



COMMISSION COMMENT

Summer | 2013

The ABCs of Handling Trust Funds The Basic Rules that Every Licensee Should Know

The Commission often gets questions and complaints about the handling of client funds. This article re-states the basic rules and how they should be applied.

The General Rule:

Each broker shall maintain in a bank (or other financial institution)...a trust account in which all downpayments, earnest money deposits, or other trust funds received by him or her, his or her associate brokers, or his or her salespersons on behalf of his or her principal or any other person shall be deposited and remain until the transaction is closed or otherwise terminated unless all parties having an interest in the funds have agreed otherwise in writing. (Neb. Rev. Stat. §81-885.21)

The Specific Rule on Cooperative Sales Between Brokers:

“In the case of cooperative sales between brokers, the selling broker, unless all parties to the transaction with an interest in the funds have agreed otherwise in writing, shall deposit the earnest money payment in his or her real estate trust account within 72 hours or before the end of the next banking day, after an offer is accepted, in writing, and then forthwith transfer such earnest money deposit to the listing broker issuing a check drawn on the selling broker’s trust account.” (NAC, Title 299, Ch. 3, Sec. 006)

When the Nebraska Real Estate Commission gets questions about handling client funds the general answer given, based upon the rules above, is that the earnest money should go into your designated broker’s trust account (or your trust account if you are the designated broker) unless all parties having an interest in the funds specifically agree otherwise in writing.

In a typical sales transaction the buyer’s or selling agent will receive a down payment from the buyer.

1. Absent any provisions to the contrary, when the offer is accepted, this money must be deposited in the

designated broker’s trust account before the end of the next banking day if possible, or within 72 hours at the latest, and the deposit should be documented with a bank receipt.

2. The money should then be transferred to the listing broker’s trust account “forthwith”, using a check from the selling or buyer’s broker’s trust account. Although we don’t have a specific definition of a timeframe for “forthwith”, it should be done as soon as reasonably possible, and of course the transfer should be documented in the trust account records.

3. The purchase agreement should specify who will handle the real estate closing, if other than the listing agent the earnest money should be transferred to the closing agent (title company, attorney, financial institution, etc.) according to the terms of the agreement.

The most important thing to remember is that client funds should always go into your broker’s trust account as provided by law, unless all parties having an interest in the funds agree otherwise in writing. “This is how we always do it” or “this is how we do it in xxx” is not an adequate reason for handling the funds in any manner other than as provided by law or in the purchase agreement. 

Commission Meeting Schedule

August 15-16Lincoln
September 27Lincoln
October 24-25Lincoln
November 21-22Lincoln

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DIRECTOR'S DESK

Legislative Roundup

The 2013 Legislative session ended without any major changes to the laws that affect the practice of real estate. There were, however, a couple of items worth mentioning, as well as some proposals which didn't seem to gain any traction, but bear watching.

A couple years ago the Legislature passed a bill allowing brokers to use interest bearing trust accounts if the interest went to a non-profit organiza-

tion. The original bill had a sunset or cut-off date of for these accounts of July 1, 2014. LB72 extends the sunset date to July 1, 2017, and limits the type of non-profits that may be designated as the beneficiary of the interest from the account to those that promote housing.

LB3 (originally introduced in LB289) grants commercial brokers (as defined in the bill) the authority to file liens on real estate for unpaid commissions.

Other bills which did not pass, but were of interest were: LB13, relating to radon resistant construction and radon mitigation statements; LB427, the carbon monoxide safety act; and LB120 which proposed some changes to the Uniform Residential Landlord Tenant Act. LB13 was advanced to general file, the first stage of legislative debate, LB427 and LB120 remain in committee.

Greg Lemon, Director
Nebraska Real Estate Commission



Director Greg Lemon



Disciplinary Actions Taken by the Real Estate Commission

(Does Not Include Cases on Appeal)

2012-025 – Ronald Rohde vs. Patricia Ann Lunz; Broker; Wakefield, NE. Stipulation and Consent Order entered March 21, 2013. License censured; plus a civil fine of \$200.00 to be paid by April 20, 2013. [Violated Neb. Rev. Stat. § 81-885.24 (2) Intentionally using advertising which is misleading or inaccurate in any material particular or in any way misrepresents any property, Terms, values, policies, or services of the business conducted; for improperly using the Realtor logo and specific disclaimers in her Purchase Agreement indicating that she was a member of the Nebraska Realtors Association and governed by its Code of Ethics and Rules and Regulations; Violated Neb. Rev. Stat. § 81-885.24 (22) making any substantial misrepresentation; for improperly using the Realtor logo and specific disclaimers in her Purchase Agreement indicating that she was a member of the Nebraska Realtors Association and governed by its Code of Ethics and Rules and Regulations; Violated Neb. Rev. Stat. § 81-885.24 (29) Demonstrating negligence, incompetency, or unworthiness to act as a broker, associate broker, or salesperson; for violating Neb. Rev. Stat. § 81-885.24 (2) and (22).]

2013-007 – Commission vs. Bruce Gerald Johnson; Broker; Bennington, NE. Stipulation and Consent Order entered April 18, 2013. License censured; plus a civil fine of \$500.00 to be paid by May 18, 2013. [Violated Neb. Rev. Stat. § 81-885.24 (29) Demonstrating negligence, incompetency, or unworthiness to act as a broker, associate broker or salesperson, for having had a disciplinary action taken against him by another regulatory jurisdiction.]

2012-037 – Angela M. Pofahl vs. Rodney Scott Hornby; Broker; Lincoln, NE. Stipulation and Consent Order entered May 16, 2013. License censured; plus a civil fine of \$1,000.00 to be paid by June 15, 2013; plus complete an additional six (6) hours of continuing education, three (3) hours each in the areas of Disclosures and Ethics by September 13, 2013. [Violated Neb. Rev. Stat. § 81-885.24 (29) Demonstrating negligence to act as a broker, associate broker, or salesperson; for failing to advise Buyer's Agent that the subject property was already under contract for sale and if Buyer's Agent's buyer wanted to purchase the subject property, then Buyer's Agent should write a new offer and submit it to Hornby for presentation to the sellers for consideration.]

2013-016 – Commission vs. Todd S. Bartusek; Salesperson; Omaha, NE. Stipulation and Consent Order entered May 16, 2013. License censured; plus a civil fine of \$1,000.00 to be paid by June 15, 2013; plus complete an additional six (6) hours of continuing education, three (3) hours each in the areas of Agency and Disclosures by September 13, 2013. [Violated Title 299 Chapter 5 Section 003.23, Failure by the agent of a purchaser to assure that a copy of the Seller Property Disclosure Statement is delivered to the purchaser on or before the effective date of any contract which binds the purchaser to purchase the residential real property, and to obtain the signed receipt of the purchaser; for failing to deliver a copy of the Seller Property Disclosure Statement to the buyer on or before the date the contract became binding; Violated Neb. Rev. Stat. § 76-2421, 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 property 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; for failing to complete an agency disclosure with the seller on first substantial contact; Violated Neb. Rev. Stat § 76-2422, Before engaging in any of the activities enumerated in subdivision (2) of section 81-885.01, a designated broker intending to act as a dual agent shall obtain the written consent of the seller and buyer or landlord and tenant permitting the designated broker to serve as a dual agent. The consent shall include a licensee's duties

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*
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Curriculum Design (Education &
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Errors and Omissions Insurance
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New Licenses in Process *Marilyn Masters*
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Specialized Registrations. *Monica Rut*
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Transfer of License *Patricia Menousek*
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Trust Account Matters *Terry Mayrose*
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Disciplinary Action (Cont'd)

and responsibilities specified in section 76-2419. The requirements of this subsection are met as to a seller or landlord if the written agreement entered into with the seller or landlord complies with this subsection. The requirements of this subsection are met as to a buyer or tenant if a consent or buyer's or tenant's agency agreement is signed by a potential buyer or tenant which complies with this subsection. The consent of the buyer or tenant does not need to refer to a specific property and may refer generally to all properties for which the buyer's or tenant's agent may also be acting as a seller's or landlord's agent and would be a dual agent. If a licensee is acting as a dual agent with regard to a specific property, the seller and buyer or landlord and tenant shall confirm in writing the dual-agency status and the party or parties responsible for paying any compensation prior to or at the time a contract to purchase a property or a lease or letter of intent to lease is entered into for the specific property; for failing to have seller and buyer sign a Consent To Dual Agency Agreement when dual agency occurred; Violated Neb. Rev. Stat § 81-885.24 (29) Demonstrating negligence, incompetency, or unworthiness to act as a...salesperson; for violating Title 299 Chapter 5 Section 003.23, Neb. Rev. Stat § 76-2421 (1), and Neb. Rev. Stat § 76-2422 (4).]

License Law Briefs

Advertising and Social Media—

Affiliated licensees who advertise real estate using social media, such as their own Facebook page or Twitter accounts, need to remember that the basic rules of advertising still apply. Advertising must include the name the designated broker does business under, can only be done with the approval of the designated broker, and, of course, must not contain any substantial misrepresentations.

Reporting Lawsuits—

This question on renewal applications specifically states, "Have you been involved in any lawsuits, either as plaintiff or defendant". The NREC continues to file complaints and take disciplinary action based on failure to report lawsuits. We are often told that "I thought I only had to report real estate related lawsuits" or "My broker told me I only had to report lawsuits related to real estate". Please see the text of the question above, "any lawsuits".

Adverse Material Facts—

License law defines an adverse material fact as, "a fact which (1) significantly affects the desirability or value of the property to a party and is not reasonably ascertainable or known to a party . . .". "The roof leaks" is an easy one, but what about something that hasn't happened yet and may not, can that be a "fact" for license law purposes? Yes, for example, if a zoning law change allowing part of a residential neighborhood to be used for commercial or industrial purposes has been proposed, the "fact" in this case is that the change is being considered, and a reasonable buyer could certainly view this as something significantly affecting the value of the property. Adverse material facts not previously disclosed or readily ascertainable by the buyer must be disclosed in writing to the buyer prior to the buyer entering into a contract to purchase the property.