property as being available only if purchasers will not take advantage of the opportunity to conduct an inspection or risk assessment.

We would also reiterate that a purchaser is not required to conduct an inspection or risk assessment and may waive this opportunity in the course of negotiations with the seller. The purchaser is entitled to a 10-day period to arrange for and complete the inspection or risk assessment, but the parties may mutually agree to a different period of time. If the purchaser chooses to have an inspection or risk assessment, the seller is not required to pay for the cost of the inspection or risk assessment. Typically, the purchaser will pay, but this point is negotiable.

With respect to contract contingency clauses for lead inspections, the regulation provides broad flexibility for buyers and sellers to develop mechanisms for providing the opportunity for inspection or risk assessment prior to contract obligation.

The preamble to the regulations includes sample contract contingency language which offers an example of how this requirement may be implemented. See 61 FR 9076-9077.

The sample language provides that the sale would be contingent on an inspection or risk assessment and, where the parties could not agree on any appropriate remedial action, they could be released from the contract.

The regulations do not, however, prescribe the use of any language, because HUD and EPA decided to allow market forces to develop.

The seller may satisfy the statute through two principal methods.

1. The seller can provide the purchaser an opportunity for an inspection or risk assessment before the contract is signed by both parties.

Under this approach, following completion of the inspection or risk assessment, the terms relating to remediation of lead hazards, if any, could be included in the contract or possibly reflected in the price, or simply left to the potential buyer to resolve.

2. The sales contract may include provisions for the buyer to conduct an inspection or risk assessment.

As suggested in the sample language offered in the preamble, providing the purchaser a right under a contingency clause would mean that the parties may mutually agree on whether and how to address the problem, if one is found.

Nothing in the statute or rule requires a buyer or seller to correct a hazard or otherwise address lead-based paint, so it is essential under the contingency model for the buyer and seller to determine how they would handle a finding of lead-based paint hazards before both parties are obligated.

For example, if a buyer wishes to be released from the contract should lead-based paint hazards be identified, then such a clause must be part of the contingency language.

Similarly, if a seller wishes to require a buyer to honor the other terms of the contract regardless of the outcome of a lead-based paint inspection or risk assessment, such a clause must be included in the contract language.

Either outcome is acceptable to HUD and EPA because the rule only covers the opportunity to obtain an inspection or risk assessment.

In short, the agencies suggest that the details of a lead contingency be worked out by both parties before the documents are signed in order to provide clarity.

There may also be methods other than the two described above that comply with the regulations, although HUD and EPA believe these are likely to be the two principal means.

HUD and EPA will not at this time prescribe the use of particular language or requirements for all contracts, unless it appears that prevailing practices are failing to meet the intent of the statute and the regulation, or unless affected parties request the promulgation of standard language.

Adoption of such language would require new rulemaking and there would be adequate opportunity for public comment from concerned parties.

I hope this is responsive to your inquiries.

Sincerely,

William H. Sanders III, Dr. P.H., P.E.  
Director  
Office of Pollution Prevention and  
Toxics  
U.S. Environmental Protection Agency

David Jacobs  
Director Office of Lead Hazard  
Control  
Dept. of Housing and Urban  
Development

# 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 1998

<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>
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
April 18, 1998	March 3, 1998	March 16, 1998	March 30, 1998	April 3, 1998	April 7, 1998
May 16, 1998	March 31, 1998	April 13, 1998	April 27, 1998	May 1, 1998	May 5, 1998
June 20, 1998	May 5, 1998	May 18, 1998	June 1, 1998	June 5, 1998	June 9, 1998

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