

COMMISSION COMMENT

Spring

2003

Dual Agency How To Comply

BASED on inquiries received in the Commission Office since last July, when the new procedures to acquire limited dual agency consent went into effect, it was determined that an explanatory article might be helpful. This article is not intended to promote the use of limited dual agency. It is intended to give guidance to licensees, if limited dual agency has to be used in a real estate transaction.

The required written consent for dual agency can be obtained from the seller or landlord by including the duties and responsibilities of a limited dual agent, as set forth in the Agency Relationships Statute, in the written agreement with the seller or landlord. This is usually done by

placing what has become known as the “threshold” dual agency language in the listing agreement or management agreement. It could also be obtained by a separate written dual agency consent which includes the duties and responsibilities of a limited dual agent as set forth in the Agency Relationships Statute.

The required written consent from the buyer or tenant can be obtained by having the buyer or tenant sign, no later than at the time the dual agency occurs with the buyer or tenant, a written consent to dual agency which includes the duties and responsibilities of a limited dual agent as set forth in the Agency Relationships Statute.

This consent could also be included in any written agency agreement entered into by the licensee and the buyer or tenant similar to the way the “threshold” dual agency language appears in a listing or management agreement.

The written consent of the buyer or tenant can: a) be general and apply to any dual agency which could occur with that licensee and that particular buyer or tenant; or b) only apply to a specific property. The decision whether a written consent to dual is general or property specific is made by the designated broker for the firm.

The buyer or tenant could sign the consent to dual agency at the initial contact with the licensee.

The “Brokerage Relationship” Acknowledgment must still be signed also and is **NOT** a substitute for the written consent document. However, as indicated previously in the article, the buyer or tenant must consent in writing no later than at the time the dual agency occurs.

Finally, prior to or at the time a contract to purchase or lease or letter of intent to lease is entered into for a specific property, the seller and buyer or the landlord and tenant **MUST** confirm in writing that limited dual-agency had occurred and confirm the party or parties responsible for paying any compensation. This confirmation can be in a separate document or may be a provision of the contract into which the parties entered.

Commission Meeting Schedule

April 16-17Lincoln
May 28-29Lincoln

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COMMISSION COMMENT

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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.

DIRECTOR'S DESK



2003 LEGISLATION

The Real Estate Commission developed two pieces of legislation during 2002 which were introduced into the Legislature in January. They are LB 60 and LB 61. Both bills were introduced by Senator Dennis Byars.

Hearings on the two bills were held before the Banking, Commerce and Insurance Committee which advanced both bills to the floor of the Legislature.

LB60 will require all original applicants for licensure as a salesperson or broker to complete a fingerprint, criminal background check. The bill also clarifies that there is an examination for salesperson applicants and an examination for broker applicants. As of the printing date of this "Comment", LB 60 is on Final Reading.

LB61 will amend the Retirement Communities and Subdivisions registration statutes which are administered by the Real Estate Commission. This legislation will provide more enforcement options to the Commission and consumers as well as providing for additional disclosures to consumers. It provides for the escrow of payments in certain situations and for Public Offering Statements given to consumers prior to purchase or lease, to include additional financial and occupancy rights information. As of the printing date of this "Comment", LB61 is on Final Reading.

Current information on both bills can be accessed through the Commission's website.


IS THAT PERSON LICENSED?

If you are trying to determine if a person holds a real estate license in another real estate regulatory jurisdiction, there is a link on the Commission's website which could help you.

The Commission's website now links to the Association of Real Estate License Law Officials' (ARELLO's) searchable licensee database. There are special instructions on our website suggesting how you may be able to acquire the licensee information in case the licensee's jurisdiction does not submit data to the ARELLO Licensee Database.

If you have not visited our website recently, take a look at this and other enhancements at: www.nrec.state.ne.us.

Les Tyrnell



**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 . . . Heidi Burkland
InfoTech@nrec.state.ne.us
- Complaint Procedures Terry Mayrose
DDEnf@nrec.state.ne.us
- Continuing Education History or
Inquiries Julie Schuur
EdEnf@nrec.state.ne.us
- Curriculum Design (Education &
Instructor Approval) Teresa Hoffman
DeputyD@nrec.state.ne.us
- Errors and Omissions Insurance
Inquiries Teresa Hoffman
DeputyD@nrec.state.ne.us
- License Applications Packet
Requests General Staff
- License Applications Process Melanie Patrick-Heather
Applic@nrec.state.ne.us
- Licensing and Education
Requirements Teresa Hoffman
DeputyD@nrec.state.ne.us
- New Licenses in Process. Melanie Patrick-Heather
Applic@nrec.state.ne.us
- Specialized Registrations Monica Wade
Finance@nrec.state.ne.us
- Transfer of License Monica Wade
LicTsf@nrec.state.ne.us
- Trust Account Matters Terry Mayrose
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Patricia Stehly
Ron Pierson

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**Disciplinary Actions Taken by
the Real Estate Commission**

(Does Not Include Cases on Appeal)

2002-022 - Brett & Nancy Moore vs. Debra K. Carlson, Salesperson. Stipulation & Consent Order. License censured. [Violated Neb. Rev. Stat. § 81-885.24(29) by demonstrating negligence, incompetency or unworthiness to act as a salesperson due to her actions of leaving inappropriate messages on the Buyer's answering machine.]

December 11, 2002

2002-024 - Allan & Susan Arp vs. Richard Merle Wardell; 2002-044 - Commission vs. Richard Merle Wardell, Broker. Stipulation & Consent Order. License censured; plus an additional six (6) hours of continuing education, including three (3) hours in the area of agency and three (3) hours in the area of license law, to be completed by February 10, 2003. [Violated Neb. Rev. Stat. § 81-885.24(2) by intentionally using advertising which is misleading and inaccurate in any material particular or in any way misrepresents any property, terms, values, policies or services of the business conducted, specifically, advertising a 4.91 acre parcel as 8 acres in the Omaha World Herald on June 4, 2000; § 81-885.24(22) by making a misrepresentation, specifically, that the property was represented by Respondent Wardell to be approximately eight acres when said property was 4.91 acres; § 81-885.24(29) by demonstrating negligence to act as an Associate Broker; 76-2421(1) by failing at the earliest practicable

opportunity during or following the first substantial contact with the seller, landlord, buyer, or tenant who has not entered into a written agreement for brokerage services with a designated broker, to provide that person with a written copy of the current brokerage disclosure pamphlet which has been prepared and approved by the Commission, by failing to disclose in writing to that person the type of brokerage relationships a designated broker and affiliated licensees are offering to that person, and by failing to disclose in writing to that person which party the licensee is representing, specifically, failed to complete an Acknowledgment of Disclosure form with the Complainants on or before June 5, 2000.

December 11, 2002

2002-033 - Earl & LeeAnn Stueve vs. Carolyn Van Horne, Broker. Stipulation & Consent Order. License censured; plus an additional six (6) hours of continuing education, including three (3) hours in the area of license law and three (3) hours in the area of disclosure, to be completed by May 29, 2003. [Violated Title 299, Ch. 5-003.20, for failing to disclose, in writing, to a buyer, at or prior to the time the buyer signs an Offer to Purchase, an adverse material fact regarding the condition of a parcel of real estate of which a broker has knowledge; Ch. 5-003.25, for failure by a licensee, who knows

(Continued on page 4)



We've Got Mail!!

E-mail, that is. The Commission is focusing on technology. Our goal is to enhance our accessibility and service to the Public and to our Licensee Population. With that in mind, let us call your attention to the addition of e-mail addresses in the "Communications Guide" located on page 3. If you have any questions, please feel free to contact us by phone, mail, or e-mail, so that we may be of assistance.



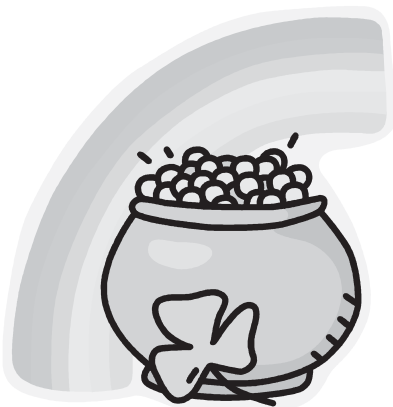
Disciplinary Actions (Cont'd)

of an error, inaccuracy or omission in a Seller Property Condition Disclosure Statement completed pursuant to Neb. Rev. Stat. § 76-2, 120, to disclose the error, inaccuracy or omission, in writing, to a potential purchaser and the seller. Such disclosure shall be attached to the Seller Property Condition Disclosure Statement; § 81-885.24(29) by demonstrating negligence to act as a broker.]

January 29, 2003

2002-015 - Janelle A. Zeleny vs. Steven Lee Scherich, Salesperson. Stipulation & Consent Order. License censured; plus an additional six (6) hours of continuing education, including three (3) hours in the area of agency and three (3) hours in the area of ethics, to be completed by July 31, 2003. [Violated Neb. Rev. Stat. § 76-2418 (b) by failing to exercise reasonable skill and care for the client; § 76-2421 by failing, at the earliest practicable opportunity during or following the first substantial contact with a buyer who has not entered into a written agreement for brokerage services with a designated broker to provide the buyer with a written copy of the current brokerage disclosure pamphlet and disclose in writing the type of brokerage relationships the designated broker and affiliated licensees are offering or disclose in writing to the buyer which party the Respondent is representing.]

January 29, 2003



Anchorage Case Puts Cold Chill On Dual Agency

(Editors note: the following article was written by Blanche Evans Associate Editor of the REALTY TIMES and is reprinted, here, with permission.)

Disclose, disclose, disclose may soon become a more important real estate catchphrase than location, location, location.

An Alaskan judge has awarded \$200,000 to a buyer whose dual agent failed to provide proper disclosure of her agency status which resulted in the buyer overpaying for his home.

And that was only one misdeed in a long list of behaviors by REALTOR Bonnie Mehner that the judge called "outrageous." But failure to disclose agency is a problem that could keep haunting Mehner long after she and her broker pay their civil fines. She could face industry sanctions as well.

Joe Columbus, Jr. and his agent Robert Holbrook and McAlpine Investments, Inc. sued Mehner and her broker Prudential Jack White when Columbus discovered that he overpaid for his new home. Columbus made a full-price offer of \$585,000, because the listing agent, Mehner, had tricked him into using her services to buy the home from her instead of his own agent. She was successful because she failed to disclose what her role as a dual agent would mean to Columbus as the buyer.

From the findings of the court, Anchorage REALTOR Bonnie Mehner:

- poached the buyer from her agent
- tricked him into believing that

he could not secure the home without her help

- told the buyer that his initial offer was too low, and then failed to tell the seller of the buyer's offer. The buyer's first offer was closer to comparables than what the buyer ultimately paid for the home
- told the buyer there were multiple offers on the home when there were not to encourage him to pay more for the home
- failed to show him existing comparables that would have illustrated that he was overpaying for the home
- admitted in court that she did not follow state law with regard to dual representation

The court ruled in April that Mehner behaved unethically and violated state law by not informing the

“ it is important that the consumer understand and agents understand who they work for ”

seller of Columbus' initial offer, misleading him about other offers on the house, failing to properly inform him about her dual agency status, and unfairly leading him to believe he

could buy the house only if he made his offer through her, said an account of the story in the Anchorage Daily News when the ruling became public on Sunday, July 28th, 2002.

Columbus' broker also benefitted from the ruling. As a state-licensed agent, but not a member of the Anchorage Board of REALTORS, agent Holbrook and the firm he represents McAlpine Investments, Inc., were able to collect half of the \$35,040 commission paid to Mehner and her firm for the dual representation of both the buyer and seller in the transaction. If Holbrook had been

(Continued from page 5)

Anchorage Case (Cont'd)

a member, he would not have been able to collect commissions via a civil suit. REALTORS are precluded in their codes of ethics from suing one another. They instead have to petition their boards in "procuring cause" hearings to collect disputed commissions.

Mehner was a 27-year veteran, an award-winning agent whose earnings topped \$600,000 a year. However, between 30 and 60 percent of her earnings came from sales in which she performed as a dual agent, according to court records, and that's the real crux of the case—not the rogue behavior of one agent, but the implication for dual agents at large.

The real estate industry has so far been protective of the dual-dip transaction, because brokers and agents can work half as hard to get results—one transaction closed; two commission sides collected. This is evidenced by the development of alternative business models to dual agency such as transactional brokerage and designated agency.

But as cases such as Mehner's come to light, how will the industry and large brokers such as hers continue with the practice if it means the expense of consumer goodwill?

"Agents are going to have to do a better job in complying with their disclosure requirements and obligations to the consumer," says Charlie Sandberg, broker for ERA Real Estate Center, in Anchorage.

Sandberg is a national director of the National Association of REALTORS and a member of the NAR's professional standards committee. He also served as an expert witness for the plaintiff. Sandberg believes this case will resonate with consumers.

"This is a big story," says Sandberg. "The point is that it is important that the consumer understand and agents understand who they work for

and that the agent has the obligation to tell the consumer who they are working for and under what circumstances changes might take place.

"What we'll see is consumer awareness over representation," continues Sandberg. "Buyers will want their issues represented, and you'll see more buyers being represented to minimize conflicts of interest and that could pose some economic challenges for offices dependent on dual transactions, not to mention the liability issues and statutory liability."

Mehner's worst misstep could be one of timing. In an increasingly intolerant-of-miscreants political and economic environment, she could become the next "example".

Mehner could face a hearing and disciplinary actions from her board's professional standards committee. According to insiders, the Alaska Real Estate commission is already looking into her case as well. While a variety of sanctions could apply, in the worst case, Mehner could lose her license to practice real estate.

The Consumer Guide to Buying and Selling Homes

The Commission has recently revised the Consumer Guide to Buying and Selling Homes and once again has these booklets available for the public. They can be accessed by contacting our Office for copies of the booklet or by visiting our Website at: www.nrec.state.ne.us.

The Nebraska Real Estate Commission has published this booklet to aid consumers in the buying and selling of real estate. The processes involved in a real estate transaction are described, as well as, the roles of the various individuals who may take part in the transaction.

Sections of the Booklet describe: The Real Estate Licensee's Role; The Selling Process; The Buying Process; Financing Information; Federal Fair Housing Information; The Real Estate Commission's Role; and an extensive Glossary. Throughout the booklet Consumers are advised of the information they should gather, the advice they should

seek, and resources available to them as they navigate through the home buying process.

The Commission believes that everyone benefits when complete information is available and all parties to a transaction have a basic understanding of what to expect. If you know of someone who can benefit from this information at this time, we encourage you to refer them to the Real Estate Commission, the Commission's website, or to obtain a copy of the booklet on their behalf.

Please note that in addition to this booklet a Consumer Section is under construction on our website at the address given above. Please visit from the site from time to time and stay updated on our progress.



Advertising – A Reminder to be Accurate

Based on inquiries and complaints received in the Commission office in recent months, the Commission determined that a reminder regarding misleading advertising would be beneficial. The License Act and Rules provide that the Commission may investigate the holder of a real estate license for alleged violations of the License Act and Rules; this includes revoking, suspending or censuring any license or entering into consent orders when a licensee engages in an unfair trade practice. An unfair trade practice includes the intentional use of advertising which is misleading or inaccurate, or in any way misrepresents any property, terms or services of the licensee's

business. Advertising includes all forms of identification or promotion, including business cards, flyers, websites or newsletters. All advertising must be under the direct supervision of the designated broker and in the name the broker is conducting business as recorded with the Commission.

If the advertising contains statistical information, the broker should assure himself or herself that the statistical information can be traced in some material respect to actual numbers available to the broker. The use of statistical information to report market share and the like is

not per se prohibited by the License Act or Rules, however, the Commission advises brokers to exercise caution and assure themselves that the statistical numbers can be validated by accurate numbers in the possession of the brokers.



Service Satisfaction Survey

The Commission is interested in receiving feedback from the real estate licensee population and others who have contact with the Commission Office.

You may have had a question, had a license issued or transferred, had continuing education courses approved, or had some other reason for contacting the Commission Office by telephone, regular mail, e-mail, or in person. Or you may have utilized our website. We are interested in your opinion with regard to that interaction. Through this process, strengths can be recognized and areas needing improvement can be identified and improved upon.

This survey process is in no way intended to replace or diminish personal contact with the Office or the Commissioners. Rather, it is to solicit more feedback on a periodic basis. As always, if you have any questions about this process or matters in general concerning the Commission, please feel free to contact us.

When you have completed the survey, please tear it out, fold it along the lines as indicated on the back of this page making certain the pre-printed address of the Real Estate Commission is visible. Please seal with tape, add postage and mail. Thank you for your participation.

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

You may also complete the survey on our website at www.nrec.state.ne.us

Person Completing Survey: (optional) _____

Staff Member Who Assisted You (if applicable): _____

1. What was the reason for your interaction? Please check all that apply.

- | | |
|--|--|
| <input type="checkbox"/> Application/New License | <input type="checkbox"/> Complaint |
| <input type="checkbox"/> Transfer | <input type="checkbox"/> Laws, Rules, and Regulations |
| <input type="checkbox"/> Continuing Education | <input type="checkbox"/> Request Packet (application, complaint, etc.) |
| <input type="checkbox"/> Renewal | <input type="checkbox"/> General Information |
| <input type="checkbox"/> Trust Account | <input type="checkbox"/> Other (please specify) _____ |

2. How was your contact made?

- | | | |
|------------------------------------|---------------------------------------|----------------------------------|
| <input type="checkbox"/> Telephone | <input type="checkbox"/> Regular Mail | <input type="checkbox"/> Website |
| <input type="checkbox"/> In Person | <input type="checkbox"/> E-Mail | |

3. Was your contact handled in a professional and efficient manner?

Yes _____ No _____ Comment:

(Website users may skip to question #6)

4. Were you treated politely, with courtesy and respect?

Yes _____ No _____ Comment:

5. Did staff seem knowledgeable, and assist you in a timely manner?

Yes _____ No _____ Comment:

6. In using the Website, did you receive accurate, sufficient, and timely information?

Yes _____ No _____ Comment:

7. Overall, how would you rate your experience(s) and interaction with the Commission office?

Excellent _____ Good _____ Fair _____ Poor _____

8. Do you have any additional comments or suggestions? If so, please use the remaining space or additional pages as needed.

FOLD SECOND

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