



COMMISSION COMMENT

Summer

1998

Guidelines for Storage of Trust Account Records in Alternative Media

Under Title 299, Chapter 3, Section 001, brokers "...must preserve for five years following its consummation records relating to any real estate transaction."

Historically, the retention of the records has taken place in the form of paper files for transaction files or, in the case of computerized bookkeeping systems, on computer.

With the advance of technology, records can now be stored securely on alternative forms of media, e.g. compact disk, optical disk, microfilm, etc.

The Commission's concerns with alternative media storage of required records are that: 1) the records stored on the alternative medium be able to be readily printed when requested by the Commission; and 2) the records, once stored on the alternative medium, are not able to be rewritten while on the alternative medium.

Therefore, the Commission has issued the following guidelines to

be used by brokers desiring to retain the required records on a medium other than in original paper format and/or computer.

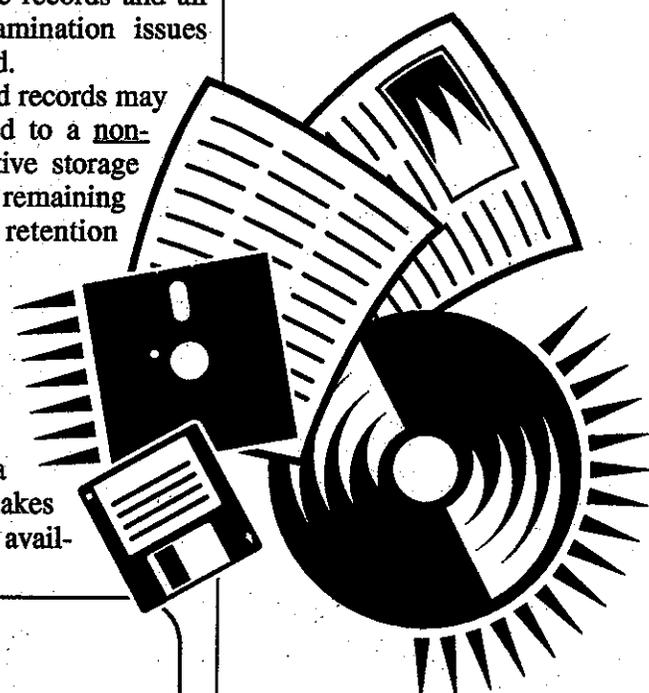
1. The records in their original medium or media (paper and/or computer) must be maintained in the original medium until such time that the Real Estate Commission has conducted a trust account examination of the records and all trust account examination issues have been resolved.

2. The examined records may then be transferred to a non-rewritable alternative storage medium for the remaining required record retention time.

3. The non-rewritable alternative storage medium must allow access to the records in a manner which makes the records readily avail-

able on demand for the remaining record retention period required in 299 NAC 3-001.

4. Once the original records are transferred to the appropriate alternative medium, the Real Estate Commission will no longer require the retention of the records in the original medium or media.



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Commission Meeting Schedule

June 22-23, 1998	Omaha
August 18-19, 1998	Lincoln
October 6-7, 1998	TBA

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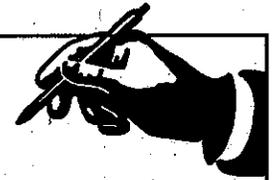
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From the
DIRECTOR'S DESK



**USDA Wire Transfer Program –
Broker Guidelines**

The Commission Office was informed in early March that on March 1, 1998, the Department of Agriculture/Commodity Credit Corporation began a wire transfer program for payments made to brokers managing agricultural properties. The wire transfer payments are made in the Conservation Reserve Program and the Crop Subsidy Program. It is our understanding that the Program works in the following manner:

The Regional Office of the Department of Agriculture sends a letter to the broker indicating that payments were processed on a certain date and citing each specific request for which payment is being made.

The wire transfer may actually be made anytime up to ten days after the process date. Banks, at least some, have taken the position that when the wire transfer arrives, in lump sum, and is credited to the broker's trust account, the bank will not notify the broker. This situation could cause the trust account ledgers to not accurately reflect the status of the trust account until such time that the broker was advised that the deposit by wire had occurred.

We were asked to provide procedural guidance to brokers.

On March 18, 1998, the Real Estate Commission considered the situation and adopted the following Procedural Guidelines for Brokers:

1. Upon the written notification from the Regional Office of the Department of Agriculture, the broker should contact the bank on a regular basis to determine actual deposit date of funds.
2. Whether the broker must initiate this query or the Bank notifies the broker of the actual deposit date, the broker would post, on the actual date of deposit in the bank, the trust funds received to the General Ledger and individual sub-ledgers to accurately reflect the status of the trust account.
3. The Broker would be allowed to issue checks on the trust account based only on actual trust funds available as identified in the bookkeeping system. The broker could not issue checks prior to the actual date of deposit if a negative balance would occur nor could checks be issued, prior to actual deposit, based on the anticipated deposit of the funds.

Should you have any questions, contact the Commission Office.

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	TBA
Complaint Procedures	Terry Mayrose
Continuing Education History or Inquiries	TBA
Curriculum Design (Education & Instructor Approval)	Teresa Hoffman
Errors and Omissions Insurance Inquiries	Teresa Hoffman
License Applications Packet Requests	Vera David-Beach
License Applications Process	Nancy Glaesemann
Licensing and Education Requirements	Teresa Hoffman
New Licenses in Process	Nancy Glaesemann
Specialized Registrations	TBA
Transfer of License	Nancy Glaesemann
Trust Account Matters	Terry Mayrose
	John Clark
	Bob Arterburn
	Ron Pierson

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Disciplinary Actions Taken by The Real Estate Commission

(Does Not Include Cases on Appeal)

96-044 - Don & Beverly vs. Larry Geiger, broker. License revoked. (Violated Section 81-885.24(22) by making substantial misrepresentation and Section 81-885.24(29) by demonstrating negligence, incompetency or unworthiness to act as a broker.)

March 20, 1997. Appealed to Lancaster County District Court. Court upheld Motion for Stay on April 30, 1997. Court affirmed findings of Commission on March 16, 1998.

97-035 - James Bollman vs. Frederick C. Renner, broker - Stipulation and Consent Order. License suspended for six (6) months, with last five (5) months following the first 30 days stayed and served on probation, from April 1, 1998 through September 30, 1998, with an additional six hours of continuing educa-

tion to include three hours in disclosures and three hours in agency to be completed by July 1, 1998. (Violated Section 81-885.24(26) by violating a regulation adopted and promulgated by the Commission in the interest of the public inconsistent with the Nebraska Real Estate License Act, to wit: Title 299, Ch. 5-003.20 by failing to disclose, in writing, to a buyer, at or prior to the time the buyer signs an offer to purchase, an adverse material fact regarding the condition of a parcel of real estate of which the broker has knowledge. The Respondent failed to have said written disclosure signed by the buyer and a copy of the signed disclosure maintained in the transaction file.)

March 18, 1998

New Construction Exemption to Seller Property Condition Disclosure Law Did Not Pass

The legislation proposed to exclude sellers of new construction from having to complete the Seller Property Condition Disclosure Statement and deliver it to a buyer, did not pass this past session of the Legislature.

Therefore, licensees are reminded of the following Commission clarification originally published in the Summer 1997 Commission Comment. It is still very much in effect and is reprinted, here, for your review:

In order to assist licensees in meeting their responsibilities relative to the Seller Property Condition Disclosure Act when working with new construction, the Commission, on April 17, 1997, adopted the following clarification:

"Since dwelling units is undefined in Neb. Rev. Stat. 76-2,120, it should be given its plain and ordi-

nary meaning. A dwelling is a place of shelter to live in. Read in this context the statute applies to real property on which no fewer than one or more than four places of shelter to live in are located. It is not necessary that the place has previously been lived in. It is sufficient that the particular structure in question be suitable for a person or persons to live in or reside. Structures which are unsuitable to live in or, when and where required by law do not have occupancy certifications, would not be dwellings and would not require that the seller prepare a Seller Property Condition Disclosure Statement."

Should you have any questions please feel free to contact the Real Estate Commission Office.

MORE ON COMPUTERIZED REAL ESTATE LICENSING EXAMINATIONS

Since the article that appeared in the Spring 1998 issue of the Commission Comment we have received more information of interest regarding examination availability for the computerized real estate licensing examinations. Nothing in that original article changed, it remains a valid resource to draw from, this is **additional** information. Please refer to that previous article or the updated application packets when seeking information on the application and licensing process.

However, we wish to call the following additional information to your attention as it has previously been unavailable.

AMP ASSESSMENT CENTER LOCATIONS

Location 1: Lincoln H & R Block Tax Office 2365 "O" Street Lincoln, NE	3 Examination Stations	Park in the lot on the west side of the tax office and enter via the west door marked "AMP Assessment Center."
Location 2: North Platte H & R Block Tax Office 503 East 4th Street North Platte, NE	1 Examination Station	
Location 3: Omaha AMP Assessment Center 7502 South 84th Street La Vista, NE	4 Examination Stations	Exit I-80 at 84th Street (this street is also Nebraska Route 85). Go south on 84th Street/Route 85. The Assessment Center is approximately three blocks south of Harrison Street and is on an access road on the west side of the highway. Turn into the west access road approximately 500 feet south of the AMP Assessment Center. A map is provided in the Candidate Handbook.
Location 4: Scottsbluff Western Nebraska Community College Campus Library 1601 East 27th Street Scottsbluff, NE	1 Examination Station	

After a candidate has applied for the examination and received notification of his/her eligibility to take the examination from the Real Estate Commission, he/she schedules an appointment by calling AMP at a toll-free number. All individuals are scheduled on a first-come, first-served basis.

When candidates call to schedule an appointment, they must be prepared to confirm a date and location for testing and to provide AMP with their name and social security number. The candidate will be notified during this conversation of the time to report to the examination site. **Candidates must make note of this information since they will NOT receive any additional written confirmation. Because of the almost immediate examination availability there is no provision for cancellations. Candidates who do not or cannot appear for their scheduled examination will forfeit their examination fee and must reapply through the Real Estate Commission.**

Examinations are administered by appointment only, Monday through Friday at 9:00 a.m. and 1:30 p.m. **Candidates arriving more than 15 minutes late for an appointment will not be admitted, will forfeit their examination fee, and must reapply for the examination by contacting the Nebraska Real Estate Commission.** Saturday examinations will be available the last Saturday of the month in Omaha OR Lincoln, alternating between these locations every month.

Examinations will now be offered every month, including December, however, examinations will not be offered on the usual national holidays, Christmas Eve and the week between Christmas and New Year's Day.

Should you have any questions please feel free to contact the Commission office.

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.

INSUFFICIENT FUNDS

What are the responsibilities of a real estate broker when trust funds, collected in the form of a personal check, are collected, deposited into the trust account, and returned by the bank as insufficient funds?

The Nebraska Real Estate License Act, Rules and Regulations, and the Real Estate Trust Account Manual requires the broker to maintain a bookkeeping system which accurately and clearly accounts for all trust funds received and disbursed by the broker on behalf of the client. When a personal check is accepted by the broker, and the personal check is deposited into the trust account, the bookkeeping entry must be posted to both general ledger and the individual transaction sub-ledger. If the check is returned by the bank as insufficient funds, the insufficient funds bookkeeping entry must be posted to the general ledger and the individual transaction sub-ledger. If the insufficient funds check is re-deposited into the trust account, the bookkeeping entry must be posted to the general ledger and the individual transaction sub-ledger.

A broker may never allow one client's funds to be used to pay the expenses of another client. If a broker has issued checks on the trust account

based upon funds being available per the individual property sub-ledger, and a check is returned by the bank as insufficient funds causing the individual transaction sub-ledger to show a negative balance, the broker would have four options: (1) Immediately transfer broker funds from the Broker Equity sub-ledger account to the individual transaction sub-ledger; (2) Immediately deposit broker funds from the operating account into the trust account and post the deposit of funds to the general ledger and the individual transaction sub-ledger; (3) Immediately obtain funds from the property owner or seller; or, (4) Immediately obtain funds from the payer of the insufficient funds check. A broker failing to perform one of these four options may be in violation of the license law, especially if one client's funds are inadvertently used to cover the negative balance of another client.

* * * * *

DUAL AGENCY

Neb.Rev.Stat. § 76-2411 defines a dual agent as "A limited agent who, with the written informed consent of all parties to a contemplated real estate transaction, has entered into a brokerage relationship with and therefore represents both the buyer and seller or both the landlord and tenant."

Neb.Rev.Stat. § 76-2419 states, "(1) A licensee may act as a dual agent only with the informed consent of all parties to the transaction. The informed consent shall be evidenced by a written agreement pursuant to section 76-2422. [emphasis added] (2) A dual agent shall be a limited agent for both the seller and buyer or the landlord or tenant and shall have the duties and obligations required by section 76-2417 and 76-2418 unless otherwise provided for in this section. (3) Except as provided in subsections

(4) and (5) of this section, a dual agent may disclose any information to one client that the licensee gains from the other client if the information is relevant to the transaction or client. (4) the following information shall not be disclosed by a dual agent without the informed written consent of the client to whom the information pertains: (a) That the buyer or tenant is willing to pay more than the purchase price or lease rate offered for the property; (b) That a seller or landlord is willing to accept less than the asking price or lease rate for the property; (c) What the motivating factors are for any client buying, selling, or leasing the property; and (d) that a client will agree to financing terms other than those offered. (5)(a) A dual agent shall not disclose to one client any confidential information about the other client unless the disclosure is required by statute, rule, or regulation or failure to disclose the information would constitute fraudulent misrepresentation. (b) No cause of action for any person shall arise against a dual agent for making any required or permitted disclosure. (c) A dual agent does not terminate the dual agency relationship by making any required or permitted disclosures. (6) In a dual agency relationship there shall be no imputation of knowledge or information between any client and the dual agent or among persons within an entity engaged as a dual agent."

Dual agency is a contractual agreement between two parties, a seller and buyer or a landlord or tenant, which authorizes a real estate licensee to represent both parties in a real estate transaction. In dual agency, a licensee must treat both parties to the contract the same. *When dual agency occurs*, both the seller and buyer or the landlord and tenant must sign a "Consent

(Continued on page 6)

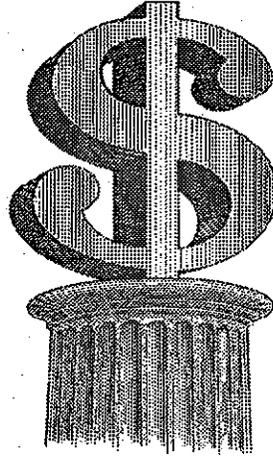
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To Dual Agency Agreement" which must state the duties and responsibilities of a dual agent as specified in State Statute 76-2419 and the terms of compensation.

In situations where licensees are having the seller sign a "Consent To Dual Agency Agreement" at the time of listing the property for sale, the seller must re-sign and date the "Consent To Dual Agency Agreement" when dual agency actually occurs which may be days or possibly weeks after the listing agreement was signed. Again, the buyer and seller must affirm dual agency in writing, when dual agency occurs.

Trust account examiners have indicated that licensees in certain situations, have disclosed through the Agency Acknowledgment Pamphlet, that the licensee is acting as a Dual Agent on first substantial contact with a seller, landlord, buyer, or tenant,

when the licensee is really acting as a seller, landlord, buyer, or tenant agent with the possibility of dual agency occurring. (Agency Acknowledgment



Pamphlets only need to be completed on first substantial contact with any seller, landlord, buyer, or tenant. When going from seller or landlord status or buyer or tenant status to dual agency

status, a new Agency Acknowledgment Disclosure Pamphlet need not be completed.) Designated brokers should review this situation with their licensees and insure that affiliated licensees do not disclose that the licensee is acting as a dual agent, prior to both seller and buyer or landlord and tenant signing a "Consent To Dual Agency Agreement."

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