

COMMISSION COMMENT

Winter

2007

Governor Appoints Robert Dover to the Commission

Governor Dave Heineman appointed Robert Dover to a six-year term on the Real Estate Commission. Robert makes his home in Norfolk. He went to High School in Norfolk and went on to earn a Bachelor of Arts Degree in both Managerial Finance and Spanish from Wayne State College.

Robert has more than 22 years of experience in the real estate industry, receiving his real estate salesperson's license in 1985 and his real estate broker's license in 1993. He is President of Coldwell Banker Dover Realtors, President of Whitecliff Development Inc. and President of American Title & Escrow.

Robert has served the real estate industry by being an active member

of the National, State and Local Realtors® Association serving on a number of committees at each level, often as Chairperson. In addition, he received the Realtor of the Year recognition from the Norfolk Board of Realtors® in 1997 and became the Board President in 2002. In 1998 he received an Outstanding Service Award from the Nebraska Realtors® Association for coordinating a Statewide Multiple Listing Service. In 2003 he served as President of the Nebraska Realtors® Association and served on the Board of Directors of the National Association of Realtors® that same year.

Robert also serves his community as a member of the Norfolk Chamber of Commerce, the Legislative Action Council and Chair of the Small Business Council. His affiliation with the Boy Scouts of America includes being a State Trustee and a Century Member. He is a graduate of Leadership Norfolk and has Co-Chaired fund drives for the Norfolk Art Center, Lifelong Learning Center, YMCA Capital Drive and the United Way 30th Anniversary Campaign.

Robert and his wife, Ann, enjoy living in Norfolk where they raise their four children; Randi, Katherine, Erica, and Richard.

Commission Meeting Schedule

December 20-21Lincoln
January 24-25Lincoln
March 6-7Lincoln
April 3-4Lincoln

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Swearing In Ceremony.



Supreme Court Justice John M. Gerrard administers the oath of office to Robert Dover.



CONGRATULATIONS Commissioner Robert Dover!



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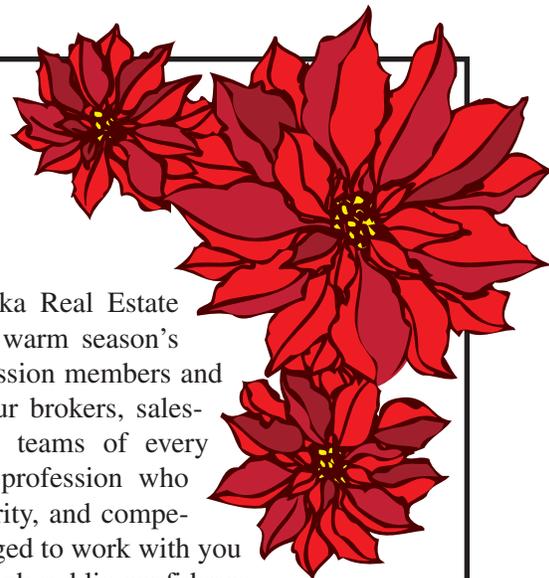
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2007 Holiday Greetings



As Chairperson of the Nebraska Real Estate Commission, I want to extend a warm season's greetings on behalf of the Commission members and our Commission staff to all of our brokers, salespeople and the dedicated office teams of every agency. You are a high energy profession who serve our public with pride, integrity, and competence. Your Commission is privileged to work with you as partners to help maintain the high public confidence and trust you have earned! We hope 2007 has been a decent year for each of you, and that your holiday season will be a celebrative one with family and friends.

The Nebraska real estate industry shows good vitality in terms of licensee numbers. There were 8,097 licensees (2,818 brokers and 5,279 salespersons) in September 2006. We saw a slight growth to 8,144 licensees (2,833 brokers and 5,311 salespersons) in September 2007.

Nebraska licensees consistently demonstrate a fine record in terms of their professional and ethical conduct. In fiscal year 2005-06, there were 82 complaints filed with the Real Estate Commission and 15 complaints resulted in disciplinary action. In fiscal year 2006-07, there were 76 complaints filed and 24 complaints resulted in disciplinary action.

The number of complaints the Commission receives on an annual basis means that only about 1 percent of licensees on average are subject to a complaint in a given year. Considering the huge volume of real estate transactions and contacts, this is an outstanding record on the part of the industry.

Primary goals of the Commission are to keep high professional standards for the real estate industry and maintain high public trust and confidence in the industry. With the help of our licensees, we are achieving those goals.

This fall, Robert Dover of Norfolk joined the Commission as a new member, filling the position of broker member at large for a six-year term. Robert, a past President of the Nebraska REALTORS®, brings a high level of knowledge and experience to the position, and we welcome him to the Commission.

Robert replaced Larry Shepard of Fremont on the Commission. We extend our warmest appreciation to Larry for his outstanding and dedicated service during his six-year term.

2007 was a tough year nationally as problems in the subprime mortgage market depressed house sales and prices across the country, but especially on the coasts. This trend toward subprime mortgages through online providers has been a steady source of concern to the Commission. Fortunately Nebraska brokers and salespeople sought to work with buyers to suggest responsible financing alternatives in our Nebraska markets.

While Nebraska did not escape the 2007 housing woes, the state fared

(Continued on page 4)

**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 . . . *Monica Wade*
InfoTech@nrec.ne.gov
- Complaint Procedures *Terry Mayrose*
DDEnf@nrec.ne.gov
- Continuing Education History or
Inquiries *Melanie Patrick-Heather*
EdEnf@nrec.ne.gov
- Curriculum Design (Education &
Instructor Approval) *Teresa Hoffman*
DeputyD@nrec.ne.gov
- Errors and Omissions Insurance
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Finance@nrec.ne.gov
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- License Applications Process *Marilyn Masters*
Applic@nrec.ne.gov
- Licensing and Education
Requirements *Teresa Hoffman*
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- New Licenses in Process *Marilyn Masters*
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**Disciplinary Actions Taken by
the Real Estate Commission**

(Does Not Include Cases on Appeal)

2007-042 Commission vs Tia Lyn Stratton, Salesperson: Stipulation and Consent Order. License censured; plus three (3) hours of additional continuing education in the area of agency, to be completed by February 19, 2008. [Violated Neb. Rev. Stat. § 76-2421 (1) At the earliest practicable opportunity during or following the first substantial contact with a seller, landlord, buyer, or tenant who has not entered into a written agreement for brokerage services with a designated broker, the licensee who is offering brokerage services to that person or who is providing brokerage services for that person shall: (a) Provide that person with a written copy of the current brokerage disclosure pamphlet which has been prepared and approved by the commission; and (b) Disclose in writing to that person the types of brokerage relationships the designated broker and affiliated licensees are offering to that person or disclose in writing to that person which party the licensee is representing; and Neb. Rev. Stat. § 81-885.24 (29) demonstrating negligence, incompetency, or unworthiness to act as a salesperson, for failing to complete the required Agency Disclosure.]
August 23, 2007

2006-064 Ronald S. Kopiasz vs Gustavo A. Buenrostro, Broker. Stipulation and Consent Order. License suspended for a period of sixty (60) days, to commence within thirty (30) days of August 23, 2007; plus six (6) hours of additional continuing education with three (3) hours in the area of ethics and three (3) hours in the area of agency. [Violated Neb. Rev. Stat. § 81-885.24 (29) Demonstrating negligence, incompetency, or unworthiness to act as a broker, for failing to return the listing agent's telephone calls and for failing to keep the listing agent informed as to the status of the buyer's loan.]
August 23, 2007

2006-068 Raymond M. Zendejas vs Angel Ramon Loza, Salesperson and Gustavo A. Buenrostro, Broker. Loza: Continued until further notice. Buenrostro: Stipulation and Consent Order. License suspended for one hundred twenty (120) days, followed by one hundred eighty (180) days of probation, to commence immediately upon completion of the suspension period given the Respondent Buenrostro under Complaint 2006-064; plus six (6) hours of additional continuing education with three (3) hours in the area of trust accounts and three (3) hours in the area of license law. [Violated Neb. Rev. Stat. § 76-2418 (1) A licensee representing a buyer or tenant as a buyer's or tenant's agent shall be a limited agent with the following duties and obligations: (d) To account in a timely manner for all money and property received. Buenrostro failed to account for the \$500.00 earnest money deposit; Neb. Rev. Stat. § 81-885.24 (3) Failing to account for and remit any money coming into his or her possession belonging to others. Buenrostro failed to account for and remit the earnest money deposit of \$500.00; and Neb. Rev. Stat. § 81-885.24 (29) Demonstrating negligence, incompetency, or unworthiness to act as a broker. Buenrostro allowed Respondent Loza to participate in the real estate transaction knowing that he was a licensed salesperson employed by another designated broker.]
August 23, 2007

2007-015 Lindsey DeBerry vs Shannon Kole Yates, Broker. Stipulation and Consent Order. License censured; plus six (6) hours of additional continuing education with three (3) hours in the area of contracts and three (3) hours in the area of license law to be completed by April 8, 2008. [Violated Neb. Rev. Stat. § 81-885.24 (22) Making any substantial misrepresentations and Neb. Rev.

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Disciplinary Action (Cont'd)

Stat. § 81-885.24 (29) Demonstrating negligence, incompetency, or unworthiness to act as a broker. Yates misrepresented the terms of the lease between seller and tenant to the purchaser.]

October 11, 2007

2007-023 Kevin Delong vs Debbie A. Newburn, Salesperson. Stipulation and Consent Order. License censured; plus six (6) hours of additional continuing education with three (3) hours in the area of agency and three (3) hours in the area of license law to be completed by April 8, 2008. [Violated Neb. Rev. Stat. § 76-2419 (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 Neb. Rev. Stat. § 76-2422. Newburn failed to obtain the informed written consent of all parties to the transaction to act as a limited Dual Agent.]

October 11, 2007

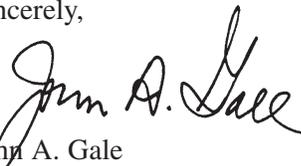
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Holiday Greetings (Cont'd)

considerably better than many parts of the country. The Federal Reserve says economic activity was more subdued this fall due to reduced home construction and sales, but that manufacturing and service sectors have continued to expand. Let's hope for considerable improvement in the housing market in 2008!

On behalf of all the Commissioners and the Commission staff, I send our best wishes to you and your families for a joyful holiday season. We hope you have a successful and prosperous 2008!

Sincerely,



John A. Gale
Chairperson and Secretary of State

When Does a Transaction Close?

(Editor's note: Upon receiving inquiries relative to this topic from some of our licensees, Special Assistant Attorney General Chris Heinrich was consulted in this regard. The following is an article he authored with the intention of giving guidance on this matter. Licensees should further note: The information in this article is not intended to be relied upon as legal advice and any person desiring legal advice should consult with an attorney.)

As brokers and salespersons, some of you may have been involved with a situation similar to the following:

Buyer and seller are scheduled to close the sale and purchase of a residence on Friday. The parties meet on Friday and sign their respective documents. Seller is told they will get their check on Monday after the lender "releases" the funds being held by the escrow agent. Buyer gets the keys to the house and buyer moves in over the weekend. On Monday, seller's agent learns that the bank decided to reject the loan and took back the loan proceeds from the escrow account. The seller is understandably upset to get the news and says: "But I thought we closed on Friday!"

One question that arises is: When does a transaction close? While Nebraska law is virtually silent regarding the exact time at which a real estate transaction closes, the issue was recently addressed by the Nebraska State Department of Insurance in an administrative action brought by the Department against a closing agent. In *State of Nebraska, Dept. of Insurance v. Empire Title of Nebraska, Inc.*, Case No.: A-1650 (2006), at issue was the effective time of the real estate closing when the loan closing had occurred one day, but the escrow closing had not occurred until several days later. The purchaser had been granted possession of the real estate after the loan

closing, but prior to the escrow closing.

Hearing Officer Christine Neighbors determined that neither Nebraska statutory law nor case law provide an answer to the question of when a real estate transaction closes. The Hearing Officer relied upon the definition of "closing" as provided in *Black's Law Dictionary, Sixth Edition*, which provides that the term "closing" with regard to a "sale of real estate, refers to the final steps of the transaction whereat the consideration is paid, mortgage secured, deed is delivered or placed in escrow, etc." Based upon this definition, the Hearing Officer held that the real estate transaction did not "close" until both the loan closing and the escrow closing had occurred. The Hearing Officer ruled that the purchasers of the real estate were given possession of the real estate before the transaction had closed.

In evaluating whether a transaction has "closed," the purchase agreement is the guiding document. A good purchase agreement will list the conditions of closing. For the buyer, the conditions of closing should include items like clear title, acceptable inspection and delivery of a warranty deed. For the seller, the primary condition should be receipt of payment.

Licensees should be careful at closing in the representation of their respective clients. Failure to accurately state when a transaction has "closed" may expose a licensee to liability. A licensee has a fiduciary duty to use care, skill and diligence in performing his or her duties. Placing a purchaser in possession of a house before a transaction has closed could lead to civil liability for resulting damages and disciplinary action by the Commission.

FTC Issues Mortgage Ad Warnings, Consumer Alert

(Editor's Note: The following article appeared in the November 1, 2007 issue of the Association of Real Estate License Law Officials' (ARELLO's) publication the "ARELLOgram". Nebraska licensees may find this information and these resources useful when working with consumers.)

The U.S. Federal Trade Commission has sent over 200 letters to mortgage brokers, lenders and their media outlets, warning that certain advertisements may violate federal law. The letters assert that the mortgage ads are potentially deceptive or may violate the federal Truth-In-Lending Act. The ads, including some in Spanish, offer very low monthly payment amounts or interest rate without adequate disclosure of other important loan terms. Some fail to adequately disclose that the advertised rate is a "payment rate" that applies only during the loan's initial period, not the actual loan interest rate. Others advertise payment rates or simple interest rates without disclosing the loan's actual Annual Percentage Rate (APR). The warning letters also target ads that fail to adequately disclose repayment terms, including potential payment increases and final balloon payments. The FTC has also issued a consumer alert entitled *Deceptive Mortgage Ads: What They Say; What They Leave Out*. The publication identifies common advertising buzz terms and phrases and advises consumers about the issues that need to be considered in responding to such advertising. The alert publication is available at www.ftc.gov/bcp/edu/pubs/consumer/alerts/alt023.shtm.

Real Estate Sales & Brokerage Course Rewritten

One of the Commission's goals this year was to revise the Sales and Brokerage pre-license course to include a more comprehensive study of the Nebraska Real Estate License Act, the Rules and Regulations, the Agency Relationships Statute, the Seller Property Condition Disclosure Statute and the Nebraska Fair Housing Act.

To this end, a group of dedicated volunteers got together in June to finalize a topical outline of the Nebraska-specific content; update and condense the existing Sales & Brokerage Course content; merge these two content outlines into one 30–45 hour course outline;

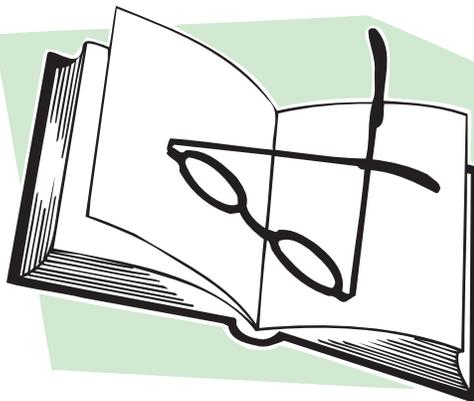
supplement the outline with various learning activities and resources and retitle the course to reflect the new content.

Through these efforts, the Nebraska Sales & Brokerage Instructor Manual was created. Those who have worked on this Manual are very excited about the quality of the material and the support to instructors that it offers. It is their belief that it has sufficient detail to facilitate a smooth transition to its use. The Manuals have been sent to all schools approved to offer the course and to all instructors approved to teach the course. As of January 1, 2008, all Sales and Brokerage pre-license courses must be taught from the Nebraska Sales & Brokerage Instructor Manual.

The Commission would like to gratefully acknowledge the contribution of the volunteers who gave freely of their time and worked together in accomplishing this goal. We all benefit from this type of information exchange and support in teaching methods and cre-

ative ideas for the classroom. Their contributions will manifest themselves in better equipped instructors, in more comprehensive information coverage and, ultimately, in well educated licensees more capably serving the citizens of our state. Our appreciation goes to:

Richard Ahlschwede
Patricia Arneson
Harding Collis
Rod Faubion
Bryan Fraser
Susan Geschwender
Becky Herms
Ron Herms
Monica Humpal
Christie Jennings
Craig Larabee
Rich O'Neill
Susan Rinker
Bob Ryan
Bob Young



2008 Commission Members



Commission Members: seated (left to right) Vince Leisey, Rita Griess, Robert Dover; standing (left to right) Mike Poskochil, Wes Grady; not present Chairperson John Gale, Bruce Bohrer

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