



COMMISSION COMMENT

Fall | 2014

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Commission Meeting Schedule

- September 25-26Lincoln
- October 17Lincoln
- November 20-21Lincoln

Teresa Hoffman Retires

Deputy Director for Licensing and Education Teresa Hoffman has taken a new position with the Alabama Real Estate Commission; her last day was September 5. Hoffman worked for the Commission for 26 years, starting as the Education Director under former Director Paul Quinlan, and moving up to Deputy Director for Licensing and Education under Quinlan's successor, Les Tyrell.



Among Hoffman's many accomplishments were implementing automated license examinations, the development and implementation of the current licensee database, and the creation of broker approved training, as well as serving as President of the international Association of Real Estate License Law Officials (ARELLO) and numerous other leadership positions with that organization.

The Education position has not been filled at this point, but we will make an announcement on the website and in this publication when a candidate has been chosen. 

Licenses No Longer Required to Send in Education Certificates

Effective immediately, the Nebraska Real Estate Commission will no longer require licensees to send in certificates for proof of completion of continuing education (CE). Proof of completion of continuing education requirements will be submitted by the education providers as required by law. **Please Note:** Providers have, by law, 10 days to submit education verification to the Commission. Licensees should use the licensee portal to verify that their class completion has been submitted.

If it does not appear that the course completion has been submitted and recorded after the ten day period has expired, you should contact your course provider. We would also like to note once again, in order to simplify and expedite the renewal process, we suggest that licensees not wait until the last minute to meet their continuing education requirements, as we cannot complete the renewal process until all required CE has been properly certified.

Providers will continue to provide completion certificates to students who successfully complete the course. Students are advised to maintain these certificates for their records. **Please note,** licensees will still be required to submit certificates for courses taken through providers approved in other jurisdictions and not Nebraska, as well as appraiser CE. 

Ann Dover Appointed to the Commission

Governor Dave Heineman has announced the appointment of Ann Dover as the Salesperson at Large Representative on the Nebraska Real Estate Commission. She replaces Kathryn Rouch of Omaha, who recently completed her six year term.



Dover has over 25 years experience as a licensed salesperson, and, in addition, has completed a seven year term on the Nebraska Equal opportunity Commission. She has also served on the Board of Directors and in numerous other capacities with the Nebraska Realtors Association. Dover is currently employed as a salesperson with Coldwell Banker Dover Realtors in Norfolk, where she lives with her husband, Robert, and their four children.

On behalf of myself and all the Commission staff I would like to welcome Ann Dover to her new post and thank her for her willingness to serve on the Commission.

—Greg Lemon, Director,
Nebraska Real Estate Commission

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The Nebraska Real Estate Commission grants permission to reprint articles which appear in this newsletter on condition that recognition of their original publication in the **Nebraska Commission Comment** also appears with the article.

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.

Printed with soy ink

DIRECTOR'S DESK

License and Renewal Fees

At the August meeting of the Nebraska Real Estate Commission the Commission voted to approve an increase of \$15 a year (\$30 for the two year renewal cycle) for renewal fees and a corresponding increase of \$15 for the licensing fee. The increase will change the two year broker renewal fee from \$260 to \$290, and the two year sales renewal fee from \$200 to \$230, these increases will be effective immediately for the upcoming renewal cycle for the 2015-2016 license year.

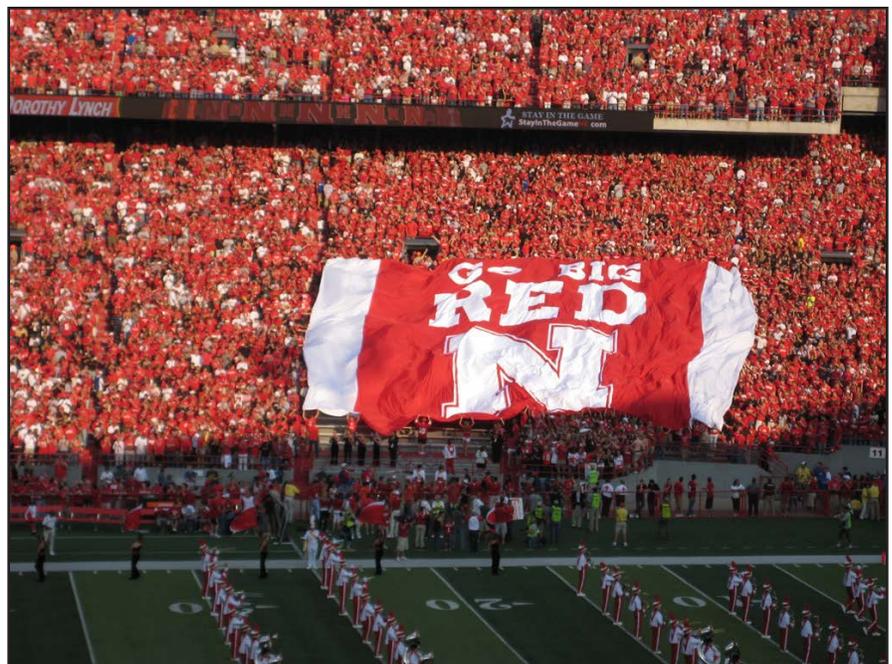
The salesperson's license fee will increase from \$100 to \$115, and the broker's license fee will increase from \$130 to \$145, both effective January 1, 2015.

While the number of applicants has been up the last couple of years, creating a healthy fund balance for Commission operations, the Commission is currently faced with the need to purchase a new licensee database. The current system, developed in the mid-nineties and operational since 1998, is becoming very difficult to adequately support for a variety of reasons, including the original vendor being out of business, and the programming language used being out of date. The fee increase is needed to fund that purchase, which is still subject to the approval by the Legislature and Governor. If the request is not granted the Commission will reassess its projected fund balances and adjust fees accordingly in future years.

Greg Lemon, Director
Nebraska Real Estate Commission



Director Greg Lemon



Memorial Stadium is transformed into a sea of red on game day in Lincoln.

Photo courtesy of Nebraska Tourism Commission

Disciplinary Actions Taken by the Real Estate Commission

(Does Not Include Cases on Appeal)

2014-015 - Commission vs. Thomas Eugene Sunderman; Broker; Fremont, NE. Stipulation and Consent Order entered August 21, 2014. License suspended for two (2) years all stayed and served on probation; plus pay a civil fine of \$1,500.00 by September 20, 2014; plus complete six (6) hours of additional continuing education, three (3) hours each in the areas of agency and contracts by February 17, 2015. [Sunderman violated Neb. Rev. Stat. § 76-2421(3) Licensee offering brokerage services; (3) Before engaging in any of the activities enumerated in subdivision (2) of section 81-885.01, a licensee working as an agent or subagent of the seller or landlord with a buyer or tenant who is not represented by a licensee shall provide a written disclosure to the customer which contains the following: (a) A statement that the licensee is an agent for the seller or landlord and is not an agent for the customer; and (b) A list of the tasks that the agent acting as a seller's or landlord's agent or subagent may perform with the customer; by not obtaining a signed Agency Disclosure "following the first substantial contact with" nine of the twelve owners of seller's farmland July 30, 2013; violated Neb. Rev. Stat. § 76-2422 Written agreements for brokerage services; when required (1) All written agreements for brokerage services on behalf of a seller, landlord, buyer, or tenant shall be entered into by the designated broker on behalf of that broker and affiliated licensees, except that the designated broker may authorize affiliated licensees in writing to enter into the written agreements on behalf of the designated broker. A copy of a written agreement for brokerage services shall be left with the client or clients. (2) Before engaging in any of the activities enumerated in subdivision (2) of section 81-885.01, a designated broker intending to establish a single agency relationship with a seller or landlord shall enter into a written agency agreement with the party to be represented. The agreement shall include a licensee's duties and responsibilities specified in section 76-2417, the terms of compensation, a fixed date of expiration of the agreement, and whether an offer of subagency may be made to any other designated broker, except that if a licensee is a limited seller's agent for a builder, the terms of compensation may be established for a specific new construction property on or before the builder's acceptance of a contract to sell; 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; by marketing real property for sale between March 20, 2013 and July 30, 2013, and writing Buyer's Offer to Purchase property on July 30, 2013, without having a signed Listing Agreement with all owners of the property; violated Neb. Rev. Stat. § 81-885.24(16) Violating any provision of sections 76-2401 to 76-2430; violated Neb. Rev. Stat. § 81-885.24(29) Demonstrating negligence, incompetency, or unworthiness to act as a broker, associate broker, or salesperson by violating Neb. Rev. Stat. § 76-2121(3), 76-2422, 81-885.24(12) and 81-885.24(16).] 



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 *Duran Cell*
duran.cell@nebraska.gov
- Continuing Education History or
Inquiries *Tawny Snider*
tawny.snider@nebraska.gov
- Curriculum Design (Education &
Instructor Approval) *Vacant*
- Errors and Omissions Insurance
Inquiries *Monica Rut*
monica.rut@nebraska.gov
- Financial Officer. *Hillary Pospisil*
hillary.pospisil@nebraska.gov
- License Applications Packet
Requests *General Staff*
realestate.commission@nebraska.gov
- License Applications Process *Marilyn Masters*
marilyn.masters@nebraska.gov
- Licensing Requirements *Monica Rut*
monica.rut@nebraska.gov
- New Licenses in Process. *Marilyn Masters*
marilyn.masters@nebraska.gov
- Specialized Registrations *Monica Rut*
monica.rut@nebraska.gov
- Transfer of License *Patricia Menousek*
patricia.menousek@nebraska.gov
- Trust Account Matters *John Clark*
john.clark@nebraska.gov
Ron Pierson
- Webmaster. *Monica Rut*
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Renewal Instructions 2015-16

License Year

The Commission's online renewal service continues this year with little change from prior year's. The online form is pre-populated with your information as it currently exists in our database and you have the opportunity to check the information for accuracy and accept it as is or edit as needed, as well as verifying or updating other critical information in our database. For example, there will be no reason to assume your continuing education requirements have been met (or not), you can verify it prior to or while filling out the form.

No Renewal Packets!

We will be sending out renewal reminder postcards to those whose license is expiring this year. **If you renewed for two years last year you will not need to renew this year and will not receive a postcard UNLESS** you are a broker with branch offices, branch offices must be renewed annually. **The postcard** will be your only renewal notice. We will provide paper renewal packets when absolutely necessary, but we strongly encourage all licensees with internet access to renew online.

Licensee Portal

The online renewal along with access to the records the Commission has relative to your particular license can be found at your licensee portal. To get to the portal you login from our homepage. In order to login you will need to know your real estate license number and your password. If you do not know your password you can reset it from our website by clicking on the licensee login button in the upper right hand corner of the NREC homepage: <http://www.nrec.ne.gov>, then click on the "change password" link to have a temporary password emailed to you. The email address we have on file for you must be current and you must know your license number to reset your password. **Also, be sure to use the link in the email to get to the page necessary to change your temporary password, the temporary password assigned will not allow access to our renewal and other online services, the temporary password must (and can only) be used for setting your permanent password.** If you still need help please call us at (402 471-2004) for assistance. Once logged in you will be taken to your licensee portal where the renewal link will be clearly indicated on the main page.

The licensee portal will also provide your Continuing Education and Errors and Omissions insurance information, as well as affiliated licensees and branch office information for designated brokers. All licensees are able to login to their licensee portal at any time but only those whose renewal is due this year will have access to the renewal pages.

The Renewal Process

The renewal application takes you through the step-by-step process for renewal and includes numerous stopping points so you can save your work and continue later. The renewal application will also let you attach documents such as a lawsuit or insurance information. All attachments must be in PDF format. PDF converters are readily available online and also built into many of the latest versions of popular off the shelf software such as Microsoft Word. While the process and questions are fairly self-explanatory, there are a few hints we would like to add to make your online renewal easier:

Before starting your renewal, please read the online instructions.

From the Licensee Portal, review the continuing education and errors and omissions insurance information we have on file for you. If you need to renew your license this year, your continuing education needs to be complete and you need to have E&O insurance into 2015 unless you are renewing on inactive status. You will need to commit to providing the necessary information by some method, while you may continue through the renewal form these items must be in the office before your license will be renewed. Remember, you may submit additional material while you are in the renewal process by attaching PDF files.

Designated brokers will need to compare their current list of affiliated licensees to our list in the portal (or on the paper renewal) so that they can add or delete names as part of completing the renewal. Designated brokers will also want to review their branch offices every year and consider those they wish to renew or let expire by the end of the year. Online branch renewals are also available. Please remember that both the designated broker and the managing broker must be renewed on active status before the branch can be renewed. Employing brokers can check the renewal status of any of their affiliated licensees by checking the expiration date supplied on the list found on their portal.

If there is an affirmative answer regarding errors and omissions insurance claims, lawsuits, etc. have the details, as requested, ready to submit via narrative or attachment.

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Renewal Instructions (Cont'd)

Final Review and Payment

When you complete entering the renewal information you will be taken to a review page that will allow you to look over what you have entered. Once you have completed your review and made any corrections, you will be taken to the payment portal where you can pay for your renewal via ACH payment or credit card (Visa, MasterCard or Discover). **Print the confirmation page for your records.** You will receive an email indicating that your renewal has been submitted. The email does not confirm renewal, that will be confirmed later.

Because there are many items on the renewal form that will still require review by Commission staff, such as lawsuit information or criminal charges, the renewal status indicated on your licensee portal will indicate "pending Commission's approval" **Your renewal will not be complete until Commission staff have reviewed the form and given final approval, this process may take several days.** Your credit card will not be charged pending final review, but you will probably see a notice of pending charge or charge authorization on your online statement after the renewal has been submitted.

Verification That License Has Been Renewed

Please allow time for the Commission's review of your renewal. After the renewal has been reviewed you will receive an email that will confirm the renewal has been approved OR that the renewal has been rejected and why it has been rejected. Finally, after you have succeeded in renewing and have received the email indicating approval of renewal you will receive another email that contains your receipt card. **PRINT YOUR RECEIPT CARD AND PUT IT IN YOUR WALLET**—no more waiting until a mass mailing in December!

Help for Designated Brokers

The Commission will send an email to designated brokers in December indicating which of their affiliated licensees have not renewed, similar to the letter we have sent in the past. However, **all designated brokers, whether due to renew themselves or not, should note that they can go to their licensee portal and review the list of their affiliated licensees to see who has renewed and who has not throughout the renewal season.**

Email Address Critical

It is very important that we have the correct email address in order to send you your renewal confirmation and other information, please review your online filing to make sure we have the right email address for you or, if changing your address or adding one, to double check to make sure it is correct.

SOME HELPFUL TIPS

- Before starting your renewal, please read the online instructions at www.nrec.ne.gov.
- Change your temporary password to a permanent password, write it down and keep in a safe place.
- Print the confirmation page for your records.
- November 30, 2014, is the statutory deadline for submitting renewal application materials.
- RENEW EARLY.
- RENEW ONLINE AT www.nrec.ne.gov.
- Look for the renewal reminder postcards in the mail.
- All documents and attachments must be in .pdf formats.
- Make sure your email address is correct.
- Print your Receipt Card.

And Please Remember

Failure to receive your renewal reminder postcard or a requested packet because it was lost in the mail or not personally delivered to you does not relieve you of your obligation to renew your license on time.

DEADLINES!

November 30, 2014, is the statutory deadline for submitting renewal application materials for all active and inactive salespersons and brokers, along with the proper fees and, if needed, proof of continuing education and errors and omissions insurance. However, because that date falls on a Sunday this year electronically submitted renewals will be accepted until Midnight, on December 1st. No matter how you are filing your renewal we strongly recommend that you do not wait until the last minute to file as any technical difficulty in filing or filing deficiency will result in a delayed or rejected filing and a late fee.

For those renewing on paper the Commission office is open until 5:00 P.M. (CST). If the renewal is complete and all necessary materials have been submitted, postmarks of December 1, 2014, will be honored. **Postal meter marks will not substitute for postmarks!**

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Renewal Instructions (Cont'd)

Licenses held on inactive status must be renewed too.

Inactive licenses are subject to the same deadlines and fees as described in this article.

Individualized Paper Forms

Because the Commission is now able to take ACH payments (electronic checks) requests for paper renewal forms should be minimal. These forms are produced from our database and are individualized to the named licensee. Please take the time to read the supplied information carefully and make any corrections necessary. **Do not attempt to use someone else's form, the barcode will not accommodate this.** Please take care not to lose your requested individualized form. **Email notice of status of paper renewals is not possible, however, you will receive your receipt card via email when the paper renewal is complete and has been processed.**

Incomplete Applications

NO LICENSES WILL BE RENEWED UNTIL THE CORRECT FORM IS RECEIVED AND ALL INFORMATION REQUESTED IN THE APPLICATION IS SUPPLIED. PAPER RENEWALS MUST BE SIGNED BY THE LICENSEE. There should be no questions left unanswered. If active, make certain you properly address your errors & omissions insurance and continuing education requirements. Make sure your ACH, check or credit card information is supplied, filled out properly, legible, and in the correct amount. **If you are unsure as to how to complete your online or paper renewal, we will be happy to answer any questions you may have. INACCURATE OR INCOMPLETE RENEWALS MAY JEOPARDIZE THE TIMELY RENEWAL OF YOUR LICENSE AND COULD RESULT IN THE ASSESSMENT OF LATE FEES.**

Late Renewals

Any salesperson or broker who fails to file a complete application for renewal of a license and pay the renewal fee by the deadline date, as provided in the Nebraska Real Estate License Act and NEB. REV. STAT. §49-1203, may file a late renewal application with all required information included. Renewals which are late must pay, in addition to the renewal fee, the sum of twenty-five dollars for each month, or portion of month, beginning on December 2, 2014; provided that such late application is filed by 5:00 P.M. (CDT) June 30, 2015.

Renew Early!

The processing of renewal applications, as the volume of renewals received increases near the deadline, can be as long as a week to ten days. This being the case, the rejection of an online renewal, return of the individual application or "bundled" applications in and of itself will cause late fees to

accrue. Therefore, we encourage all licensees to submit renewals early and not wait until the last minute.

Remember: Do Not Combine Fees

LICENSE RENEWAL FEES CANNOT BE COMBINED WITH TRANSFER FEES OR EXAMINATION FEES. THESE ARE SEPARATE PROCESSES. PLEASE SEND SUCH REQUESTS AND THE APPROPRIATE FEE UNDER SEPARATE COVER.

Insufficient Funds

ANY PAYMENT RETURNED BY A FINANCIAL INSTITUTION OR ANY STOP PAYMENT THROUGH A CREDIT CARD COMPANY (CHARGEBACK) WILL BE SUBJECT TO A \$30 PROCESSING FEE. IT SHOULD ALSO BE POINTED OUT THAT THE LICENSE ACT PROVIDES THAT ATTEMPTED PAYMENT OF A LICENSE OR RENEWAL FEE BY AN INSUFFICIENT FUNDS CHECK OR INVALID ELECTRONIC PAYMENT MAY BE GROUNDS FOR DENIAL OR REVOCATION OF A LICENSE.

**RENEW
Online At
www.nrec.ne.gov**



Update: Pennsylvania Supreme Court Rejects Duty to Disclose “Psychological Impacts”

(Reprinted with permission from ARELLO Boundaries, the real estate regulation news publication of the Association of Real Estate License Law Officials, although a Pennsylvania case based upon Pennsylvania law, and not controlling in Nebraska, the case and article provide an interesting discussion of disclosure requirements of stigmatized property in a state with similar disclosure requirements to those in Nebraska)

The Pennsylvania Supreme Court has brought an unsuccessful end to a home buyer’s 5½-year legal struggle against sellers and real estate agents who did not disclose that the subject property was the site of a previous murder-suicide. In the absence of a state statute addressing the situation, the state’s highest court ruled that disclosure of non-material information that may “stigmatize” or “psychologically impact” a property is not required.

As reported in previous editions of Boundaries, the circumstances underlying the protracted litigation in *Milliken v. Jacono* began when the original owner allegedly committed murder-suicide at the subject property. The Jaconos purchased the property from the owner’s estate, renovated it and listed it for sale. The Jaconos and their listing agents each sought and received information from various sources indicating that disclosure of the previous events at the property was not required. The listing agents suggested disclosure “just to get it out there”, but the Jaconos declined. Milliken purchased the property from the Jaconos and received a completed Seller’s Property Disclosure Statement pursuant to Pennsylvania’s Real Estate Seller Disclosure Law (RESDL). The RESDL establishes a seller’s duty to disclose known “material defects” (problems that “would have a significant adverse impact on the value of the property” or involving “unreasonable risk to people in the property”) on a form generated by the Pennsylvania State Real Estate Commission.

The RESDL and the Commission form require disclosures regarding numerous specific property conditions, but do not address factors that might “psychologically impact” a property, such as a murder or suicide. After the transaction closed, Milliken learned about the deaths at the property and sued the sellers and real estate agents alleging fraud, misrepresentation and violation of state consumer protection laws. She asserted that she would not have purchased the property if she had known about the prior events which, according to two appraisals, lowered the value of the property between 10 and 15 percent. The trial court granted summary judgment in favor of the sellers and agents, ruling that the murder-suicide was not a “material fact” that required disclosure.

Milliken appealed to the Pennsylvania Superior Court, which overturned the trial court ruling. The court noted that the disclosure form generated by the agents and provided to Milliken covered topics “beyond the basic requirements of the

[RESDL]” and called for the disclosure of material defects “not disclosed elsewhere on this form”. The Superior Court concluded that, under the circumstances, a jury should have been allowed to determine whether the murder-suicide was a “material defect” that required disclosure. However, the court thereafter granted reargument of the case, withdrew its decision and instead ruled that a murder occurring on a property involves its reputation, not its physical structure, and thus the RESDL did not require disclosure of such “psychological damage”. Milliken then appealed to the Pennsylvania Supreme Court, which affirmed the lower court decision(s). The Supreme Court refused to accept the proposition that a psychological stigma constitutes a “material defect”, regardless of its potential impact on a home’s value. The court said that any such judicially crafted standard would be impossible to consistently apply and also would place an unmanageable burden on sellers; a “slippery slope” that the court was unwilling to descend. The court also noted, “If there is to be a newly created duty to disclose psychological stigma, it should only be imposed with clear definition by the legislature after careful consideration of all aspects and ramifications of the issue.” [*Milliken v. Jacono et al.*, 2014 Pa. LEXIS 1770]

About 28 U.S. jurisdictions have enacted laws that address the disclosure of “stigmatized” or “psychologically impacted” property information such as previous HIV/AIDS occupants, murders, suicides and felonies. Most of those limit or eliminate the duty of sellers and/or their agents to disclose such information. Some, however, such as South Dakota Codified Laws section 43-4-44, mandates disclosure of a homicide, suicide or other felony committed against the property or a person on the property within the preceding 12 months. Still others, such as Georgia’s O.C.G. section 44-1-16, have been interpreted to require disclosure of information such as prior homicides or suicides if the buyer asks, but not if the question implicates state or federal fair housing laws. And some states, such as Massachusetts, have enacted laws that include “alleged parapsychological or supernatural phenomenon” as matters that do not require disclosure. 



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