



COMMISSION COMMENT

Winter

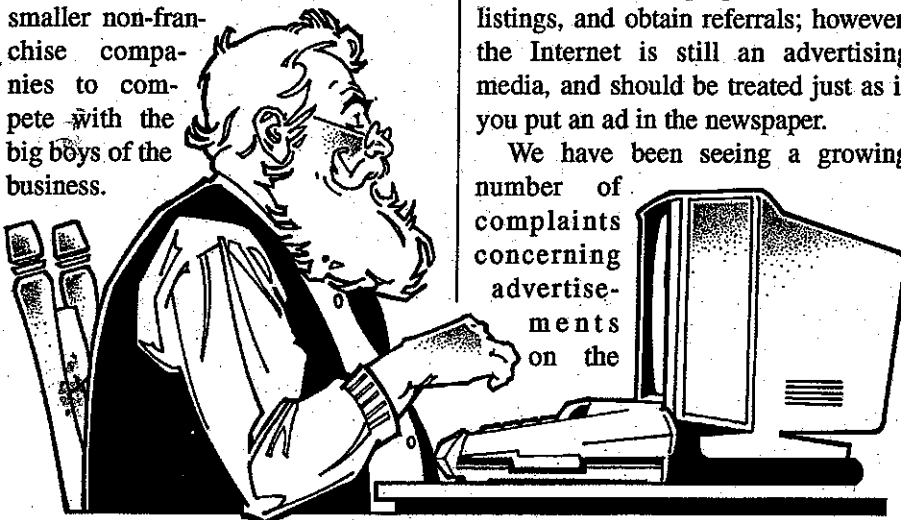
1996

Watch Out For Sharks When Surfing The Net

(Editor's note: The following article appeared in the Real Estate published by the Idaho Real Estate Commission. It is reprinted, here, with permission because its subject matter is relevant to Nebraska where it is also a violation to pay referral fees to any unlicensed entity.)

Broker Stacy was having a great year. Business was booming and she could credit it all to the number of referrals she was receiving through the Internet. With an Air Force base just outside of town, she had been able to hook up with a military relocation company that was really sending her referral business.

While she was paying 25% referral fees to the company it was well worthwhile for the high volume of good qualified leads she was getting. With the larger market share, she had even been able to induce a couple of experienced agents to come over to her office from some of the big franchise companies. The Internet was making for a level playing field for the smaller non-franchise companies to compete with the big boys of the business.



Broker Stacy was surprised when a formal complaint was filed against her for fee splitting with an unlicensed person, and she received a civil fine and suspension of her license. How was she supposed to know that the relocation company was unlicensed, and that she couldn't pay them a referral fee.

With the coming age of the computer Internet system, more and more companies are taking advantage of the historically strong real estate referral systems to demand and be paid referral fees through the Internet program. The problem is simple. They are not licensed and therefore are not allowed to be paid referral fees.

Bottom line is, if you are going to pay a referral fee to someone, and this would include unlicensed relocation companies, insurance companies, and military associated relocation and moving companies, or lead groups, you need to make sure that the person or company you're paying the fee to is licensed.

The Internet allows for great opportunities to market properties, to solicit listings, and obtain referrals; however, the Internet is still an advertising media, and should be treated just as if you put an ad in the newspaper.

We have been seeing a growing number of complaints concerning advertisements on the

Internet. These complaints are similar to others we have received, such as, not disclosing you are the owner/agent on unlisted property; not showing the listing broker's company name or business phone number, and other types of information that is misleading to the public.

Know the rules and laws; play by the rules and laws; and demand that those you deal with do the same. And you won't get caught with your license down.

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Tentative Commission Meeting Schedule

Dec. 16-17, 1996 Lincoln
January 22-23, 1997 TBA

COMMISSION COMMENT

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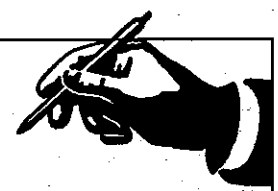
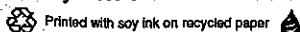
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From the

DIRECTOR'S DESK

Agency And New Construction

While attending a sales meeting to answer questions on license law and other issues, a licensee asked a question which I thought might occur often enough to merit setting it and its response out in the "Director's Desk."

A licensee representing a builder as a limited seller agent is at the model home or an open house for a "spec" home when a couple arrives and looks around. The couple leaves and the next day or the next week the licensee recognizes the couple as they walk through the same model or home again. Neither time does the couple enter into long conversations with the licensee. They ask the price, and they ask for copies of the specifications and any brochures or other information available.

Does the licensee need to complete and have the couple sign a "Brokerage Relationships" disclosure pamphlet?

Answer: No, a substantial contact has not occurred.

Assuming the same as indicated above but in addition the couple go directly to the builder, who has an exclusive right to sell listing with the licensee's broker for the builder's properties. The builder and the couple enter into direct negotiations to build a home similar or identical to the model or "spec" home. The licensee is not involved in these discussions. A contract to build is entered into between the builder and the couple. The home is built and closing occurs.

What responsibilities for estimated closing costs disclosure to the couple (the buyers) does the licensee have?

Answer: None, the licensee was not involved in any of the negotiations of the contract.

What if the builder was a licensee? Does the builder have to make the agency disclosure or estimated closing costs disclosure?

If the builder was acting in the transaction with the couple only as the builder, the builder would need to disclose in writing prior to the couple becoming obligated to purchase the fact that he/she was a licensee/builder (299 NAC 5-003.04). The builder would not need to deliver the "Brokerage Relationship" pamphlet or complete the estimated closing costs disclosure. However, if the builder was acting as both a licensee and principal the builder would need to disclose that fact (299 NAC 5-003.08) and make any and all other disclosures required of a licensee in a real estate transaction, including agency and estimated closing costs.

Lead-Based Paint Reminder

Just a reminder to Licensees that the Residential Lead-Based Paint Hazard Reduction Act of 1992 is now in effect. Sellers and Landlords of more than four residential dwellings, have been required to disclose lead-based paint and hazards since September 6, 1996, and for Sellers and Landlords of one to four residential dwellings the required date for disclosure was December 6, 1996.

This disclosure is not required for housing built after 1977; zero bedroom units, such as efficiencies; leases for less than 100 days;

housing exclusively for the elderly (unless there are children living there); housing for the handicapped (unless there are children living there); rental housing that has been inspected by a certified inspector and found to be free of lead-based paint; and/or houses being sold because of foreclosure.

Please refer to the Summer 1996 edition of "Commission Comment" for further details.

Estimated Closing Costs for An Unrepresented Buyer or Seller

Chapter 5 of Title 299 of the Commission's Rules and Regulations, Sections 003.10 and 003.11 establish that a licensee must identify to a seller or prospective purchaser, respectively, the categories of cost the respective party will be expected to pay at closing. The Sections also require a written estimate of the costs the party will be expected to pay at closing, to the extent the necessary cost information is reasonably available. Each Section also has specific exemptions which will not be set out here.

Though not widespread, there are some licensees who are confused regarding whether or not an unrepresented customer in a transaction must be given the required cost categories disclosure and estimate. For example, "Since I (the licensee) represent the buyer not the For Sale By Owner seller, do I need to give the disclosure and estimate to the seller?"

The two sections do not refer to making the disclosure and estimate only to a client (the party whom the licensee represents). The two sections require "...the licensee to identify to the seller/prospective purchaser..."

Therefore, when licensees are representing either the seller or the buyer and the other party is unrepresented the cost categories disclosure and estimate must be made by the licensee to both parties at the applicable times and retained in the transaction file.

Clarification

In the last issue (Fall 1996) of "Commission Comment" we gave examples of when consumers were "clients" or "customers".

Since that issue, a licensee wrote a letter expressing the following:

"Dear Les:

In your comments on Client or customer, I read what I thought was an error. Please correct me if I am wrong. Under you[r] (sic) examples given on page 3, you state A licensee enters into a management agreement with an owner or landlord as the limited agent of the owner/landlord-the owner/landlord is the client.'

I thought, by definition, a management agreement was a common law agency agreement and did not fall under the limited agent status of the Agency Relationships Statute.

I would appreciate hearing from you.

Sincerely,"

The original scenario was given to clarify customer/client status. Whether the licensee in the scenario is a "limited agent" or a "common law agent", the "owner/landlord" is a "client".

In answer to the question in the letter:

Question: When is a licensee acting in a management capacity a "limited agent" or a "common law agent"?

Answer: If the licensee performs only those duties and obligations set out in the Agency Relationships statutes, then the licensee is a "limited agent".

If the licensee performs duties and obligations which exceed those set out in the statute, then the licensee is a "common law agent", e.g. the licensee is authorized by the owner/landlord to enter into lease agreements with a tenant on the owner/landlord's behalf.

I would like to thank the licensee who sent in this question for allowing this clarification to be made. If this licensee had the question, I am sure that there were others with the same question and that is why we are sharing it in this newsletter.

I urge each of you to contact the Commission Office, either by mail or telephone, anytime you have a question or need a clarification. Individuals who are quality conscious enough to seek out answers and clarification are to be respected. I would also encourage you to consider making your inquiries directly, as this licensee did, rather than anonymously. By contacting the Commission directly this licensee received an immediate and specific

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response from us while those who inquire anonymously cannot be so served and have to wait for a general response, or if a subject is too specific or too individual, a response might not be possible at all.

PROHIBITION OF OFFERING INDUCEMENTS REPEALED

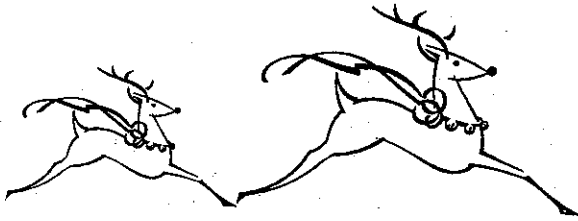
Effective October 26, 1996, 299 N.A.C. Section 2-007 was repealed. This action eliminated the prohibition of offering inducements, of more than a minimal value, to the public for the purpose of securing prospective purchasers or tenants, or to owners or their agents(s) for the purpose of securing listings or to prospective purchasers or tenants for the purpose of securing offers.

Licensees are advised that repealing this Regulation does not change the prohibition against paying referral fees to unlicensed persons.

Licensees are further advised that any inducements they offer should be approved by their Broker. Any failure by a licensee or his/her Broker to honor a commitment could warrant action by the Commission.

LICENSE RECIPROCITY WITH ALABAMA

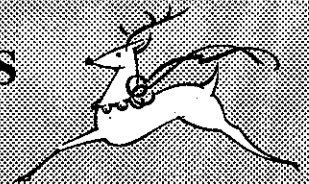
Effective November 13, 1996 the Nebraska Real Estate Commission entered into a Reciprocal Agreement with Alabama that provided for full licensure recognition. Should you have any questions about this agreement with Alabama contact the Commission office.



A handwritten signature in cursive script that reads "Les Tyrrell".

Les Tyrrell, Director Nebraska Real Estate Commission

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, lets 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.

Greetings,

As Chairperson of the Nebraska Real Estate Commission, I want to take this opportunity to convey "Season's Greetings" to my friends and all the licensees of the Nebraska Real Estate Commission.

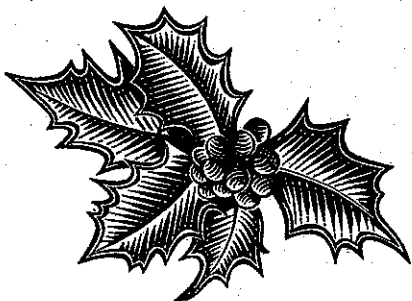
This time of year it is always fun to look back in retrospect on all that has occurred. When 1996 is measured against some of the big changes that occurred with agency and license law in past years, one may want to assume that means 1996 was not a busy one for members of the Nebraska Real Estate Commission. Although not addressing law changes that affect how you as a licensee do business, the Commission and staff have continued to strive towards the goal of being responsive to your needs while protecting the public that it is our charge to serve.

The Commission, like all of you, likes to correct a problem when what is going on does not make sense. With this in mind during the last year the Commission finally persuaded the Legislature to quit transferring 15% of all our Commission revenues to the General Fund and to keep such money in the hands of the Commission so it can be used for the betterment of you, the licensee. This year also saw the Commission remove a rule previously adopted that prohibited inducements when securing listings as well as dropping by half the fee that is charged when a licensee transfers his/her license. In 1996, education continued to be a paramount objective for the Commission as staff held many information sessions across the state and we attempted to put even more useful information into the "Commission Comment."

As we look into the future, I think those of us on the Commission must continue to learn more about how the information revolution will impact the industry and probably more importantly how we as the licensing entity must adapt to new ways of doing business. We can learn much from our counterparts in other States through our national licensing association but we must always keep the good working relationship between the Industry and the Commission. I continue to be surprised by the adversarial nature many Commissions have with the licensees in their state. I like the way we work together for the betterment of the industry and the public here in Nebraska.

On behalf of the Nebraska Real Estate Commission and staff, I would like to wish everyone "Happy Holidays" and hope that the New Year finds you in good health.

With Appreciation and good wishes,



Scott Moore
Secretary of State - Chairperson
Nebraska Real Estate Commission



Let's Talk Trust Accounts

This column of the "Commission Comment" provides educational information which pertains to the License Act and Rules and Regulations and the Trust Account Manual. All licensees are encouraged to discuss this information at office meetings and share this information with the appropriate non-licensed personnel within the office so that any questions concerning policy or procedure can be eliminated prior to a visit by the Trust Account Examiner. If there are questions or concerns, please contact Terry Mayrose at the Commission office. (402) 471-2004.

Embezzlement

The following article was written by Ted Gayle, former Director of Investigations of the North Carolina Real Estate Commission and was originally reprinted in the Winter 1992-1993 edition of the "Commission Comment". It is reprinted, again, in this issue because it contains solid information that continues to be helpful and because embezzlement continues to occur in some real estate offices. It is our hope that it will assist you in avoiding a costly and damaging situation. Following this reprint, there will be some additional comment from Nebraska's Trust Account Examiners.

Protect Yourself From Employee Theft

A few months ago, a young broker whom we will call Jim came into my office with his attorney. Jim came to report that his bookkeeper (Who we'll refer to as Jane) had embezzled between ten and fifty thousand dollars from his trust account and other company accounts. The story of Jim and

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Jane is true. Only their names have been changed to protect their anonymity. Unfortunately, this story repeats itself far too often in the real estate business.

It seems that Jim first became registered in 1975. For ten years he sold real estate for other firms but then decided he could better achieve his career goals by going into business for himself. His business consisted primarily of sales but since he sold rental investment properties, investors often asked him to manage their properties. He also managed his own investment rental property.

Jim's property management business grew to some eighty units, including his own properties and the properties of fifteen other investors. Though his property management division was small by most standards, it was large enough to be too time-consuming to enable him to manage it and do all the other things necessary to keep his young company going. In addition, he found that being in business for himself created new demands on his time: managing an office, supervising employees, understanding profit and loss statements and trust accounting.

Jim decided that the time had come to hire someone to receive rents, post and balance the books, reconcile bank statements, send out owner's statements, prepare 1099's and help him with the thousand and one other chores associated with property management. The first person he hired lasted about six months. In fact, Jim was ready to abandon the property management business altogether until he met Jane.

Jane had worked for several real estate management companies. Still, for the first six months of her employment, Jim worked closely with Jane. He was impressed with her knowledge and her ability. But after awhile, Jane seemed to resent Jim's looking over her shoulder.

Reflecting on his experiences with previous bookkeepers, he wondered if they might have been driven to resign

by his close supervision. With Jane, He felt for the first time that his property management operations were in good hands, and he decided to give her free reign. For nearly two years, his property management division appeared to be running smoothly. Then suddenly, trust account checks began to bounce, owners complained that they were not getting their rent checks, tenants complained that they couldn't get their security deposits refunded and the tenant security deposit trust account balance fell below \$500.

When Jim confronted Jane, she admitted that she had been taking cash rents and security deposits during the entire term of her employment. Jim contacted his attorney, then hired a public accounting firm to help him determine the actual extent of the embezzlement. They found that Jane's entries in the computer accurately reflected the collection and distribution of money. Unfortunately, the bank statement did not cast the same reflection. The firm estimated that some thirty thousand dollars had been embezzled.

SUGGESTIONS: What are some management techniques that Jim could have implemented that might have prevented this embezzlement?

He should have calculated the dollar value of tenant security deposits held, then examined his tenant security deposit trust account bank statements each month to determine if the reconciled bank statements were in line with his calculations.

He should have calculated the dollar amount of rent that the eighty properties would generate each month. He should have been examining his trust account bank statements each month to determine if the deposits matched his calculations.

He should have had Jane prepare monthly trial balances for each account comparing the money held for others to the amount actually

shown on deposit in the reconciled trust account bank statements.

He should have had an outside accounting firm prepare an audited financial statement of his property management statements.

He should have set aside at least two occasions each year to personally perform an audit of the trust account on an unscheduled surprise basis.

He should have bonded Jane. Although this would not have prevented the embezzlement, it would have at least prevented him from having to personally replace the missing funds, and it would have offered his clients and customers a greater degree of security.

And to the greatest extent possible, Jim should have divided his office and bookkeeping responsibility between employees in order to check the opportunity for embezzlement.

In small offices where the broker doesn't have the luxury of delegating bookkeeping tasks to several different employees, s/he must become more personally involved, verifying that trust funds are properly accounted for. That includes examining bank statements each month, confirming that what should be there is actually there.

Perhaps most importantly, Jim should have simply exercised closer supervision over Jane. He completely missed the red flag that was raised when Jane showed resentment of his close scrutiny of her work. Jim had developed complete trust in Jane, and in her ability and honesty. He is still shocked that she would steal from him.

Jim said that his property management business generated a net profit of approximately \$1,000 per year. At that rate, it will take thirty years for him to recoup the embezzled funds. It is very painful for him to sit down and write cheques to owners for past rents that had been collected by Jane but were

never deposited in the bank. Jane spent the money, but now Jim has to dig deep in his pockets to make up the deficit.

Nebraska Trust Account
Examiners' suggestions:

This suggestion may not be a practical solution in all cases, but it eliminates the probability of embezzlement to a much higher degree. Do not accept cash payment for rent or security deposits. Require all rents and security deposits to be in the form of a personal check, cashier's check, or money order.

If cash payments are accepted, have a cash receipt book with pre-numbered receipts. Require the receipt to be completed in detail so that the receipt identifies the form of payment and can be traced to the property address, the tenant, the rent roll, and to the actual deposit of funds into the trust account. The cash receipt book should only be used for the receipting of trust funds received in the form of cash. It should not be used for items of a personal nature, such as receipting for rent received on a personally owned residence. These items should have a separate receipt book(s).

Maintain a rent roll which identifies the property address and tenant(s) name(s) and, a list of the months January through December. When rental income is received, the bookkeeper would note the amount of rent received to the rent roll, under the specific month to which the funds were applied. This should be reviewed by the designated broker on a monthly basis to determine who has and who has not paid the rent.

Remember, as designated broker, the complete and accurate accountability of trust funds coming into your possession or the possession of your employees is one of your primary responsibilities. If you hire competent people to perform the job function, don't abandon your responsibility to ensure that the job is being done

properly. Remain vigilant!

TRANSACTION FILE UPDATE

We have received an inquiry into the preferred order of documents maintained in the transaction file. The preferred order is as follows:

- 1) Listing Agreement and any extensions to the agreement. (listing company)
- 2) Dual Agency Agreement if representing both seller and buyer in the same real estate transaction (selling company**)
- 3) Buyer Agency Agreement, if applicable. (selling company)
- 4) Seller Brokerage Relationship Acknowledgment. (listing company)
- 5) Buyer Brokerage Relationship Acknowledgment. (selling company)
- 6) Purchase Agreement (listing and selling company)
- 7) Addenda or counter-offers which affect the final acceptance of the offer (listing and selling company)
- 8) Seller Property Condition Disclosure Statement (listing company)
- 9) Buyer "Estimated" Closing Cost Statement (selling company)
- 10) Seller "Estimated" Closing Cost Statement (listing company)
- 11) Buyer "Final" Closing Cost Statement (listing and selling company)
- 12) Seller "Final" Closing Cost Statement (listing company)

Caution should be exercised when punching holes in any of the documents. Be careful that important information is not being eliminated by punching a hole through it.

**** (Note: This is a change from previous columns that directed the listing company to maintain Dual Agency Agreements. This change is made because there can be circumstances where the licensee who is in a dual agency situation is not affiliated with the listing company.)**

ACKNOWLEDGMENT OF DISCLOSURE REQUIRED

In May 1996, each designated broker was provided with the revised Brokerage Relationships Pamphlet. By now, most designated brokers should have exhausted their supply of the original pamphlet issued in June 1995 and should be using the revised pamphlet with a revision date of "June 1996".

Trust Account Examiners have reported some confusion relating to the proper procedure in completing the revised Brokerage Relationships Pamphlet. The following scenarios relate to a sales transaction with only the listing agent involved, and should give licensees some guidance in how to use the form.

- 1) If the licensee is performing a listing presentation to a prospective seller, and may not obtain the written listing agreement, the licensee may complete Section 1, which states "Licensee has informed me that licensee is offering to act as my limited Seller's Agent,"

OR;

In Section 2, the licensee can mark four individual boxes which indicate: "offering to act"; "Seller's Agent"; "offering to provide"; and "Client, as my agent".

Do one or the other, but it is not necessary to do both.

If several days after the presentation, a listing agreement is completed, and the licensee

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Disciplinary Actions Taken by The Real Estate Commission

(Does Not Include Cases on Appeal)

95-054 - Commission vs. Scott W. Bloemer, broker. License revoked. (Violated Section 81-885.24(22) by substantial misrepresentation; Section 81-885.24(26) by failing to produce a document in the Respondent's possession or under his control concerning a real estate transaction under investigation by the Commission; Chapter 5-003.17 by violating rules or regulations adopted and promulgated by the Commission; and Section 81-885.24(29) by demonstrating negligence, incompetence, or unworthiness. July 1, 1996

Motion for New Hearing and Stay of Execution denied July 22, 1996

96-025 - Commission vs. Dolores G. Peterson, salesperson, and Mary Elizabeth Schon, broker. Stipulation and Consent Order. Peterson's license suspended 30 days, with entire period being served on probation, from September 18, 1996 through October 17, 1996. (Violated Section 81-885.24(26) and 299 N.A.C. Section 5-003.13 by failing to communicate to the seller the fact that the earnest money deposit was in a form other

than cash or an immediately cashable check and failing to show such fact in the earnest money receipt.) Schon's license censured. (Violated Section 81-885.24(26) and 299 N.A.C. Section 5-003.13 by failing to communicate to the seller the fact that the earnest money deposit was in a form other than cash or an immediately cashable check and failing to show such fact in the earnest money receipt, and 299 N.A.C. Section 5-003.22 by failing to supervise her salesperson.) September 18, 1996

(Continued from page 7)

indicated as representing the seller is the same licensee who performed the disclosure noted above during the listing presentation, then a new Brokerage Relationships Acknowledgment need not be completed as long as the Listing Contract contains language setting out that the licensee represents the seller as a limited seller's agent.

- 2) When a licensee, who upon the first substantial contact with a seller, or as soon as practicable thereafter, enters into a listing agreement with the seller, the licensee must complete Section 2 of the Brokerage Relationships Acknowledgment. The following boxes must be marked: "acting"; "Seller's Agent"; "providing"; and "Client, as my agent".
- 3) When the listing agent shows a listed property to any unrepresented prospective purchaser, upon first substantial contact with the prospective purchaser, or as soon as practicable thereafter, the licensee must complete Section 2 of the Brokerage Relationships Acknowledgment

with the following boxes marked: "acting"; "Seller's Agent"; "providing"; and "Customer, not as my agent".

While the above scenarios relate to a sales transaction with only the listing agent involved, it is hoped that it is illustrative in more general terms, as well. Those transactions where another licensee is involved can become more complex, depending on how the designated broker has written the firm's Agency Policy and whether or not the designated broker has elected to have all affiliated licensees bound by each agency relationship or whether the firm will be exercising the appointment option where certain individuals within a firm are appointed to serve as agents of one party to a transaction while others may serve as agents of the other party.

In property management situations, under Landlord limited agency or tenant limited agency, licensees are also required to complete Brokerage Relationship Acknowledgments for the Landlord and every unrepresented prospective tenant that the property is shown to in the same manner as outlined, above, but substituting

"Landlord's Agent" and "Tenant's Agent" as applicable.

Trust Account Examiners have further reported that in addition to inappropriate boxes being marked, many Brokerage Relationship Acknowledgments are missing the signature of Client/Customer and date of signature, the printed name of Client/Customer, and/or the signature of the licensee and date of signature.

Neb. Rev. Stat. 76-2421 requires a licensee to provide to the person (seller, landlord, buyer, or tenant), who has **not** entered into a written agreement for brokerage services with a designated broker, a copy of the current Brokerage Relationships Pamphlet which has been prepared and approved by the Commission. The licensee must also disclose, in writing, the types of brokerage relationships the designated broker and affiliated licensees are offering or disclose in writing, which party the licensee is representing. These requirements **must be completed** at the earliest practicable opportunity during or following the first substantial contact with a seller, landlord, buyer, or tenant.

Money Laundering Scheme

(Editor's note: This article is reprinted with permission from the Oregon Real Estate News Journal.)

It will probably come as a big surprise to you to learn that real estate is the new frontier for laundering large sums of ill-gotten dollars. It's true. Drug dealers and other major criminals who regularly possess large amounts of illegally obtained money are turning to real estate to hide their loot through legitimate real property transactions. And they could be putting you at risk. Laundering money involves placing dirty money in legitimate investments where it is difficult to trace.

It's entirely possible that you could unwittingly participate in a money laundering scheme that could implicate you in the crime. The result could be criminal prosecution. Sound farfetched? It's not.

Real estate agents who do not report suspicious activities can be convicted of felonies for money laundering. Just take the amazing case of Ellen Campbell, the first agent in the country to be convicted of the crime. Campbell was first convicted in 1991 of money laundering, but a trial court judge nullified the conviction for a lack of sufficient evidence. However, the government appealed and Campbell was ordered to appear back in court.

The Campbell case

In 1989, on the advice of her real estate broker, Campbell drew a nine percent commission on \$122,500, rather than the standard six percent. The cash at closing was counted from a brown paper bag in front of eight people, including Campbell and the closing attorney who was a former North Carolina prosecutor. Nobody questioned the cash, commission or anything about the transaction.

Somehow alerted to the transaction, federal authorities closed in and arrested the property's purchaser, Mark Lawing, who later pleaded guilty to money laundering and drug charges. He agreed to

testify against salesperson Campbell to gain favor with the government. During his testimony, though, he stated that he never told Campbell he was a drug dealer. He did own a body shop, as claimed by Campbell, and she had called him at the shop's business number.

Because Lawing drove an expensive car, wore "flashy" gold jewelry, had a suntan and used a cellular phone, the government reasoned that Campbell should have known Lawing's cash was from illegal proceeds.

Prosecutors left it in the hands of the jury, saying that the burden of proving guilt beyond a reasonable doubt was met if the jury found that Campbell was "willfully blind" to dealing with the proceeds of some form of unlawful activity.

Campbell in her defense stated she had never received training or instruction concerning cash transactions nor in recognizing money laundering or potential criminal suspects. She said Lawing's appearance was not out of the ordinary considering many of her prospective buyers were in the higher income brackets and had expensive sports cars, cellular phones and suntans.

She said she found Lawing to be nice, mannerly and intelligent, and that she assumed the cash he brought to the closing were proceeds from his body shop business.

Campbell received a \$5,060 commission on the sale, plus a \$200 tip from Lawing. Her broker was never charged, nor were the sellers who took cash (under the table, according to prosecutors), the closing agent, or the attorneys who presided over the transaction.

In the second trial, Campbell pleaded guilty to the lesser charge of failing to report the cash portion of the transaction. She was placed on five years' probation and ordered to perform 2,000 hours of community service. The choice she faced was either accept the lesser charges and probation or face a prison term of up to 20 years under the money laundering law. Of course, she lost her real estate license.

What are Your Responsibilities?

Under the Bank Secrecy Act, the government has defined real estate agents as non-bank financial institutions, said Gary Reece, special agent with the U.S. Customs Service, Office of Investigations. Therefore, they fall under some of the same reporting standards as do banks, investment companies, insurance companies and even travel agencies. What this means is real estate agents have to report suspicious activities in order to avoid a potential conviction of their own.

Real estate agents who fail to report suspicious transactions take the risk of being treated as co-conspirators or being labeled "willfully blind," meaning the agent claimed he or she didn't know the money was illegal, but given the circumstances, should have. Either consequence can result in felony convictions and long prison terms. License revocation is a certainty.

Roger Shoblom, special agent with the Internal Revenue Service, Criminal Investigation Division, said, "It's important that if you believe there are suspicious activities you report them."

Customs agent Reece offers this advice that is used by the banking industry: "Know your customer."

You may be asking yourself what constitutes suspicious activities?

All cash transactions are to be reported to the IRS. Cash that is brought into the country, if not reported by the person who brought the cash into the U.S., has to be reported by the financial institution (i.e. you, the real estate agent), if you are aware of it. If you are working with a person of foreign descent who mentions "I don't want this reported," or "I don't want anyone to know about this," or just tries to disguise or conceal the origin of the funds, you must inform the authorities. If you don't know whether you should or shouldn't notify the authorities, for your own protection the disclosure should be made. If it turns into a false alarm, no harm done.

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Consumer Product Safety Commission Warnings:

Imported Plastic Miniblinds Can be Dangerous to Tenants

(Editor's note: This article was reprinted with permission from the Fall 1996 issue of the Real Estate Asset Manager.)

Property managers need to be especially careful about using imported plastic miniblinds as they may present a lead poisoning hazard for young children. According to the Consumer Product Safety Commission (CPSC) twenty-five million non-glossy, vinyl miniblinds, that have lead added to stabilize the plastic in the blinds, are imported each year from China, Taiwan, Mexico and Indonesia.

CPSC found that over time the plastic deteriorated from exposure to sunlight and heat to form lead dust on the surface of the blind. In homes where children aged 6 and younger may be present, CPSC recommends that consumers remove these vinyl blinds. Young children can ingest lead by wiping their hands on the blinds and then putting their hands in their mouths. Adults and families with older children generally are not at risk as they are not likely to ingest lead dust from the blinds.

CPSC found that in some blinds, levels of lead in the dust was so high that it could result in blood levels at or above the amount CPSC considers dangerous for young children. Property managers should check the blinds now in place for possible dangerous contamination.

Property Managers Need to Know and Understand the New Swimming Pool Safety Guidelines

(Editor's note: The following article was reprinted with permission, from the Fall 1996 issue of the Real Estate Asset Manager.)

Knowledge of the guidelines for swimming pool safety can be significant to the property managers when managing residential properties with a swimming pool. As the swimming season begins, the U.S. Consumer Product Safety Commission (CPSC) is re-issuing its pool barrier guidelines to help prevent about 300 drownings of children each year in residential swimming pools. Managing the residential property with a swimming pool that has not been protected, raises serious liability concerns.

Drowning is the leading cause of accidental death in the homes of children under age 5 in states such as California, Arizona, Texas, and Florida. In addition, each year more than 2,000 young children are treated in hospital emergency rooms nationwide for submersion injuries, such as brain damage.

"Supervision is key to preventing a child from drowning in what is a silent death that happens very quickly," said CPSC Chairman Ann Brown. "A child can drown in the time it takes to answer the telephone. Most of the young victims are missing from sight for less than just five minutes."

Barriers and pool covers can reduce the risk of child drowning. CPSC recommends that parents install the following safety devices to prevent access and give parents time to locate a child before tragedy strikes:

1. A fence or barrier at least 4 feet high with no footholds or handholds should surround the entire pool.
2. If a wall of the house serves as a side of the barrier, the house doors should be protected with alarms.
3. In addition to the barriers, a power safety cover should protect the pool when it is not in use.

"The three barriers that CPSC recommends can buy you time and may save your child's life," Brown said.

In addition to installing safety devices, parents can take other steps to help prevent drowning. CPSC recommends that parents and other caregivers should learn cardiopulmonary resuscitation (CPR). If a child is missing, check the pool first. Seconds count in preventing death or disability.

CPSC offers consumers two free publications to help prevent child drowning: "Safety Barrier Guidelines for Pools" (CPS362), and "How To Plan For the Unexpected" (CPS359). Consumers can obtain copies of the publications by sending their names and addresses to "Pool Safety," U.S. Consumer Product Safety Commission, Washington, D.C. 20207.

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Other telltale indicators you should look for include:

- Clients with no employment
- Youthful age - questionable that a person of client's age would have so much money on hand
- Where they live out of the country?
- Other material trappings, such as car, clothes, jewelry, cellular phone, pager, etc., that seem

excessive given their circumstances.

Also the types of property the suspicious clients are purchasing can lead to clues:

- They need waterfront property
- Remote property
- Property near an airport with an airstrip

Money laundering through real estate is commonplace, even in small towns. Law enforcement agencies are serious about stopping it, and they will show no tolerance for anyone who promotes it or who through ignorance or carelessness contributes to its growth.

If you suspect a prospect might be laundering money, call any federal law enforcement agency to report suspicious activities.

Continuing Education Record Keeping Made Easy

The Nebraska Real Estate Commission has been experiencing an increasing number of requests from licensees for their continuing education history. These records are valuable so that you can plan for the future without duplicating the past. In response, we have developed a convenient method for licensees to keep track of their own continuing education hours.

While we will continue to provide information on continuing education histories, our response often must be delayed by the file search that these inquiries necessitate. Therefore, we strongly encourage each licensee to adopt a method of continuing education record keeping for his/her own purposes.

Following this article is a sample form for tracking continuing education. Begin by listing each continuing education course that you have taken in the last 4 years and the date and content number (including the R designation if it has one) of each course. The 4-digit course content number is to assist in determining duplications. Courses with the same number will be considered duplications.

Remember, you cannot get continuing education credit for course content duplicated within four years. With one exception, designated subject matter courses (those with an R accompanying the 4-digit number) may be duplicated in subsequent continuing education periods, but may not be dupli-

cated during any one continuing education period.

Please place this list in the front of your continuing education file so that you may make additions to it as you complete your courses. We will accept copies of course completion certificates so that you may retain the original for this file.

Because our computer system does not allow us to enter educational increments, we ask that you

wait to submit your hours until you can send all 12 hours of continuing education certificates to the Commission under one cover. Please remember that 3 hours of the 12 hours of continuing education required every two years must be in designated subject matter (the R courses).

Should you have further questions, please contact Janelle, Education and Enforcement Secretary, at (402) 471-2004.

Name: _____

ID# _____

*Your current continuing education period is: January _____ - November _____

C.E. Period	Date	Content #	Course Title - # of Hours
_____ - _____			
_____ - _____			
_____ - _____			
_____ - _____			
_____ - _____			
_____ - _____			
_____ - _____			
_____ - _____			
_____ - _____			
_____ - _____			

Future Real Estate Examinations

The following is the schedule of the dates on which the real estate licensing examinations are administered in Nebraska and the deadline dates for filing of broker and salesperson original applications, retake applications, proof of education and examination cancellation requests for the applicable Examination Date.

Examinations for both salesperson and broker applicants are administered eleven times a year as set out on this schedule. The examination is adminis-

tered in Lincoln, North Platte and Omaha on each Examination Date and in Scottsbluff on only the January, May and September Examination Dates. All applicants for a particular examination will receive notice of the time and place of the examination approximately one week prior to that Examination Date.

Applications, proof of education, and cancellation requests are due on the date of the deadline!

The Examination Date and the deadlines are subject to change by order of

the Nebraska Real Estate Commission. Affected applicants will be notified of any changes in a timely manner.

Applications and other pertinent information regarding the real estate licensing and examination process may be obtained from the Nebraska Real Estate Commission, P. O. Box 94667, Lincoln NE 68509-4667. Telephone Number: (402) 471-2004. TDD users may use the Nebraska Relay System at (800) 833-7352.

Real Estate Examination Schedule 1996

<u>Examination Date</u>	<u>Broker Original Application</u>	<u>Salesperson Original Application</u>	<u>Education Deadline</u>	<u>All Retake Applications</u>	<u>Cancellation Deadline</u>
January 18, 1997	December 3, 1996	December 16, 1996	December 30, 1996	January 3, 1997	January 7, 1997
February 15, 1997	December 31, 1996	January 13, 1997	January 27, 1997	January 31, 1997	February 4, 1997
March 15, 1997	January 28, 1997	February 10, 1997	February 24, 1997	February 28, 1997	March 4, 1997
April 19, 1997	March 4, 1997	March 17, 1997	March 31, 1997	April 4, 1997	April 8, 1997
May 17, 1997	April 1, 1997	April 14, 1997	April 28, 1997	May 2, 1997	May 6, 1997
June 21, 1997	May 6, 1997	May 19, 1997	June 2, 1997	June 6, 1997	June 10, 1997

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