

COMMISSION POLICIES AND INTERPRETATIONS

Required Notice pursuant to the Administrative Procedures Act:

“This guidance document is advisory in nature but is binding on an agency until amended by such agency. A guidance document does not include internal procedural documents that only affect the internal operations of the agency and does not impose additional requirements or penalties on regulated parties or include confidential information or rules and regulations made in accordance with the Administrative Procedure Act. If you believe that this guidance document imposes additional requirements or penalties on regulated parties, you may request a review of the document.”

The above disclaimer applies to all Policies and Interpretations listed herein.

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1. Trust Account Examination Advance Notice Policy to Cease

The Real Estate Commissions' policy of giving brokers advance notice of trust account examinations practice will cease after notice to brokers through an article in the Commission Comment.

Adopted August 1, 1990

2. Names of Salespeople Used in Names of Companies

The use of licensed salesperson's names in the trade name or corporation name of a real estate company is allowed.

Adopted May 22-23, 1991

3. Out-of-State Appraiser Courses Used Toward Salesperson/Broker Continuing Education Requirement

A clarification and amendment to the Real Estate Commission's policy of honoring the Appraiser Board's determinations regarding Appraiser continuing education. The Nebraska Real Estate Appraiser Board accepts courses approved by other Appraiser Licensing Bodies when taken out-of-state.

The Real Estate Commission will honor the Nebraska Appraiser Board's position in this regard as well, by accepting approved Appraiser continuing education taken out-of state for Nebraska Salesperson's and Broker's continuing education credit.

Adopted July 24-25, 1991

4. Commission Staff Members Acting as Private Continuing Education Providers

Because of concerns over the Political Accountability Act, issues relating to potential conflicts of interest and the imperative that the programs be perceived as independent from the Real Estate Commission, it was the consensus of the Members of the Commission that Commission Staff Members should not act as private continuing education providers.

Adopted January 14-15, 1992

5. Records Retention Policy

Non-active records will be retained for fourteen years, unless otherwise required by State Policy.

Adopted February 12, 1992

Amended September 10, 2009

6. Limit on Unused Examination Fees

Unused examination fees are valid for one year from date of receipt. (This is an extension of previous undated Policy making applications for original licensure and applicable fees only valid for one year from date of receipt.)

Adopted March 10, 1992

7. Commission Travel Policy

The Commission has had a long-standing policy with regard to out-of-state travel which is based on the philosophy that Commissioners and Staff need to be informed and up-to-date on real estate regulatory matters. Involvement in National organizations and interaction with other states' real estate regulatory bodies allows for the research and enhancement of educational opportunities approved for use by licensees, especially in the continuing education area; allows for the negotiation of reciprocity regarding educational offerings, both pre-license and continuing education leading to negotiation of reciprocal licensing agreements; and allows for education of Commissioners and Staff that has allowed the Nebraska Real Estate Commission to be on the leading edge of the real estate regulatory movement and, therefore, to better serve the citizenry of Nebraska.

Authorization for travel must be approved by the Commission. Such authorization for travel of Commission Members and/or Staff is based on the educational value which can be accrued from attendance at the meeting; on the pertinence of the subject, or subjects, to be covered at the meeting such as the recent issue regarding Federal legislation dealing with Appraisers; and on the economic condition of the Commission at the time.

All of these factors are considered in determining if the meeting should be attended at all, and, if so, which person or persons should attend in order to provide maximum benefit to Nebraska.

Upon return from any authorized out-of-state travel, a Report will be given by the Commission Member(s) and/or Staff Member(s) involved in the conference or meeting at the next meeting of the Commission.

This Policy supersedes previous policy.

Adopted March 10, 1992

8. Branch Office Definition of "Temporary Basis"

NAC 299 Chapter 2-011 refers to a "Model Home" utilized as an office on a "temporary basis" as not being considered a branch office. "Temporary basis" will be interpreted as two to three years.

Adopted April 21, 1992

9. Fully Completed and Signed Renewal Policy

Renewal applications and fees will be returned if all requested information is not supplied and/or the renewal form is not signed by the applicant.

Adopted April 21, 1992

10. Direct Deposits to Trust Account Policy

Direct deposits may be made into a Real Estate Trust Account maintained by a broker under the Nebraska Real Estate License Act and Rules and Regulations of the Commission as long as a receipt is sent to the broker with the remitter's name on it so that a paper audit trail exists.

Adopted April 21, 1992

11. Transfer of License Policy

Due to a Rule change effective on September 21, 1992, licensees will no longer be required to carry their pocket card when conducting business. The transfer process will be handled in the following manner:

When all materials required to transfer are mailed under one cover, requesting an immediate transfer, the transfer is effective as of postmark, if no postmark is visible, then the effective date will be the date of the latter letter included, i.e. that of the licensee requesting their previous broker return their wall certificate to the Real Estate Commission or that of the new broker wishing to hire the licensee. If materials are hand carried into the office, the transfer, if an immediate transfer request, is effective as of Commission date stamp.

In the event that transfer materials are incomplete, the transfer will not be effective until all materials are received and date stamped in the Commission Office. Until complete, the licensee will be placed on inactive status and no activities requiring a license may be conducted until the transfer is completed. Business must be suspended until the transfer is complete.

Adopted April 21, 1992

12. Trust Account Records Location Matter

Brokers with branch offices who maintain a centralized bookkeeping system will be allowed to maintain transactions files at the branch offices in which the transaction occurred. Dependent on the examiner's judgment, the broker would be responsible for supplying the files to the examiner at the centralized location with a reasonable, non-audit risk, time-frame or the broker would be responsible for providing photocopies of documents needed from the centralized location which the examiner would need at the other location.

Adopted June 16-17, 1992

13. Return to Work/Light Duty Policy

This policy, as recommended from the Office of Risk Management, is a part of compliance with the Americans with Disabilities Act. (Copy available from Commission Office.)

Adopted June 16-17, 1992

14. Clarification of Third Party Closing Fee Disclosure

In all real estate transactions, the buyer and seller must: 1) authorize, in writing, the use of the third party closing agent; 2) authorize, in writing, the transfer of funds from the broker to the third party closing agent; and 3) agree, in writing, as to who will pay the closing fee, if any, or how the closing fee, if any, will be split between buyer and seller. The actual fee does not need to be disclosed at this time, but must be disclosed as a part of estimating the closing costs.

Adopted June 16-17, 1992

Amended September 15, 1992

15. Commission Smoking Policy

Smoke-free Commission Meetings will be held by the Nebraska Real Estate Commission, with smoking allowed during recesses in designated smoking areas of the building where the Meeting is being held.

Adopted October 27, 1993

16. Interpretation of 81-885.24(14) and (15)

"**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;

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;"

Neb. Rev. Stat. 81-885.24(14) sets out two prohibitions. Taking the second one first, it prohibits licensees from negotiating directly with an owner to withdraw from or break an exclusive agency or exclusive right to sell listing contract for the purpose of substituting, in lieu thereof, a new listing contract.

The first part of (14) also prohibits certain activity which, as it relates to "listings", is modified somewhat by (15). Under (15), a licensee can discuss with an owner whose property is exclusively listed with another broker the terms upon which the broker would accept a future listing upon the expiration of the present listing, if the owner initiates the discussion. The Commission has not distinguished between expiration, termination or cancellation previously.

Except for the proviso in (15), licensees cannot, in the first part of Neb. Rev. Stat. Section 81-885.24(14), negotiate a sale, exchange, listing, or lease of real estate directly with an owner or lessor if the licensee knows that such owner has a written outstanding listing contract in connection with the property, which contract grants an exclusive agency or exclusive right to sell to another broker.

Reaffirmed February 28, 1995
from pre-1990 Interpretation

17. Clarification of "Financial Statement" As Used in the Membership Campground Act

Financial statements, as referenced in the Membership Campground Act, shall be prepared in accordance with generally-accepted accounting principles and shall include:

1. A statement signed by an in-house accountant indicating that the financial statements were so prepared and a statement signed by the President of the Corporation certifying that the financial statements fairly represent the condition of the company;
2. A balance sheet reporting admitted assets, liabilities, capital, and surplus;
3. Cash flows;
4. Statement of changes in capital and surplus; and
5. Notes to financial statements.

Adopted September 15, 1992
Amended August 19, 1993
Amended by Rule March 6, 1995

18. Confidentiality of Investigative Records

WHEREAS, it is the public policy of the State of Nebraska to maintain the confidentiality of public records pursuant to NEB. REV. STAT. § 84-712.05, including, under subsection (4) work

product of an attorney and public body and attorney-client communications and, under subsection

(5), investigative records, including investigations and citizen complaints or inquiries;

THEREFORE, be it resolved that it shall be the policy of the Commission to:

- 1) Assert the attorney-client privilege over all records of the Commission, its staff and agents whenever applicable under NEB. REV. STAT. § 27-503.
- 2) Assert the work product privilege over all agency and counsel records whenever applicable under Nebraska Court Rule 26(b) (3).
- 3) Assert the confidentiality of Commission records whenever applicable under NEB. REV. STAT. § 84-712.05.

BE IT FURTHER RESOLVED, that the Director, Deputy Directors, and staff of the Commission are instructed and authorized to assert any one or all of these protections whenever in their opinion or on the advice of counsel, the respective protection reasonably appears to be applicable.

BE IT FURTHER RESOLVED, that the Commission retains the authority to adjudicate, on a case by case basis, the applicability of any protection under the law or to waive any applicable protection.

Adopted April 23, 1996

19. Brokerage Relationships Pamphlets And the Common Law Agent

Question:

If a licensee is acting as a common law agent, does the Agency Relationships Act require that licensee to provide a Brokerage Relationships pamphlet to a customer during or following the first substantial contact as soon as practicable?

Answer:

First, let's define common law agents. Common law agents are those licensees who act on behalf of a person in a transaction and who perform duties and responsibilities which exceed those of a limited agent, as set out in the act. Examples of common law agents are licensees in management, e.g. farm and ranch, commercial, residential, or apartment, who enter into lease agreements with tenants on behalf of an owner/landlord with whom their designated broker has a written agency agreement.

In a review of the Agency Relationships statutes, specifically Neb. Rev. Stat. § 76-2416, it has been determined that those licensees operating under a common law agency agreement are not required to provide a customer, who is in most instances a prospective tenant, the Brokerage Relationships pamphlet. The above cited section removes the common law agent from the duties and responsibilities of the provisions of the Act which would include the provision of the pamphlet to customers/tenants or prospective tenants.

With regard to landlords - when offering services to a landlord, the Brokerage Relationships pamphlet must be completed appropriately and signed because the licensee has not yet entered into the common law agency agreement and, therefore, is still required under the Act to provide the pamphlet and make the other required disclosures as set out in Neb. Rev. Stat. § 76-2421.

In essence, managers of properties who enter into lease agreements on their owners' behalf, whether they manage farms, ranches, apartments, single-family residences, commercial space, etc., do not have to provide the Brokerage Relationships pamphlet to prospective tenants.

Adopted November 13, 1996

20. Interpretation of 299 N.A.C. 5-003.10 and 5-003.11 and Neb. Rev. Stat. § 76-2418(3)(a)

RESOLVED, It is the interpretation of the Nebraska Real Estate Commission that Title 299 N.A.C. §§ 5-003.10 and 5-003.11 require a limited agent to make a written disclosure to his or her client of the categories of costs and estimated costs the client will be expected to pay at closing but do not require a limited agent to make such written disclosures to a customer. Said interpretation based on Neb. Rev. Stat. § 76-2418(3)(a).

Adopted March 19, 1997

21. Commission Procedures for Implementation Of License Suspension Act

Suspension

The procedures described in the following paragraphs are the same as those required of a licensee whose license is suspended after a disciplinary hearing.

Upon notification by any of the certifying authorities of non-compliance by a broker, associate broker or salesperson licensee, a notice will be sent by certified mail, informing said licensee that, effective ten working days after the date of the certification to the Commission, his or her license is suspended and what to provide for reinstatement. Additional information, as applicable to the licensee, will also be included as indicated in the following:

When the licensee is an employing broker, said notice will include notice to return his or her wall license and pocket card, along with the wall licenses and pocket cards of all affiliated licensees by the suspension date. Information will also be included with regard to affiliated licensees transferring to another broker or to inactive, as well as information regarding the installation of a new designated or employing broker. Information will also be included regarding affiliated licensees returning to the broker upon compliance, i.e. if went inactive - no fees, just documents; if transferred to new broker or another broker - transfer fees and documents needed.

When the licensee is an individual broker with no employees, the same notice will be sent as above except it will only ask for his or her wall certificate and pocket card.

When the licensee is an associate broker and/or salesperson whose license is under a broker, he or she will be informed of the suspension and to return his or her pocket card by the suspension date. At the same time, the employing broker will be requested to return the wall certificate of the licensee by the suspension date.

When the licensee's license is on inactive status, notification of the suspension date will be sent certified mail, indicating the license cannot be activated until compliance is achieved and what to provide for reinstatement.

Reinstatement

The Commission will not impose any special reinstatement charges authorized by LB-752. It will only impose charges required of any standard reinstatement. The procedures described below are the least restrictive reinstatement or renewal procedure applicable to license suspension.

In all cases of suspension under the Act, the non-compliant licensee will be informed that, during suspension, if a renewal of license occurs, he or she will be expected to renew, even though on suspension, if he or she wishes to retain the entitlement to a license.

The licensee will also be informed that if he or she returns to the same position as that held prior to the suspension, there will be no additional fees assessed, however, required documents, as applicable, will be needed. However, if he or she, when compliance is achieved, decides to change companies or status, a transfer fee, as applicable at the time, will be required along with any documents required.

In all cases of suspension under the Act, any continuing education needed to renew will still be required. If the licensee chooses not to acquire the continuing education or to waive it, but renews the license, the license will be transferred to renewed inactive and a fee will be required to transfer to active upon compliance, along with any required documents.

Errors and Omissions Insurance will need to be retained prior to being able to renew during a suspension if license was active when the suspension commenced, unless the licensee chooses to renew inactive during the suspension period. If a licensee suspended under the Act cancels his or her Errors and Omissions Insurance while under suspension, he or she will be considered inactive from the date of cancellation and upon coming into compliance. In both cases, the licensee will be required to pay transfer fees, provide required documents and acquire errors and omissions insurance before activation.

Adopted August 19, 1997

22. Resolution of the State Real Estate Commission Of the State of Nebraska – Respondent Costs for Hearing

IT APPEARING before the State Real Estate Commission of the State of Nebraska that it would be in the best interest of the Commission if a policy is adopted outlining the specific costs the party or parties against whom a final decision is rendered shall pay pursuant to Title 305, N.A.C., Chapter 4-007.05, and Neb. Rev. Stat. § 84-914(1) (Reissue 1994).

BE IT HEREIN RESOLVED that the costs the party or parties against whom a final decision is rendered shall pay, pursuant to Title 305, N.A.C., Chapter 4-007.05 and Neb. Rev. Stat. § 84-914(1) (Reissue 1994), any and all charges for an appearance by the court reporter and any and all witness fees, including mileage and the cost of serving any witness.

BE IT FURTHER RESOLVED that the Commission shall determine the time frame for payment of the costs on a case-by-case basis, however, in all cases the failure to pay the costs pursuant to the payment schedule shall result in the automatic suspension of the licensee's real estate license, if the licensee was the party against whom a final decision is rendered.

EFFECTIVE JANUARY 1, 1998.

Adopted October 30, 1997

23. Resolution Authorizing Hearing Officers

BE IT RESOLVED THAT, in accordance with Neb. Rev. Stat. § 84-913.01 and Title 305 NAC Chapters 4-001.02G and 4-005, the State Real Estate Commission authorizes the appointment of a hearing officer to conduct any prehearing conferences, hearings on non-dispositive motions including discovery issues, and other matters preliminary to an evidentiary hearing, in the following circumstances: a) when any party requests a prehearing conference; b) when a non-dispositive motion is filed, or when any other prehearing matters must be resolved; and, c) when any motion to compel, prevent or limit discovery is filed.

BE IT FURTHER RESOLVED THAT, in the event the Chairperson of the Commission is unavailable to sign the Order Appointing Hearing Officer, any member of the Commission is authorized to sign the Order in accordance with the provisions of this Resolution.

BE IT FURTHER RESOLVED THAT nothing in this Resolution shall prevent the Chairperson from appointing any qualified person as a hearing officer for any reason provided by law.

Adopted January 21, 1998

24. Procedural Guidelines for Brokers: USDA Wire Transfer Program

Since there are delays between broker notification of the process date of payments and the actual wire transfer deposit date in the bank where a broker's trust account is located and, since some banks have indicated they will not notify the broker of the deposit on the day of transfer, the Commission provides the following guidelines to determine date of deposit and general guidance regarding posting and check issuance.

1. Upon the written notification from the Regional Office of the Department of Agriculture, the broker should contact the bank on a regular basis to determine actual deposit date of funds.
2. Whether the broker must initiate this query or the Bank notifies the broker of the actual deposit date, the broker would post, on the actual date of deposit in the bank, the trust funds received to the General Ledger and individual sub-ledgers to accurately reflect the status of the trust account.
3. The Broker would be allowed to issue checks on the trust account based only on actual trust funds available as identified in the bookkeeping system. The broker could not issue checks prior to the actual date of deposit if a negative balance would occur nor could checks be issued, prior to actual deposit, based on the anticipated deposit of the funds.

Adopted March 18, 1998

25. Policy Establishing December Licensing Examinations

Until altered by vote of the Real Estate Commission, the Real Estate Commission orders, under Title 299 NAC 1-005, that real estate salesperson and broker examinations also be administered on the customary days in the month of December except that such examinations shall not be administered from December 24 through December 31.

Adopted April 22, 1998

26. Guidelines for Storage of Trust Account Records on Alternative Media

The Nebraska Real Estate Commission was asked if the records relating to a real estate transaction, which are required to be maintained by real estate brokers under 299 NAC 3-001 for five years following the consummation of the transaction, could be stored in a medium other than the original paper format or, in the case of computerized bookkeeping systems, on computer.

After due consideration, the Nebraska Real Estate Commission establishes the following guidelines for storage of the trust account and transaction records on alternative media, e.g. compact disk, optical disk, microfilm, etc.:

1. The records in their original medium or media (paper and/or computer) must be maintained in the original medium until such time that the Real Estate Commission has conducted a trust account examination of the records and all trust account examination issues have been resolved.
2. The examined records may then be transferred to a non-rewritable alternative storage medium for the remaining required record retention time.
3. The non-rewritable alternative storage medium must allow access to the records in a manner which makes the records readily available on demand for the remaining record retention period required in 299 NAC 3-001.
4. Once the original records are transferred to the appropriate alternative medium, the Real Estate Commission will no longer require the retention of the records in the original medium or media.

Adopted April 22, 1998

27. Policy on Follow-Up Trust Account Examinations

When a Trust Account Examiner issues the designated broker a deficiency for failing to maintain a proper bookkeeping system, for situations such as failing to maintain a General Ledger and/or individual Sub-ledgers, the Deputy Director for Enforcement will automatically request a Trust Account Examiner to perform a follow-up trust account examination. Dependent upon the amount of activity within the designated broker's trust account, the follow-up trust account examination will normally be conducted within 15 days following receipt of the next monthly bank statement by the designated broker. The designated broker may, on their own initiative, supply the Commission with photocopies of the correctly-posted General Ledger and/or individual Sub-ledgers prior to the follow-up trust account examination. The Deputy Director for Enforcement will determine whether doing so eliminates the necessity for an immediate follow-up trust account examination.

Adopted March 24, 1999

28. Policy on Attorney Exemption to the Nebraska Real Estate License Act and its Effect On the Agency Relationships Statutes

The Nebraska Real Estate License Act provides that the requirements of the Act and the requirement to obtain a license shall not apply to a licensed attorney when the attorney is

performing his or her duties as such attorney at law. The Commission interprets this exemption to mean that the attorney is exempt from the Act if the attorney is acting as legal counsel for a party

to a transaction. If the attorney is acting as a broker or salesperson in a transaction, the attorney is not exempt from the Act. For example, actively listing or selling real property would cause the attorney's activities to be governed by the Act. An attorney acting as legal counsel to a buyer, tenant, seller, or landlord in a transaction would not be considered a designated broker under the Agency Relationships Statutes and, therefore, disclosure must be made to clients of an attorney, unless said attorney is acting as a designated broker.

Adopted July 25, 2000

29. Deadline for Agenda Items Policy

No new Agenda Items for a scheduled meeting of the Nebraska Real Estate Commission shall be added to the Agenda within three business days prior to the opening of the meeting; provided, emergency items may be added at any time by a vote of the Commission, and staff may add Stipulation and Consent Orders and Information Matters to the Agenda up to twenty-four hours prior to the opening of the meeting, in accordance with the Nebraska Public Meetings statutes.

Adopted May 22-23, 2001

30. Guidelines for Continuing Education Activities

Continuing education providers must follow the procedures for approval of providers, activities, and instructors outlined in the Nebraska Real Estate License Act and Title 299 NAC Chapter 7. The following subject matter is generally considered acceptable for continuing education activities, but providers are encouraged to create new activities to meet the changing demands of the real estate market. Addressing listed subject matter in an activity does not guarantee approval by the Nebraska Real Estate Commission.

Approvable subject matter includes, but is not limited to, the following:

1. Agency
2. Auctions of real estate
3. Broker price opinions and comparative market analyses
4. Commercial real estate sales and leasing
5. Compliance with federal and state real estate laws
6. Computers - utilization to serve the consumer
7. Condominiums and cooperatives
8. Contracts used in real estate transactions
9. Counseling the real estate client
10. Diversity, i.e. respecting cultural differences
11. Environmental concerns, i.e. radon, lead-based paint, etc.
12. Ethical practices in real estate
13. Fair Housing/ADA
14. Farm and ranch real estate sales and leasing
15. Housing and Urban Development programs
16. Land use planning and zoning, i.e. site assessments, feasibility studies, etc.
17. Landlord/Tenant Act
18. Legal issues in real estate e-commerce
19. Legislative changes that affect real estate (not pending legislation)
20. Property inspections, i.e. wood-destroying insects, furnace/AC, whole house, etc.

21. Property management
22. Real estate accounting and taxation, including exchanges of real property
23. Real estate development, construction, and energy conservation methods
24. Real estate finance
25. Real estate investment
26. Real estate mathematics
27. Real estate relocation
28. Real estate securities and syndications
29. Risk reduction
30. Title Issues
31. Trust accounts
32. Water and waste management

Adopted November 15, 2001

31. Use of Unlicensed Persons by Licensees

Licensees, both brokers and salespersons, often use unlicensed persons, either employed or contracted, to perform various tasks related to a real estate transaction which do not require a license. Such persons, for example, are used as personal assistants, clerical support staff, closing secretaries, etc.

The Nebraska Real Estate License Act prohibits unlicensed persons from negotiating, listing, or selling real property. It is, therefore, important for employing brokers and other licensees using such persons to carefully restrict the activities of such persons so that allegations of wrongdoing under the License Act or Rules can be avoided.

Licensees should not share commissions with unlicensed persons acting as assistants, clerical staff, closing secretaries, etc. The temptation for such unlicensed persons, in such situations, to go beyond what they can do and negotiate or take part in other prohibited activities is greatly increased when their compensation is based on the successful completion of the sale.

In order to provide guidance to licensees with regard to which activities related to a real estate transaction unlicensed persons can and cannot perform, the Commission establishes the following Policy:

Activities which can be performed by unlicensed persons who, for example, act as personal assistants, clerical support staff, closing secretaries, etc., include, but are not necessarily limited to:

1. Answer the phone and forward calls to licensees.
2. Transmit listings and changes to a multiple listing service.
3. Follow up on loan commitments after a contract has been negotiated.
4. Assemble documents for closings.
5. Secure documents, i.e. public information, from courthouse, sewer district, water district, etc.
6. Have keys made for company listings.
7. Write and prepare ads, flyers and promotional information and place such advertising.
8. Record and deposit earnest money and other trust funds.
9. Type contract forms under direction of licensee.

10. Monitor licenses and personnel file
11. Compute commission checks.
12. Place and remove signs on property.
13. Order items of routine repair as directed by licensee and/or supervising broker.
14. Act as courier service to deliver documents, pick up keys, etc.
15. Schedule appointments.
16. Measure property, if measurements are verified by the licensee.
17. Hand out objective written information on a listing, other than at functions such as open houses, kiosks, and home show booths or fairs.

Activities which cannot be performed by unlicensed persons who, for example, act as personal assistants, clerical support staff, closing secretaries, etc., include, but are not necessarily limited to:

1. Host open houses, kiosks, home show booths or fairs, or hand out materials at such functions.
2. Show property.
3. Answer any questions on listings, title, financing, closing, etc.
4. Discuss or explain a contract, agreement, listing, or other real estate document with anyone outside the firm.
5. Be paid on the basis of real estate activity, such as a percentage of commission, or any amount based on listings, sales, etc.
6. Negotiate or agree to any commission, commission split or referral fee on behalf of a licensee.

Employing brokers, whether they are employing unlicensed persons or whether licensees under their supervision are using unlicensed persons as personal assistants or the like, are responsible for assuring that such unlicensed persons are not involved in activities which require a license and/or activities which violate this policy. Brokers should establish guidelines for the use of unlicensed persons and procedures for monitoring their activities. It is the responsibility of the employing broker to assure that unlicensed persons, either directly employed or contracted, or employed or contracted by licensees under his or her supervision, are not acting improperly.

This policy does not include unlicensed persons who are acting under the exemption related to management of property as set forth in 81-885.04(4).

Adopted February 12, 1992
Amended November 15, 2001

32. Guidelines for Original Applicants with Criminal Convictions

If an individual who files an application for a Nebraska Real Estate license, or a potential applicant who is seeking to file an application, has been convicted of forgery, embezzlement, obtaining money under false pretenses, larceny, extortion, conspiracy to defraud, or any other similar offense or offenses or has been convicted of a felony or a crime involving moral turpitude, then he or she must appear before the Commission before being allowed to sit for the examination. If an applicant has a pattern of any other criminal conviction(s), other than minor traffic violation(s), Commission staff may exercise the discretion to require the applicant to appear before the Commission before the applicant may sit for the examination.

An applicant who has filed an application and is required to appear before the Commission may

choose either a formal or an informal appearance before the Commission. Informal appearances will require that the applicant's self-reported criminal history be made available to the Commission.

Individuals who have not yet formally applied for license, but are simply potential applicants, may be granted a request for an informal appearance before the Commission only if recommended by Commission staff. Such individuals shall be required to self-report any criminal history and complete a criminal background check through the Nebraska State Patrol in the same manner as a license applicant, and such material must be available to the Commission at the time of the informal appearance.

Commission staff may also submit, or request the applicant or potential applicant to submit, such other materials as may be relevant at the informal special appearance.

If an application for license, or an issuance of license, is denied by staff or denied by the Commission following an informal appearance, then in either case the applicant is entitled to request a formal hearing as allowed by statute and regulation. Any individual approved by the Commission to sit for an examination after an appearance does not have to reappear before the Commission regarding the same issue(s) when applying for subsequent licensure, unless specifically required to do so by the Commission as a part of its original decision. Each application shall be reviewed on a case-by-case basis; however, the Commission adopts the following as guidelines for denying a license:

1. Unless extraordinary circumstances are present in a specific situation, the application to sit for the examination or issuance of a license will be denied if the applicant has been convicted of a felony violent crime(s) felony financial crime(s), or crimes involving moral turpitude.
2. Unless extraordinary circumstances are present in a specific situation, the application to sit for examination or issuance of a license will be denied if the applicant has not completed his or her sentence, his or her probation, or made restitution, if any was ordered. The Commission recommends the applicant authorize his or her probation or parole officer(s) to discuss applicant's performance during the period of supervision with Commission staff.
3. Other information the Commission considers relevant and will consider in granting approval to sit for the examination or issuance of license includes, but may not be limited to, the following:
 - a. The applicant's truthfulness, demeanor, acceptance of responsibility, evidence of rehabilitation, and age at the time of the crime.
 - b. The nature of the crime(s), the relationship between the crime(s) and licensed activity, and the effect on the applicant's worthiness to hold a real estate license.
 - c. Any aggravating or extenuating circumstances of the crime(s).

- d. The time since the conviction and/or end of the sentence.
- e. Whether the applicant successfully completed the terms of the sentence, including the timeliness of making restitution.
- f. Whether the applicant's civil rights have been restored.

4. If the approval to sit for the examination and/or issuance of a license is granted, the Commission may require the applicant to notify any anticipated employing broker of the criminal conviction(s) and the circumstances of the conviction(s) and said broker shall confirm said notification in writing to the Commission prior to the license being placed with said broker.

5. If the approval to sit for the examination and/or issuance of a license is granted, the Commission may require the applicant to immediately notify Commission staff of any criminal charge, except those charges where there is no possible sentence of jail time, for a period of time. The time period, if any, is to be determined on a case-by case basis.

Adopted January 24, 2002
Amended December 10, 2003
Amended September 27, 2012
Amended October 15, 2015

33. Guideline for Original Applicants with History of Disciplinary Action in Another Regulatory Jurisdiction

If an applicant for an examination or issuance of a Nebraska Real Estate license has had disciplinary action, other than a censure, taken against his or her license, within the last five years, in another regulatory jurisdiction, said applicant shall appear before the Commission prior to the application being granted. If, however, the applicant has had disciplinary action, but is now in good standing with the regulatory jurisdiction, said applicant need not appear before the Commission. If the applicant is to appear before the Commission, the applicant is allowed to choose whether the appearance is formal or informal. Informal appearances may be made by or through a written submission of materials or other methods as determined by Commission staff. If approval to sit for the examination or for issuance of a license is denied by staff or following an informal special appearance, applicants are entitled, by law, to file a Petition for Review. An individual who the Commission has approved to sit for the examination after an appearance before it does not have to reappear before the Commission regarding the same issue(s) when applying for subsequent licensure, unless specifically required to do so by the Commission as a part of its original decision. Each application shall be reviewed on a case-by-case basis, however, the Commission adopts the following as guidelines for denying the license:

1. Disciplinary action by another regulatory jurisdiction may cause denial to sit for the examination or issuance of a Nebraska license.
2. Unless extraordinary circumstances are present in a specific situation, approval to sit for the examination or issuance of a Nebraska license will be denied if a disciplinary action is pending or the penalty is not yet completed in another regulatory jurisdiction.

Adopted January 24, 2002
Amended December 10, 2003

34. Documentation Required of Foreign High School Graduates to Determine High School Equivalency

Applicants with foreign high school education must meet the same academic requirements as applicants who have received their high school education in the United States. To be used as a basis for issuance of a real estate salesperson or broker license, documentation must be submitted indicating that the foreign high school degree is at least the equivalent of a high school degree granted in the United States.

The high school degree must be determined equivalent by one of the following documents:

1) A transcript from a United States college or university that indicates that the individual's high school education was sufficient to allow the individual to be admitted into a post-secondary education program.

OR

2) Document-by-Document Evaluation Report verifying the equivalence of the foreign high school graduate's education to that of an American high school education. The Document Evaluation must be conducted through an education credential evaluation service that holds membership in the National Association of Credential Evaluation Services (NACES).

Adopted November 18, 2004

35. New Commissioner Orientation

Before participating in or voting at Nebraska Real Estate Commission Meetings newly appointed Commissioners, regardless of experience or training, shall participate in and complete a Commissioner Orientation Session.

The Commissioner Orientation Session shall include but not be limited to:

1. Nebraska Real Estate License Law
2. Nebraska Real Estate Commission Statutory Authority and Jurisdiction
3. Meeting Conduct and Procedures
4. Complaint Procedures
6. Nebraska Open Meetings Act
7. Accountability and Disclosure Act and Conflicts of Interest
8. Association of Real Estate License Law Officials (ARELLO)
9. Expense Reimbursement Policies and Procedures
10. Education and Licensing
11. Presentation of a sample meeting agenda and items covered

This Policy shall not apply to previously appointed Commissioners as of the date of initial adoption.

Adopted October 15, 2009

36. Guidelines for Review of Lawsuit Information

Nebraska Real Estate Commission Salesperson and Broker initial license and renewal

applications require the reporting of the licensees' involvement as a party to any lawsuit. In reviewing lawsuit information the Commission shall use the following criteria for evaluating the information provided:

1. Single or isolated instances of bankruptcies or debt collection actions shall not be considered grounds for possible disciplinary action against a licensee.
2. Lawsuits unrelated to real estate matters, the financial dealings of the licensee, or the general character honesty and integrity of the licensee for honesty and fair dealings shall not be considered grounds for possible disciplinary action against a licensee.
3. A repeated or consistent pattern of bankruptcies or debt collection actions may be considered grounds for further investigation and possible disciplinary action against a licensee.
4. Lawsuits relating to real estate matters, the financial dealings of the licensee, or the general character and integrity of the licensee for honesty and fair dealings may be considered grounds for further investigation and possible disciplinary action against a licensee.
5. Lawsuits which may be related to the endangerment of individual welfare or public safety by a licensee may be considered grounds for further investigation and possible disciplinary action against a licensee.

Adopted June 24, 2010

37. Guidelines for Compensation of Salespersons and Associate Brokers Doing Business as a Professional Corporation or a Professional LLC

Neb. Rev. Stat. 81-885.24(18) specifically provides that it is an unfair trade practice subject to disciplinary action to provide any form of compensation to any unlicensed person performing the services of a broker, associate broker or salesperson.

For purposes of interpretation of 81-885.24(18) it shall not be an unfair trade practice for a broker to provide compensation to:

1. An individual holding a Nebraska broker's or salesperson license when all services of a broker, associate broker or salesperson for which the compensation is being rendered were provided.
2. A professional corporation in good standing with the Secretary of State's office, provided that the shareholders, officers (with the exception of the secretary and the assistant secretary) directors, and any employees or agents of the professional corporation that perform the services of a broker, associate broker, or salesperson hold an active broker or salesperson's license from the Nebraska Real Estate Commission at the time all services for which the compensation is being rendered were provided.
3. A professional limited liability company in good standing with the Secretary of State's office, provided that all members, managers and any employees or agents of the limited liability company that perform the services of a broker, associate broker, or salesperson hold an active

broker or salesperson's license from the Nebraska Real Estate Commission at the time all services for which the compensation is being rendered were provided.

Adopted August 19, 2010

38. First Substantial Contact

Chapter 76. Real Property

Article 24, Agency Relationships

SS 76-2421 (1) contains two phrases (in ***bold italics*** below) that the Nebraska Real Estate Commission believes need some clarification to guide the conduct of real estate licensees in their practice with clients and customers, to assist designated brokers in their supervision of their affiliated licensees, and to help real estate trainers formulate and implement practical, meaningful agency disclosure training.

Section 76-2421 (1) requires that "At the ***earliest practicable opportunity*** during or following ***first substantial contact*** [emphasis added] with a seller, landlord, buyer, or tenant . . . the licensee who is offering brokerage services to that person or who is providing brokerage services for that property shall" provide that person, whether a client or customer, with a written copy of the current brokerage disclosure pamphlet and disclose in writing to that person the types of brokerage services offered or which party the licensee is representing.

Although, as has been said in Commission Comment before (see Winter 2000 issue), "earliest practicable opportunity" is somewhat subjective and "depends on the circumstances of each situation," the Commission interprets "***earliest practicable opportunity***" to mean that the required brokerage disclosure pamphlet should be presented and signed and the disclosure of the types of brokerage services offered or of which party the licensee is representing should be made BEFORE the licensee provides "***specific assistance***" to that client or customer. IF the written disclosure is not made before the specific assistance is provided, it must be made immediately thereafter.

Specific assistance means eliciting or accepting compromising information about a potential or actual client's or customer's real estate needs. Compromising information is information that would reduce, impair or erode that party's bargaining power in an arm's length negotiation. Compromising information may include but is not necessarily limited to:

- The person's motivations or motivating factors.
That a buyer or tenant is willing to pay more than the offered purchase price or lease rate.
- That a seller or landlord is willing to accept less than the asking sale price or lease rate.
- That a client or customer will agree to financing terms other than those offered.

Specific assistance shall also mean showing a specific property or properties to a specific buyer by pre-arrangement. Specific assistance MAY be provided at an open house if compromising information is elicited or accepted from the buyer at the open house, but specific assistance to a buyer WILL be deemed to be provided when there is a pre-arranged showing of a particular property or properties to that buyer.

Specific assistance may be offered anywhere and not necessarily at a formal showing or

appointment, so it is important that the required disclosures be made BEFORE any compromising information is elicited or accepted, even if the setting is an open house or a public place. It is not the venue, but rather the content of the interchange that determines if specific assistance has been provided.

However it is possible to enumerate some things that are not generally considered to be specific assistance within the meaning of this policy interpretation. In the absence of the items listed above, specific assistance will not be considered to include:

- Preliminary conversations about the market, general real estate values and general financing terms;
- Conveying publically available information about the property's or properties' general factual features including price, location, style, amenities, etc.
- Eliciting or accepting general, non-compromising information about a buyer's or tenant's real estate needs or desires, such as the person's general preferences for location, price range, features, etc.

Two useful criteria can be assessed in determining whether specific assistance has been provided:

- The direction information is flowing should be considered. It can generally be held that the licensee eliciting or accepting personal, compromising information **from** the person constitutes specific assistance, but the licensee conveying general information **to** the person about the market, financing or a specific property or properties is not offering specific assistance.
- The nature of the information being conveyed should be considered. Generally, if the information being elicited or accepted is compromising (i.e. information a rational person would not share with the other principal in an arm's length negotiation because that information could reduce, erode or impair that person's bargaining power), then specific assistance is being provided, but if the licensee is eliciting or accepting general information that is not compromising to the person's bargaining power or position, then the licensee is not providing specific assistance.

The point at which the licensee first provides specific assistance will be deemed to be "**first substantial contact**" under this section.

On a related matter, the Commission will deem an electronic copy of the current brokerage disclosure language that has been appropriately checked and completed by the licensee and which has been emailed to the person to whom disclosure is being made to be in compliance with Section 76-2421 (1) (a), provided that the recipient client or customer sends the licensee an email response acknowledging receipt of the disclosure language.

Adopted January 17, 2013

39. Use of Unlicensed Employees of Owners of Real Estate

Section 81-885.02 of the Nebraska Real Estate License Act (the "Act") prohibits unlicensed persons from, among other acts, negotiating or attempting to negotiate the listing or sale of any real estate or engaging in other activities requiring a license as defined by the Act

(81-885.01 (2) & (6) . It is, therefore, important for owners of real estate to carefully restrict the activities of their unlicensed Employees so that allegations of wrongdoing under the License Act or the Rules can be avoided.

The following section of the Act supports the Commission's Policy and Interpretation:

81.885.04 (1) of the Nebraska Real Estate License Act contains an exception from the Act for:

(1) Any person, partnership, limited liability company, or corporation who as owner or lessor shall perform any of the acts described in subdivision (2) of section 81-885.01 with reference to property owned or leased by him, her, or it or to **the regular employees** thereof, **with respect to the property so owned or leased, when such acts are performed in the regular course of or as an incident to the management, sale, or other disposition of such property and the investment therein, except that such regular employees shall not perform any of the acts described in such subdivision in connection with the vocation of selling or leasing any real estate or the improvements thereon.**

The Act provides exemptions for the regular Employees of the owner of real estate in general with respect to property owned by the Employees' employer when such acts are incidental to the sale of the real estate and are performed in the regular course of the sale of the property except that the acts requiring a real estate license shall not be performed in connection with the vocation of selling or leasing any real estate.

The Commission interprets this language to mean that the Employee of the owner of property is exempt from the Act only to the extent that he or she may perform acts incidental to the sale of the real estate and provided that such acts are not a regular, recurring aspect of the Employee's vocation (i.e. daily activities and responsibilities).

For the purpose of this Policy and Interpretation:

- "Employee" shall mean an unlicensed person working in a salaried or hourly job for which income taxes and social security taxes are withheld and paid for by the employer.

Pursuant to this Policy and Interpretation, activities which can be performed by unlicensed Employees of Owners include, but are not necessarily limited to:

- Providing access for members of the public to the owner's property.
- Handing out written information on the property and other of the owner's properties at the property itself, as well as at home shows, fairs, etc.
- Securing the contact information of the visitors to the property.
- Scheduling appointments.
- Assisting with buyer selections of property options such as materials, fixtures, hard and soft surfaces, etc.
- Placing and removing signs on the property.
- Other activities consistent with activities permitted to unlicensed persons under the Commission's policy on the "Use of Unlicensed Persons by Licensees" as amended November 15, 2001.

Pursuant to this Policy and Interpretation, activities which can be performed by unlicensed Employees of owners of property on an occasional basis and not as part of the Employee's regular, recurring duties or as a vocation include:

- Hosting model homes or open houses or showing the property.
- Performing any other activities requiring a license which are within the Employee's knowledge and competence except as provided in the excluded activities below

Activities which cannot be performed by the unlicensed Employees of owners of property include but are not necessarily limited to:

- Negotiating or writing any purchase agreement, purchase agreement addendum, estimated closing statement or other document which is or becomes part of the transaction. This does not include assisting with selections of property options (see above) or calculating the cost of said selections or writing change orders for same.
- Negotiating or agreeing to any commission, commission split or referral fee on behalf of the owner.

In compliance with 81-885.02, the owner's Employee can receive no separate compensation for activities performed consistent with this NREC Policy and Interpretation other than his or her normal hourly wage or salary compensation as an Employee of the Owner. There can be no additional compensation in the form of a percentage of commission, bonus (either percentage or flat), referral fee or other compensation or thing of value that is calculated on the sale price of the property or is contingent upon the sale of the property as a result of Employee's activities permitted under this Policy and Interpretation.

It is the responsibility of the Owner to assure that his/her/its unlicensed Employees are under his or her supervision, and are not acting improperly. If the Owner's business entails the regular sale or lease of owner's real estate, Owners should establish guidelines for the use of their unlicensed Employees and procedures for monitoring their activities.

This policy does not include unlicensed persons who are acting under the exemption related to management of property as set out in 81-885.04(4).

Adopted September 26, 2014

40. Nebraska Real Estate Commission Policy and Interpretation, Coming Soon Listings

The Nebraska Real Estate Commission is receiving an increasing number of calls and inquiries regarding the rules for advertising a property represented as "coming soon," where there is a listing for the property but it is not yet being publicly marketed or shown.

There are no specific statutes or regulations on the use of "coming soon" advertisements, but the general rules of advertising apply:

"Advertising shall include all forms of identification, representation, promotion, and solicitation disseminated in any manner and by any means of communication to the public for any purpose related to licensed real estate activity. All advertising shall be under the direct supervision of the broker, and in the name the broker is conducting business as recorded with the Commission." (*NAC Title 299, Ch. 2,*

Sec. 003)

Also applicable are the unfair trade practices statutes (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.”

and

“(11) Placing a sign on any property offering it for sale or rent without the written consent of the owner or his or her authorized agent;”

“(12) Offering real estate for sale or lease without the knowledge or consent of the owner or his or her authorized agent or on terms other than those authorized by his or her authorized Agent;”

The Nebraska Real Estate Commission interprets these statutes and regulations to allow “coming soon” advertising if the following criteria are met:

1. The advertising broker has an active listing agreement in place (so it is not potentially false or misleading advertising.)
2. The advertising is done in the name under which the broker does business and the broker’s supervision.
3. The advertising is done with the knowledge and written consent of the property owner or his or her authorized agent.
4. The listing is in fact “coming soon” and not currently being shown or marketed to a limited group only.

While permissible, the use of “coming soon” advertising has potential to give rise to violations of the act.

The proper use of “coming soon” advertising would be a situation where a listing agreement has been entered into but the property or owner is not yet ready for showings, perhaps due to needed clean up or repairs, or personal matters or events that keep the owner from wanting to show the property immediately.

The improper use would be using the “coming soon” advertising to limit the showing of the property to preferred buyers, or the exclusion of certain buyers, this could lead to various violations of the license act, which would include but not be limited to:

1. A violation of Neb. Rev. Stat. §81-884.24(2) “intentionally using advertising which is misleading or inaccurate” if the property is represented as “coming soon” and is in fact being marketed to a limited pool of buyers.
2. A violation of Neb. Rev. Stat. §76-2417(c) “promote the interests of the client with the utmost good faith” if the coming soon listing is used to secure a transaction which places the interest of the licensee over that of the client.

3. A violation of §76-2417(c)(i) “seeking a price which is acceptable to the client” if the licensee only offers or exposes the property to a limited number of potential buyers through a coming soon listing.
4. A violation of the Federal Fair Housing Act if the coming soon listing is used to limit or exclude certain people or classes of people from the marketing of the property based on race, color, national origin, religion, sex, familial status or handicap.

Adopted September 17, 2015