

COMMISSION COMMENT

What Can I Do . . . ?

[Editor's note: In the last issue, Spring 2008, of the Commission Comment an article entitled "License Transfer From Broker to Broker Process" defined when a transfer is complete. This information is pertinent to the following article. Past issues of the Commission Comment may be accessed on our website homepage at: www.nrec.state.ne.us/]

Due to a recent disciplinary hearing and the fact that we receive inquiries on this issue throughout the year, the Commission determined it would be an opportune time to remind real estate licensees of the appropriate manner in which to handle listings and the listing process at, or about, the time of transferring a license from one broker to another.

Whose listing is it? All listings belong to the designated broker. They are not the affiliated licensee's listings! By law, the listings remain with the designated broker, even though the affiliated licensee transfers away from the designated broker, unless the seller and the designated broker terminate the listing agreement by mutual agreement.

Affiliated licensees, when confronted with this situation, often indicate that the sellers want them to continue to handle the sale of the property and ask what they can do. There are two provisions of the License Act which affect what the affiliated licensee can do.

The following two sections of the License Act set out actions, which if taken by a licensee, would be violations of the License Act and could result in disciplinary action:

- NEB. REV. STAT. § 81-885.24 (14) – Negotiating a sale, exchange, listing, or lease of real estate directly with an owner or lessor if he or she knows that such owner has a written outstanding listing contract in connection with such property granting an exclusive agency or an exclusive right to sell to another broker or negotiating directly with an owner to withdraw from or break such a listing contract for the purpose of substituting, in lieu thereof, a new listing contract; and
- NEB. REV. STAT. § 81-885.24 (15) - Discussing or soliciting a discussion of, with an owner of a property which is exclusively listed with another broker, the terms upon which the broker would accept a future listing upon the expiration of the present listing unless the owner initiates the discussion.

Licensees ask, "Can I tell the sellers of the properties I have listed that I am transferring?" The answer is yes. But the licensee must be careful not to violate the law by trying to talk the seller into, or assisting the seller in, cancelling the listing and then listing with the licensee's new broker. Dependant on the conversation, either one, or both, of the License Act provisions set out above could be violated in attempting to assist the seller

at this point in time. Do not do anything which could be construed as an attempt to get the seller to terminate the listing.

It is best to limit the discussion with the seller to the fact that you are transferring to a new broker and wish the seller well. Most, if not all, designated brokers have a policy of how a listing will be handled when the licensee servicing the listing leaves. **A licensee should confirm with his or her designated broker what the broker's policy is regarding this issue.** The transferring licensee could inform the seller of that policy. If the licensee is asked any questions regarding cancelling or "transferring" the listing with the licensee to the new broker, the licensee should refer them to the designated broker or the appropriate designee of the broker and NOTHING MORE. It is not unheard of that a transferring licensee will go beyond this advice and travel down the "slippery slope" of giving too much advice. And in so doing, breaches one, or both, of the License Act provisions set out above.

The transferring licensee should not make any assumptions. If asked if the listing can be cancelled or if the transferring licensee can take the seller with him or her, the transferring licensee should refer the seller to the designated broker or appropriate designee of the broker.

Can a licensee when he or she knows he or she will be transferring to a new broker, give potential seller-clients the option of listing with the current broker or the broker to whom the licensee is transferring? The answer is NO. The transferring licensee is still under the supervision of the current broker and all his or her allegiance is to that current broker. Any actions which could be interpreted as representing the desig-

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Commission Meeting Schedule

June 26-27	Lincoln
August 28-29	Lincoln
September 26	Lincoln

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Director's Desk



Recently, I was asked what happens when the listing agent is out-of-town and there is another affiliated licensee "covering" for the out-of-town licensee and an offer is received on the listed property? Can the "covering" licensee present the offer to the seller?

In this scenario, the designated broker's agency policy was that only the affiliated licensee acquiring the listing on behalf of the designated broker was representing the seller and all other affiliated licensees were limited buyer's agents on the property. This designated broker was using the appointment authority set forth in the Agency Relationships statute, specifically Neb. Rev. Stat. § 76-2427.

The broker, in the situation described, has some options. The designated broker could act as a limited seller's agent, and present the offer. The designated broker could appoint the "covering" licensee as a limited seller's agent and have the "covering" licensee present the offer. The designated broker could also appoint any other affiliated licensee to be a limited seller's agent and present the offer. Appropriate agency disclosures would need to be made to the seller dependent on the decision made.

Whichever licensee becomes the limited seller's agent and presents the offer, that licensee will remain a limited seller's agent for the duration of the listing. If, during the period of time the property remains listed with the designated broker, a buyer, who the "appointed" licensee represents as a limited buyer's agent, becomes interested in the property, the "appointed" licensee would become a limited dual agent and would need to make all applicable disclosures and act in the appropriate manner.

FORMS FORMAT CHANGES

In the "Ask the Commission" session at the recent Nebraska Realtors Association meeting, a licensee asked if we would be able to put the forms that were available to download from the Nebraska Real Estate Commission's website into a PDF format rather than the html format in which they appeared. One benefit of having the forms in a PDF format would be that the pages could be viewed as they are laid out for printing. Another benefit would be that the forms could be viewed and printed by virtually anyone, regardless of software or operating system used on their computer. I would like to report, as a result of that request, all downloadable forms on the Commission's website are now in PDF format. The forms require a PDF viewer such as Adobe Acrobat Reader. The Acrobat Reader software can be downloaded for free from Adobe's website at www.adobe.com/acrobat. You can also access Adobe Acrobat Reader through a link which is available on the homepage of the Nebraska Real Estate Commission's website at www.nrec.state.ne.us.

NEW E-MAIL ADDRESSES

Beginning June 13, 2008, Commission staff will have new e-mail addresses. The new e-mail addresses are reflected in the Communications Guide on page 3. While the old e-mail addresses will continue to be functional for some time, we encourage you to make note of these new addresses and start using them today!

**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 Rut*
monica.rut@nebraska.gov
- Complaint Procedures *Terry Mayrose*
terry.mayrose@nebraska.gov
- Continuing Education History or
Inquiries *Melanie Patrick-Heather*
melanie.patrick-heather@nebraska.gov
- Curriculum Design (Education &
Instructor Approval) *Teresa Hoffman*
teresa.hoffman@nebraska.gov
- Errors and Omissions Insurance
Inquiries *Teresa Hoffman*
teresa.hoffman@nebraska.gov
- Financial Officer *Rebecca Hallgren*
rebecca.hallgren@nebraska.gov
- License Applications Packet
Requests *General Staff*
- License Applications Process *Marilyn Masters*
marilyn.masters@nebraska.gov
- Licensing and Education
Requirements *Teresa Hoffman*
teresa.hoffman@nebraska.gov
- New Licenses in Process *Marilyn Masters*
marilyn.masters@nebraska.gov
- Specialized Registrations *Monica Rut*
monica.rut@nebraska.gov
- Transfer of License *Tawny Snider*
tawny.snider@nebraska.gov
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Disciplinary Actions Taken by the Real Estate Commission

(Does Not Include Cases on Appeal)

2007-030 James L. Murphy vs Jeffrey Nelson Searcy, Salesperson and Mary C. Searcy, Salesperson. Stipulation and Consent Order. **Jeffrey Nelson Searcy:** License Censured; plus an additional six (6) hours of continuing education with three (3) hours in the area of license law and three (3) hours in the area of agency to be completed by September 3, 2008. [Violated Neb. Rev. Stat. § 81-885.24 (29) Demonstrating negligence to act as a salesperson because he allowed Mary C. Searcy to participate in the pre-listing discussion during which time he failed to disclose to Murphy that Mary C. Searcy and other members of the “Searcy Team” would not be acting as limited Seller’s Agents and representing Murphy in the transaction but instead would be acting as limited Buyer’s Agents, as Mary C. Searcy did.] **Mary C. Searcy:** License Censured; plus an additional six (6) hours of continuing education with three (3) hours in the area of license law and three (3) hours in the area of agency to be completed by September 3, 2008. [Violated Neb. Rev. Stat. § 81-885.24 (29) Demonstrating negligence to act as a salesperson because she failed to disclose to Murphy that she and other members of the “Searcy Team” would not be limited Seller’s Agents and would not be representing Murphy in the transaction, but instead would be acting as limited Buyer’s Agents in the event a suitable buyer was located by her or any other “Searcy Team” member.] March 7, 2008

2007-034 Geri Tanderup vs Marlene K. Jussel, Broker. Stipulation and Consent Order. License suspended for a period of one (1) year commencing on March 6, 2008, continuing through March 5, 2009, with the entire suspension period served on probation; plus an additional six (6) hours of continuing education with three (3) hours in the area of license law and three (3) hours in the area of contracts to be completed by September 2, 2008. [Violated Neb. Rev. Stat. § 81-885.24 (12) Offering real estate for sale or lease without the knowledge and consent of the owner or his or her authorized agent or on terms other than those

authorized by the owner or his or her authorized agent; and Neb. Rev. Stat. § 81-885.24 (29) Demonstrating negligence, incompetency, or unworthiness to act as an associate broker. Because Jussel failed to have Geri Tanderup sign the Listing Agreement and offered the real estate for sale without the knowledge and consent of one of the owners.]

March 6, 2008

2007-012 Commission vs Kevin Dean Irish, Broker. Hearing held March 6, 2008. License suspended for two (2) years, with the entire suspension period stayed and served on probation to commence April 18, 2008, and continue through April 17, 2010. Kevin Dean Irish must abstain from alcohol; attend Alcoholics Anonymous meetings on a regular basis and provide documentary proof of such regular attendance on at least a monthly basis to the Commission; obtain a sponsor and provide documentary proof of such sponsorship to the Commission; and if charged with another criminal offense during the two (2) year period, Irish must report such charge to the Commission within seven (7) days of such charge. [Violated Neb. Rev. Stat. § 81-885.24 (29) by demonstrating unworthiness to act as a broker for having been convicted of four (4) Driving Under the Influence charges and for failing to report the Driving Under the Influence conviction relating to the June 2005 incident to the Nebraska Real Estate Commission on his real estate renewal application for 2006.]

March 6, 2008

2007-011 Kathryn Adkisson and Linda Vogt vs Michael Ray Holroyd, Broker. Stipulation and Consent Order. License suspended for two (2) years with the entire suspension period stayed and served on probation to commence on a mutually acceptable date within 30 days from the date of receipt of the Order; plus an additional twelve (12) hours of continuing education with three (3) hours in the area of agency, three (3) hours in the area of contracts, three (3) hours in the area of license law and three (3) hours in the area

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Considerations When Operating As A “TEAM” In Real Estate

Operating as a “team” can lead to problems for licensees when working with the public in a real estate transaction. This article is intended to point out areas where problems can arise and to, hopefully, give guidance to licensees who are working as part of a “team” so that situations do not occur which may result in disciplinary actions.

What is a “team”?

The term “team” is not defined in the License Act. Licenses are issued, under the Act, only to individuals. Licenses are not issued to “teams”. The “team” concept is no more than a marketing device. Over the years, “teams” of two or more individual licensees, working under the supervision of the same designated broker, joining together to offer licensed real estate services to the public on behalf of that designated broker, have become more common. Historically, a common configuration of a “team” consisted of a husband and wife. In some instances adult children have been added to the “team”, as have siblings of either or both spouses. More recently, two or more licensees, none of whom are related, have joined together to offer licensed real estate services to the public. There is nothing illegal or unethical in forming a “team” for such purposes. A “team”, as used in this article, should not be confused with a real estate firm which has been formed by a designated broker under the License Act.

Most “teams” have a “team” leader. It must be understood that this “team leader” is not the equivalent of the designated broker for the real estate company. The “team leader”, if there is one, and all licensed members of the “team” are affiliated licensees of the designated broker for the real estate firm. The “team” is under the supervision, and must abide by all policies, of the designated broker, just like all other affiliated licensees conducting licensed activities under the designated broker. Any unlicensed assistants, who may assist licensed “team” members, are also subject to the supervision and policies of the designated broker, just like other unlicensed persons employed by the real estate firm.

Advertising

A “team” must advertise, just as an individual affiliated licensee, in the name under which the designated broker conducts business. Advertising is conducted under the direct supervision of the broker. When advertising a “team” on a sign, in an advertisement, on a business card or any other means of communication to the public, it must be clear to the public which real estate company/broker the “team” is representing. Advertising which is misleading or inaccurate or which would be confusing to the public in this area could lead to disciplinary action being initiated against members of the team and their designated broker.

Brokerage Relationships Issues

[Note: The information presented in the “Brokerage Relationship Issues” section of this article only applies to real estate firms where the designated broker utilizes “designated agency”, i.e. not all affiliated licensees of the broker have the same agency relationship with all buyers, tenants, sellers and landlords as they would in firms which do not utilize designated agency. In real estate firms which do not utilize “designated agency”, all affiliated licensees in the firm have the same agency relationship with all the clients of the designated broker.] Another area which can lead to problems for the members of the “team”, as well as the designated broker, is how the services of the “team” are advertised in pamphlets, brochures, etc. and in person by the “team” members. A “team” advertises that, “The ‘team’ will work for you if you hire us to sell or lease your property or assist you in buying or renting a property.” Such a statement may lead members of the public to believe that all members of the “team” would be working for the consumer in an agency-client capacity, if the consumer decided to be represented by the “team”.

If only certain members of the “team” will be representing consumers, who are offered brokerage services, that should be explained in all written materials and again emphasized at the initial meeting with the consumer. It should also be

included in any written agreements. For example, the listing agreement should set out which licensee or licensees will be specifically representing the consumer, as known at the time. These names must also be set forth on the “Acknowledgment of Disclosure” page of the “Brokerage Relationships in Real Estate Transactions” brochure.

It is extremely important that both the consumer(s) and the licensee(s) involved know who is representing the consumer. The licensee(s), specifically representing the consumer, needs to know so that confidential information is not disclosed to members of the “team”, and others, who are not representing the consumer or may represent the other party to a possible transaction. An example of when this would be an issue includes routine matters, such as attendance at a listing presentation or other situations at which licensees not representing the consumer would normally not be in attendance. Specifically, a seller should be made aware if the licensee who arrives at the listing presentation with the listing agent, simply to measure the house, will or will not be representing the consumer. The consumer needs to know so that he or she does not discuss confidential information in front of a licensee he or she thinks is representing him or her when, actually, the licensee may already, or may in the future, represent a different party to a possible transaction. ***Every effort should be made so that licensees, who are members of a “team”, do not leave the impression that the entire “team” is representing the consumer when, in fact, that is not the case.***

There may be occasions when the “identified” limited agent(s) of the client(s) is/are unavailable, perhaps out-of-town or ill and: the buyer or tenant wants to look at a specific property or properties that has/have become available; or the buyer or tenant want to make an offer or enter into a lease immediately; or another licensee presents an offer for consideration which expires prior to the return of the identified agent(s); or her similar situations. In the situation where

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Operating A Team . . . (Cont'd)

only a certain member or certain members of a "team" is/are representing a client, and it becomes necessary that another member of the "team", not representing the client, needs to become a limited agent for the client, certain actions need to be taken. In the case where a written buyer or tenant agency agreement, a written seller or landlord agency agreement (normally the agency relationship is established in the listing or management agreement), or a written dual agency has been entered into with the client(s), the name of the "team" member who needs to become a limited agent of the client(s) should be added to the agreement. (Usually, the listing/management agreement of designated brokers utilizing "designated agency" give the broker the authority to appoint additional affiliated licensees as limited agents of the client.) If the appointment authority is applicable, the client should be timely notified, in writing, that the new "team" member is representing the client. Notification to the client could also be done by having the client sign a new "Acknowledgement of Disclosure" page with the new "team" member's name and the appropriate blanks checked.

In the case where a "team" member or certain "team" members is/are representing a buyer or tenant under the statutory limited buyer/tenant agency provision and a new "team" member must become a limited agent for that buyer or tenant, the new "team" member must complete the "Acknowledgement of Disclosure" page appropriately and have the buyer(s) or tenant(s) sign the "Disclosure" prior to performing any duties on behalf of the buyer or tenant.

Shadowing or Mentoring Programs

Although not exactly the same, licensees taking part in mentoring or "shadowing" training programs also need to use caution that appropriate disclosures are made regarding the licensees involved. Consumers, whose transactions are the focus of these programs, need to have their confidential information and best interests protected. It is important that those licensees who are involved in these programs clearly disclose their

agency relationship to the consumer at the time of meeting with the consumer. It is recommended that the trainee and the trainer/shadower/mentor establish the identical agency relationship with the consumer, in order to allow the consumer-client to speak freely and provide the most true-to-life situation for a trainee. The same considerations would

apply to peer review situations.

Licensees who are considering the formation of a "team" should discuss the matter with their designated broker prior to formation of the "team". The designated broker may have certain restrictions or additional conditions regarding operating as a "team". ■

Required Nonresident Class Becomes a Pre-License Requirement

(Effective July 18, 2008)

New legislation has passed that will change provisions of the Nebraska Real Estate License Act. The changes to Nebraska Revised Statutes § 81-885.17 institute a pre-license education requirement for all those seeking licensure in the State of Nebraska through recognition of a current license from another jurisdiction. **This requirement applies only to those seeking a nonresident license based upon their license in their jurisdiction of residence OR those who are moving or have recently moved to Nebraska and are seeking licensure based upon their license in their jurisdiction of immediate preceding residence.** The new language requires these applicants to complete a three-clock hour course in license law and agency.

Applications through license recognition received **on or after** July 18, 2008, must provide adequate proof of completion of the three-clock hour class approved by the Commission specific to the Nebraska Real Estate License Act and Nebraska Revised Statutes sections 76-2401 to 76-2430 **prior to the issuance date** of the license.

Nonresident applications received **before** July 18, 2008, must comply with the existing law and, therefore, must provide adequate proof of completion of a three-clock hour class approved by the Commission specific to the Nebraska Real Estate License Act and Nebraska Revised Statutes sections 76-2401 to 76-2430 **within 90 days after the issuance date** of the nonresident license. Failure to meet this deadline will result in the license being placed on inactive status immediately and the licensee will be required to show cause why the license should not be revoked. Those who are moving or have recently moved to Nebraska and who, **before** July 18, 2008, apply for licensure based on their license in their jurisdiction of immediate preceding residence do not need to complete the class at all.

The providers and courses which meet the provisions in Neb. Rev. Stat. § 81-885.17 are:

- | | |
|---|---|
| Randall School of Real Estate
11224 Elm St
Omaha, NE 68144
Phone (402) 333-3004 | 0604R (Live Classroom)
Questions & Answers: A License Law and Agency Overview
3 clock hours |
| | 0604R (Correspondence)
Questions & Answers: A License Law and Agency Overview
3 clock hours |
| Northeast Community College
Box 469, 801 E. Benjamin Ave
Norfolk, NE 68702-0469
Phone (402) 844-7292
Phone (800) 348-9033 | 0604R (Live Classroom)
Nebraska Real Estate License Law & Agency Relationship Law
3 clock hours |

Do You Know Who's Looking at Your Client Files?

[Editor's note: This article is reprinted, with permission, from the Spring 2008 *ALO/Real Estate Intelligence Report*.]

Brokers who wonder what the next big headache in real estate will be may not have to look far to find the answer. In fact, it may be lurking in the file drawers where they keep their closed transactions.

With identity theft all over the headlines and bad guys increasingly finding ingenious ways of coming up with names, addresses, and bank account, Social Security and credit card numbers, the truth is that a lot of sensitive data is routinely being stored in real estate offices and it wouldn't take a computer mastermind to extract it.

In Florida last year, a rash of identity thefts was traced back to a man who worked nights as a janitor at a real estate office. He used his spare time to comb through files that sometimes were left sitting on agents' desks.

More recently, authorities in the Midwest found thousands of transaction records from a defunct mortgage broker unceremoniously discarded in a dumpster. No effort had been made to shred sensitive client information.

A quick snapshot survey by Real Estate Intelligence

Report found brokerages keep files:

- In unlocked file drawers "in the basement."
- "In boxes on the floor of the (unlocked) storage room" until they are moved upstairs.
- "In folders on (open) shelves in the conference room."

And then there are those records – who knows how many – that are kept in the trunks of agents' cars or stacked on desks in their home offices.

ARELLO aware

Debbie Campagnola, CEO of the Association of Real Estate License Law Officials (ARELLO), says she is personally aware of many offices where transaction documents are just stacked in boxes in a corner.

"Documents aren't usually very well protected," she says. "I imagine there are many brokerages that don't even have a policy with respect to privacy. A lot of brokers have mortgage brokers sitting in their offices. A lot of agents are doing loan originations. They're collecting Social Security numbers and bank account numbers."

"There hasn't been very much attention paid to this. Keeping documents secure is as important as security when you set up a showing or put a lockbox on somebody's house."

And none of the above scenarios even considers the data kept on stealable laptop computers and desktop computers that aren't password protected.

Campagnola said state real estate commissions typically require brokers to keep all the paperwork from transactions for several years before being allowed to discard it. Many brokerages keep it longer

than necessary "just to be on the safe side."

In some cases, supervising brokers may not even know what documents are held in transaction folders and even sales associates may not know what they've got as they sweep all the pieces of paper off the closing table and into a file when the deal is done.

"That's just not adequate," says Brian Lapidus, COO of the global security firm Kroll International headquartered in New York. "That doesn't even look at the problem from an Internet security viewpoint."

"The idea of agents and mortgage brokers keeping data in their cars as they move from place to place is frightening," he said.

"From an IT standpoint, we worry about people who have stored information electronically on unsecured WiFi networks that can be easily accessed. (Stealing) paper documents is even easier."

What can happen

And what can thieves – either the common variety or the electronic version – do once they have real estate client information?

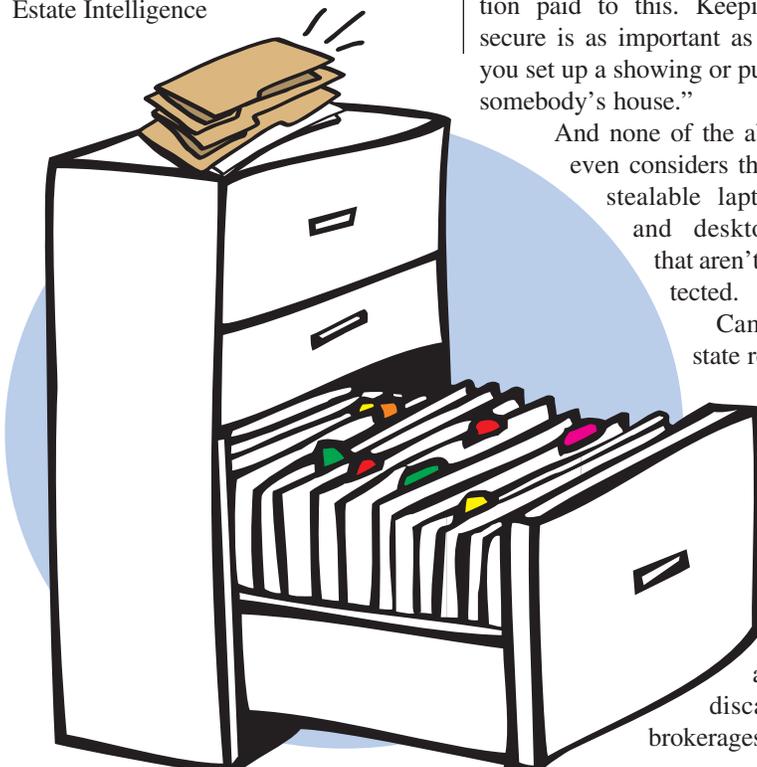
"If you have a name, an address and a Social Security number, the prospects are endless," Lapidus said.

"Someone can open credit cards in (your client's) name and run up the charges. They can take out loans and second mortgages. With enough information, they could even sell your home out from under you."

Credit card companies historically have written off bad debts once a claim has been submitted, but that doesn't resolve the issue of destroyed credit and the months, and sometimes years, it can take for individuals to restore their good credit, to say nothing of their reputations.

And consumers increasingly are not being very forgiving of companies that lose their data. Earlier this year when the Hannaford Brothers and Sweetbay grocery groups lost track of 4.7 million customer credit card numbers – resulting

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Looking at Client Files . . . (Cont'd)

in an estimated 1,800 cases of fraud – irate consumers filed a class action lawsuit against the supermarkets.

“I’d think that sort of publicity would be terrible for a real estate company,” Lapidus said. “Real estate agents build their relationships on trust. If you lose a client’s data, how do they ever work with you again? Or your company?”

The security expert says keeping private information secure is becoming an ever greater challenge but there are things that can be done.

First, he says, “don’t collect the information you don’t really need. A lot of businesses collect data because they think they need it. A lot of times they don’t.”

And second, “get rid of anything you don’t need after the transaction is done. If you’re a real estate agent, you don’t need a lot of information after the deal is closed. You don’t need to keep bank statements, tax forms and Social Security numbers. Get rid of them.”

A decent shredder costs less than \$50.

Lapidus also says hiring brokers need to be careful about who they bring into their offices as employees – whether as agents, clerical staff or even cleanup crews.

“Do background checks,” he said. “Do your due diligence. Make sure your employees are who they say they are. And make sure everyone knows the office policy and what you expect from them. Make sure they understand what your procedures are for handling documents.”

Real estate educators also need to join in this battle.

“Agents should be getting training about what kind of data is sensitive and what isn’t,” Lapidus said.

Finally, he said, brokers need to have a policy in place in case there is a data breach.

“You need to know what to do; how to handle it,” he said. “What is your procedure going to be?”

A company’s ability to guard information could even be a sales tool, Lapidus said. “When you’re marketing yourself and differentiating yourself, this could be one way to do it. You can show your clients you’re aware that problems exist and you’re doing what you can to prevent it.” ■

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What Can I Do . . . (Cont'd)

nated broker to whom the licensee will be transferring, while still under the supervision of the current broker, would be a serious violation of the licensee’s duties and responsibilities.

Can an affiliated licensee, who is transferring, refer potential clients to the designated broker to whom he or she is transferring while the licensee is still under the supervision of the current broker so that the licensee can service the listings after the transfer? NO! These sellers would need to be listed with the current broker either by the transferring licensee or another licensee affiliated with the current broker. Referring them to the broker to whom the licensee is transferring without the current broker’s knowledge would be a serious violation of the licensee’s duties and responsibilities. Usually, brokers have definite policies regarding referrals and affiliated licensees must adhere to those policies. Remember referrals and the resulting fees are between the designated brokers not between affiliated licensees and other licensees. (*See, NEB. REV. STAT. § 81-885.24 (8) and Title 299, Chapter 2, Section 010.*)

Another question often asked by transferring licensees is - “A listing will be closing shortly after I transfer to the new broker, can I attend closing with the sellers since I was there when they entered into the contract?” Not without the written consent of the transferred licensee’s designated broker at the time of closing. Yet another related question is - “One of my listed sellers is in the middle of negotiations on the sale of their home, can I continue to negotiate on their behalf even after I transfer?” Not without the written consent of the new, transferred to designated broker. In both of these situations, the written consent to represent the previous broker is required under Neb. Rev. Stat. § 81-885.24 (7) and Title 299, Chapter 2, Section 010 of the Commission’s Rules and Regulations. The previous designated broker would also have to agree, since it is that designated broker’s listing that is closing or is in the process of negotiations, respectively. It can be readily assumed, in both of these situations, the previous



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ignated broker probably appointed another affiliated licensee to represent the sellers after the transferring licensee left.

Another question that is asked by transferring licensees is - “Can I be paid a commission for any listings which are under contract and will close after I transfer and for any other licensed activity I conducted before I transferred from that broker?” The Real Estate Commission does not get involved in commission “splits”, but there is nothing in the License Act or Rules and Regulations administered by the Commission which would prohibit payment by the previous broker to the transferred licensee for licensed activity conducted by the licensee while under the supervision of the previous broker. The payment can be paid directly to the transferred licensee by the previous broker, since the payment is for licensed activity conducted while under the supervision of that broker. The payment would not need to go through the broker to whom the licensee has transferred. That being said, the truly controlling document to determine if, how and how much will be paid in this situation is the independent contractor agreement between the designated broker and the transferred licensee when he or she was affiliated with that designated broker.

What about written buyer agency agreements? These written agreements are between the buyer and the designated broker and are to be handled in the same manner as listing agreements when an affiliated licensee is transferring to a new designated broker. ■

(Continued from page 3)

Disciplinary Action (Cont'd)

of ethics, to be completed and proof of completion submitted to the Commission by October 1, 2008. [Violated Neb. Rev. Stat. § 81-885.24 (3) Failing to account for and remit any money coming into his or her possession belonging to others, for failing to transmit January 2007 rents to the Corporation's new property manager; and Neb. Rev. Stat. § 81-885.24 (29) demonstrating negligence, incompetency, or unworthiness to act as a broker, by overcharging and duplicating charges to the Corporation for hall cleaning; for failing to stop the lawn mowing service; for failing to obtain prior authorization from a member of the Corporation for an expense over \$1,000.00; for failing to ensure tenants properly transferred utilities into their name; for allowing tenants to remain in a property without paying monthly rent; for improperly charging a tenant late fees; and for failing to transmit January 2007 rents to the Corporation's new property manager.]

April 4, 2008

2007-036 David L. and Shelley M. Pokorny vs James Wilbur Muller, Salesperson. Stipulation and Consent Order. License Censured; plus an additional six (6) hours of 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 October 1, 2008. [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: (b) To exercise reasonable skill and care for the client and (c) To promote the interests of the client with the utmost good faith, loyalty, and fidelity and Neb. Rev. Stat. § 81-885.24 (29) demonstrating negligence to act as a broker, associate broker, or salesperson. Muller failed to advise the client to have a whole-house inspection.]

April 4, 2008

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