

# COMMISSION COMMENT



Spring

1999

## Advertising on "The Net"

Over the last two years, articles have been published in the Commission Comment regarding advertising requirements. The articles were general in nature, but indicated Internet advertising was included. As more and more licensees are developing a web page, and/or promoting, soliciting, and marketing on the Internet, the Commission felt it was important to "zero in" on "the Net" specifically with regard to advertising.

In a nutshell, what is required of licensees on the Internet is the same as that required of licensees in any other medium. 299 NAC 2-003 states: "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." With regard to the Internet, this would include web sites, e-mail, and any other potential "on-line" identification, representation, promotion, or solicitation to the public which is related to licensed real estate activity.

299 NAC 2-003 goes on to state: "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." With regard to the Internet, this means that the broker has supervisory responsibilities over what is placed on the Internet, and the name under which the broker is conducting business must appear on any web site which is established or Internet electronic communications used to communicate to the public for any purpose related to licensed real estate activity. This would include, but not be limited to, the home page, each individual page and/or frame of a web site, e-mail, e-mail discussion groups, bulletin boards, etc.

[NOTE: If it has not been made clear in the previous advertising articles, it must be clarified here - a broker may require "advertising" (as defined earlier in this article) to carry additional information, e.g. office address, main telephone number, the company logo, etc. If so required, the affiliated licensee needs to comply with these broker requirements also.]

Therefore, it is highly recommended that brokers develop policies and procedures for the supervision and approval of advertising on "The Net."

Some potential problems on the Internet, which have been brought to our attention, are as follows. Use of the word "licensee" is intended to include the broker and the affiliated licensee, as applicable.

1. Expired listings continuing to appear on the Internet:

Licensees need to make sure that listings which have expired are removed post haste. When the listing expires, the consent to offer the real estate for sale or lease also expires. Continued advertising of a property after expiration of consent is a violation of Neb. Rev. Stat. § 81-885.24(12).

2. Sites with multiple advertisers and/or links to other sites:

(The following advice appeared in Kentucky Real Estate News, a publication of the Kentucky Real Estate Commission. It was written by Joseph B. Helm, Jr., Executive Director of the Kentucky Commission. This advice also applies to Nebraska licensees.)

"The statutory standard for all real estate advertising remains the same with regard to the content of an ad, but may take on a slightly different application on the worldwide web. For example, if you are one of several advertisers on a given web site, be sure your ad is separate and distinct from other ads promoting products or

services which you cannot deliver, and making promises which you cannot keep.

You must also be careful when establishing links to other web sites from your own. For instance, if you are linking to an outside database of available properties, it should be clear to the consumer that these are not your listings. Also, if you link to other sites offering other services, [and] do not differentiate effectively and lead some consumers to believe that you are participating in some way, you may be assuming some liability for the performance of those services."

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### Commission Meeting Schedule

April 20-22, 1999	Omaha
May 17-18, 1999	Lincoln
June 29-30, 1999	Lincoln
August 24-25, 1999	Lincoln

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Nebraska Real Estate Commission  
**COMMISSION COMMENT**

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1200 "N" Street, Suite 402  
P.O. Box 94667  
Lincoln, Nebraska 68509-4667  
(402) 471-2004  
EDITOR: Teresa Hoffman

**COMMISSION MEMBERS**

**CHAIRPERSON**  
Scott Moore  
Secretary of State  
State Capitol  
Lincoln, NE 68509  
(402) 471-2554

**PUBLIC Member At Large**  
Paul Landow  
21045 Timber Ln.  
Elkhorn, NE 68022  
(402) 289-3553

**SALESPERSON Member At Large**  
Joan M. Nigro  
12112 Pacific St.  
Omaha, NE 68154  
(402) 697-4193

**BROKER MEMBERS**

Gerald L. Schleich  
3901 Normal Blvd., Suite 203  
Lincoln, NE 68506-5250  
(402)436-3112

John F. Hansen  
2200 Harvell Dr.  
Bellevue, NE 68005  
(402) 291-4800

Fred A. Fletcher, Jr.  
1105 Norfolk Ave., P.O. Box 1166  
Norfolk, NE 68701  
(402) 371-1480

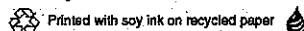
Janice Wiebusch  
4407 2nd Ave. Ste. B  
Kearney, NE 68848-1389  
(800) 947-8793

**DIRECTOR**

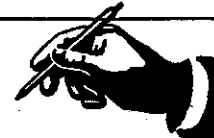
Les Tyrrell  
1200 "N" Street, Suite 402  
Lincoln, NE 68508  
(402) 471-2004  
Director@nrec.state.ne.us

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The Nebraska Real Estate Commission often solicits articles from outside experts or reprints articles with permission. While we feel that these articles may offer a broader perspective and will be of interest to the reader, it should be remembered that the views expressed are those of the author and not necessarily those of the Commission.



From the  
**DIRECTOR'S DESK**



**Ounce of Prevention ...**

I recently received the following letter from Robert W. Gillespie, M.D., F.A.C.S., with the Clarkson Hospital Burn Center. I am sharing it with you to alert licensees to potentially dangerous situations which can be avoided.

*"I am writing to voice a serious concern on behalf of home builders and their visiting public. Recently I have been treating a young child that was with his parents at a home builders open house in which a gas burning furnace with a glass door was actively burning. The child walked up and put his hands on the hot glass resulting in a significant burn to both hands.*

*It would seem prudent that the home builder sponsoring the event would cordon off the area to prevent or designate some signage that would alert parents or others to the potential of contact burns. I would be happy to work with your organization to provide further direction in that regard."*

Please take care to survey properties for potential hazardous situations such as the one indicated in the letter and take precautions so that injuries do not occur to members of the public, or yourselves. Remember - "an ounce of prevention is worth a pound of cure."

**Reminders to Licensees**

Based on recent telephone inquiries regarding three issues, it was decided to remind all real estate licensees of their responsibilities under statutes and rules administered by the Commission.

**Post-Dated and Held Earnest Money Checks**

The first issue deals with post-dated earnest money checks, and earnest money checks which the potential purchasers ask be held for a period of time before cashing.

Chapter 5 in Title 299 of the Commission's Rules and Regulations sets forth, in Subsection 003.13, that it will be an act of negligence, incompetency, or unworthiness if a licensee accepts "... other than cash or an immediately cashable check as earnest money, unless such fact is communicated to the owner prior to his or her acceptance of the offer to purchase, and such fact is shown in the earnest money receipt."

In essence, disclose it to the seller, and let the seller decide if they wish to accept the offer in such a situation. Remember, checks can be "stopped" for payment, and the transfer of money may not occur. It is possible that personal liability could accrue, in addition to disciplinary action by the Commission.

Also remember that all earnest monies must be deposited within 48 hours or the next banking day after acceptance in writing, unless otherwise agreed to in the purchase agreement (299 NAC 5 003.14).

**Rebates to Licensees**

The second issue deals with affiliated licensees receiving compensation or other consideration from a vendor or vendors of services which the client utilizes as part of the transaction, and receiving said compensation directly without the employing broker's consent.

The Nebraska Real Estate License Act sets out in the following Subsections of 81-885.24 that disciplinary action could be taken if a licensee is found guilty of:

"(6) Accepting, giving, or charging an undisclosed commission rebate or direct profit on expenditures made for a principal;"

"(8) Accepting a commission or other valuable consideration by an associate broker or salesperson from anyone other than his or her employing broker without the consent of his or her employing broker;"

299 NAC 5-003.05 and 2-010 respectively require that the disclosure from the principal and the consent from the broker be in writing. Each sets forth timing and retention requirements of the required disclosure.

Licensees should also be aware that accepting non-disclosed rebates, etc., could also be construed to violate various duties of a limited agent, which may also be a cause for disciplinary action, as well as civil liability.

[NOTE: Licensees who receive bonuses: 1) from a seller, landlord, or builder when acting as a limited buyer or tenant agent, or from a buyer or tenant when acting as a seller or landlord agent, without disclosure to the principal; and/or 2) without the consent of the employing broker, would be in violation of the same provision(s).]

**Prohibition Against Referral Fees**

The third issue deals with the payment of referral fees to unlicensed individuals. Section 81-885.01(2) sets forth in part that: "Broker [includes associate brokers

(Continued on page 3)

## MEET THE REAL ESTATE COMMISSION STAFF

The Real Estate Commission Staff is here to serve the public and the licensee population. It is our goal to be helpful and forthright in a courteous and professional manner. We hope that when you contact our office, you always receive useful, accurate information and/or are referred to the proper authority.

Following is a communication resource to assist you when contacting our office. If the indicated person is unavailable to take your call, please share the purpose for the call and your call will be routed to someone else who can help you.

We take pride in having a skilled staff. If you have comments or suggestions as to how we may better serve you, please contact our office.

### COMMUNICATIONS GUIDE

Ask for person indicated if you have questions in the following areas.

Commission Meeting Information. *Heidi Burklund*  
InfoTech@nrec.state.ne.us

Complaint Procedures ..... *Terry Mayrose*  
DDEnf@nrec.state.ne.us

Continuing Education History or  
Inquiries ..... *Julie Schuur*  
EdEnf@nrec.state.ne.us

Curriculum Design (Education &  
Instructor Approval) ..... *Teresa Hoffman*  
DeputyD@nrec.state.ne.us

Errors and Omissions Insurance  
Inquiries ..... *Teresa Hoffman*  
DeputyD@nrec.state.ne.us

License Applications Packet  
Requests ..... *Vera David-Beach*

License Applications Process . *Nancy Glaesemann*  
Applic@nrec.state.ne.us

Licensing and Education  
Requirements ..... *Teresa Hoffman*  
DeputyD@nrec.state.ne.us

New Licenses in Process ..... *Anita Cass*  
LicTsf@nrec.state.ne.us

Specialized Registrations ..... *Monica Wade*  
Finance@nrec.state.ne.us

Transfer of License ..... *Anita Cass*  
LicTsf@nrec.state.ne.us

Trust Account Matters ..... *Terry Mayrose*  
DDEnf@nrec.state.ne.us

*John Clark*  
*Bob Arterburn*  
*Ron Pierson*

TELEPHONE NUMBER  
(402) 471-2004

ADDRESS:  
Nebraska Real Estate Commission  
P.O. Box 94667  
Lincoln, NE 68509-4667

From the

## DIRECTOR'S DESK continued from page 2

and salespersons] shall mean any person who for a fee, a commission, or any other valuable consideration, or with the intent or expectation of receiving the same from another .... assists in procuring prospects or holds himself or herself out as a referral agent for the purpose of procuring prospects for the listing, sale, purchase, exchange, renting, leasing, or optioning of any real estate."

Section 81-885.24(18) of the License Act sets forth that disciplinary action could be taken if a licensee is found guilty of: "Paying a commission or compensation to any person for performing the services [in this case "referring"] of a broker, associate broker, or salesperson who has not first secured his or her license under the Nebraska Real Estate License Act, unless such person is a nonresident who is licensed in his or her state of residence."

Therefore, paying an unlicensed seller, buyer, tenant, landlord, next-door neighbor, friend, etc. for a referral could cause disciplinary action to be taken against the licensee, AND, according to Neb. Rev. Stat. § 81-885.45, the unlicensed person has committed a Class II misdemeanor.

Should you have any questions on these or other matters, please contact the Commission Office.

*Les Tyrrell*

Les Tyrrell, Director Nebraska Real Estate Commission

## Data-Base Conversion In Progress

Over the past year, licensees have been informed of the Commission's efforts to customize and plans to implement a new license management software program. In his Holiday Message in the last issue of the Commission Comment, Chairperson Moore related our goals for the new millennium which include a great focus on technology. It is an exciting time as we witness our strategic plans being realized.

December 7, 1998, our data was downloaded from the State of Nebraska's mainframe to our new data-base. The conversion is underway and the Commission Staff is working diligently to keep the transition smooth. Unfortunately, growth can bring growing pains. Data conversions such as this necessarily require many hours of painstaking review of every single piece of data. Even then, the manner in which the data relates to other data and the processes unfold can bring unexpected results that must be reconfigured and corrected.

The Commission Staff would like to enlist the aid of licensees who may

be affected by this process. Please communicate any licensing or processing abnormalities you may experience to our Staff. As always, we want to be responsive to your needs and request that you be patient while we proceed with implementation. We truly regret any inconvenience that any have suffered or may suffer during this time. We do wish to reassure everyone that we are devoting staff resources to this process to minimize inconvenience and to insure a state-of-the-art license management system that will serve your needs expertly.

During the next few weeks we respectfully request that everyone affected "keep their eyes on the prize". The data-base holds great promise for accessible, efficient data retrieval. It will capture a great deal of information that never appeared on a computer data record before and will automate procedures previously labor-intensive.

If you have questions or concerns regarding the implementation, please contact Teresa Hoffman at our office.



### We've Got Mail!!

E-mail, that is. As referred to elsewhere in this Issue and in the last Issue's Holiday Message, the Commission is focusing on technology. Our goal is to enhance our accessibility and service to the Public and to our Licensee Population.

With that in mind, let us call your attention to the addition of e-mail addresses in the "Communications Guide" located on page 3. If you have any questions, please feel free to contact us by phone, mail, or e-mail, so that we may be of assistance.

3. Linking to other sites without permission:

Licensees should obtain permission from other sites to which you link or which you frame.

4. Carefully select sites to which you link:

When linking to, or allowing linking from, other sites, licensees should review the other site to assure that messages carried on the other site are compatible with the image the licensee wishes to portray or the views with which the licensee wishes to be associated.

5. Conducting licensed activity in another real estate regulatory jurisdiction where the licensee is not licensed:

Licensees should be very careful not to give the impression of being licensed in places where the licensee is not licensed. This may be solved by including the name(s) of the real estate regulatory jurisdictions in which the licensee is licensed.

The Association of Real Estate License Law Officials (ARELLO) has developed language which brokers could use as guidelines for advertising on the Internet. The guidelines are as follows, and have been edited to be applicable to Nebraska licensees.

1. When a real estate firm is advertising or marketing on a site on the Internet, include on each page of the site on which the firm's advertisement or information appears the following data:

a. the firm's name as registered with the Commission, (abbreviations not permitted);

b. the city, state/province, and country in which the firm's main office is located; and

c. the regulatory jurisdiction(s) in which the firm holds a real estate brokerage license.

2. When an affiliated licensee is advertising or marketing on a site on the Internet, include on each page of the site on which the licensee's advertisement or information appears the following data:

a. the affiliated licensee's name;

b. the name of the firm with which the licensee is affiliated as

that firm name is registered with the Commission, (abbreviations not permitted);

c. the city, state/province, and country in which the affiliated licensee's office is located; and

d. the regulatory jurisdiction(s) in which the affiliated licensee holds a real estate broker or salesperson license.

3. When a real estate firm is using any Internet electronic communication for advertising or marketing, including but not limited to e-mail, e-mail discussion groups, and bulletin boards, include on the first or last page of all communications the following data:

a. the firm's name as registered with the Commission, (abbreviations not permitted);

b. the city, state/province, and country in which the firm's main office is located; and

c. the regulatory jurisdiction(s) in which the firm holds a real estate brokerage license.

4. When an affiliated licensee is using any Internet electronic communication for advertising or marketing, including but not limited to e-mail, e-mail discussion groups, and bulletin boards, include on the first or last page of all communications the following data:

a. the affiliated licensee's name;

b. the name of the firm with which the licensee is affiliated as that firm name is registered with the Commission; (abbreviations not permitted);

c. the city, state/province, and country in which the affiliated licensee's office is located; and

d. the regulatory jurisdiction(s) in which the affiliated licensee holds a real estate broker or salesperson license.

299 NAC 2-003 concludes with the following: "Advertising which is contrary to Sections 003 to 006 of these regulations shall constitute misleading or inaccurate advertising under Section 81 885.24(2) of the Nebraska Real Estate License Act."

Brokers and affiliated licensees may want to review statutory and rule and regulation requirements regarding advertising in general, which include Sections 81-885.24 (2), (11), (12), and (17) of the Nebraska Real Estate License Act, as well as Title 299 Chapter 2, Sections 003 through 006, Section 012, and Chapter 5, Section 003.04.

Should you have any questions, please feel free to contact our office.



# Disciplinary Actions Taken by The Real Estate Commission

(Does Not Include Cases on Appeal)

98-016 - Kenneth and Louise Nielsen vs. Debra Lee Rau, salesperson, and Sue Ellen Kuhl, salesperson - Stipulation and Consent Order. Debra Lee Rau: License censured. (Violated Neb.Rev.Stat. § 76-2418(c)(iv) by failing to advise the Buyers to obtain expert advice as to material matters about which the licensee knows but the specifics of which are beyond the expertise of the licensee.) November 30, 1998

98-036 - Commission vs. Roger Eugene Rader, broker & LaDonna Jean Rader, salesperson - Stipulation and Consent Order. LaDonna Jean Rader: License revoked. (Violated Neb.Rev.Stat. § 81-885.24(3) by failing to account for monies coming into her possession belonging to others; and Neb.Rev.Stat. § 81 885.24(29) by demonstrating negligence, incompetency or unworthiness to act as a salesperson.) Roger Eugene Rader: License suspended two years from January 1, 1999, through December 31, 2000, with the last 23 months served on probation; plus twelve additional hours of continuing education to include three hours in trust accounts, three hours in agency, three hours in license law, and three hours in disclosures to be completed by August 31, 1999. (Violated Neb.Rev.Stat. § 81-885.24(26) by violating a rule or regulation adopted and promulgated by the Commission in the interest of the public and consistent with the Nebraska Real Estate License Law, specifically violated Title 299 NAC, Chapter 3-002 by failing to maintain a bookkeeping system which accurately and clearly discloses full compliance with the laws relating to the maintenance of trust accounts, and Title 299, NAC, Chapter 5-003.22 by failing to supervise his salesperson; Neb.Rev.Stat. § 81-885.24(3) by failing to account for monies coming into his possession belonging to others; and Neb.Rev.Stat. § 81-885.24(29) by demonstrating negligence to act as the broker.) November 30, 1998

98-032 - Brian & Tracy Zych vs. Debbie L. Lasher, broker - License censured. (Violated Neb.Rev.Stat. § 81-885.24(29) by demonstrating negligence to act as an associate broker in that she imbibed in alcohol, had poor communication with the sellers and demonstrated unprofessional behavior.) January 13, 1999

98-026 - Commission vs. Buree Stoval, broker - Stipulation and Consent Order. License suspended for two years beginning March 19, 1999, with the first ninety (90) days of said suspension served and the remaining suspension time stayed and served on probation, plus an additional twelve hours of continuing educa-

tion to include three hours in trust accounts, to be completed by June 18, 1999, and three hours in agency and six hours as determined and approved by the Director, to be completed by March 18, 2001. (Violated Neb.Rev.Stat. § 81-885.24(26) by violating a rule or regulation adopted and promulgated by the Commission in the interest of the public and consistent with the Nebraska Real Estate License Law, specifically, Title 299, N.A.C. Ch. 3-002 by failing to maintain a bookkeeping system which accurately and clearly discloses full compliance with the laws relating to

*(Continued on page 11)*

## Dual Agency Confusion?

Based on the results of trust account examinations, telephone inquiries, and presentations at real estate company meetings, it appears there is some confusion regarding dual agency.

This article will only be dealing with dual agency as it occurs when the agency policy of the broker states, in effect, **that on all properties listed with the company, affiliated licensees will be limited dual agents when selling "in-house" listings.**

The confusion seems to be about: 1) when the dual agency occurs; 2) when the written consent to dual agency agreement needs to be signed; and 3) who has to sign the consent.

Dual agency occurs, under such a policy, when an affiliated licensee and the potential purchaser decide to look at the "in-house" listing. It is at this time that the potential purchaser(s) must agree to limited dual agency in writing, i.e., sign a consent to limited dual agency agreement.

If the listing agreement with the seller includes the "threshold" limited dual agency disclosure, which puts the seller on notice that a limited dual agency may occur, the seller does not need to sign the consent before showing, but must sign it as soon as practicable thereafter.

If the listing contract does **not** include the "threshold" limited dual agency disclosure, the seller must agree, in writing, to the limited dual agency before any further actions are taken by the licensee, including showing the property to the potential purchaser.

In summary, when "in-house" limited dual agency for all listings is utilized, a consent to dual agency must be signed: 1) by each potential purchaser before showing the listing; and 2) by the seller either: a) prior to the showing if no "threshold" disclosure has been agreed to in the listing contract; or b) at the time of showing, or within a reasonable time after the showing, if the "threshold" disclosure was agreed to in the listing contract.

Therefore, if an affiliated licensee with a real estate company utilizing limited dual agency on all "in house" listings shows one potential purchaser fifteen "in-house" listed properties, there would need to be fifteen separate written consents to limited dual agency, signed by both the seller and the potential purchaser. Of course, each of these written agreements would need to be maintained in the transaction file, in accordance with Rule and Regulation.

# Disclosure Requirements Pursuant To Megan's Law?

*(Editor's note: This article was researched and written expressly for the Commission Comment by Abbie J. Widger. Ms. Widger serves as Special Assistant Attorney General and Counsel to the Nebraska Real Estate Commission.)*

LB 204, which was signed into law on April 6, 1998, is an act relating to sex offenders and the authorized disclosure of certain information relating to those offenders. In light of the passage of LB 204, the Commission recently requested an opinion from the Attorney General whether a sex offender's presence in a neighborhood would be an adverse material fact requiring disclosure by a licensee.

LB 204, commonly referred to as "Megan's Law", requires that sex offenders register with the Sexual Offender Registration Service prior to their release from incarceration. Any information obtained by the central registry for sex offenders is confidential except in certain situations. The information may be disclosed to law enforcement agencies for law enforcement purposes and to other governmental agencies conducting confidential background checks. The law further provides that the Nebraska State Patrol and any law enforcement agency authorized by the State Patrol shall release information necessary to protect the public. The release of information must meet certain guidelines and be based on one of the three levels of recidivism as determined by the State Patrol. If the risk of recidivism is low, the State Patrol is to release information to and notify other law enforcement agencies likely to encounter the sex offender. If the risk of recidivism is moderate, in addition to notifying other law enforcement agencies, the notice shall be given to schools, day care centers, and religious and youth organizations. If the risk of recidivism is high, the State Patrol shall notify the law enforcement agencies, schools, day care centers, religious and youth organizations and the pub-

lic. At this time, the term "public" has not been defined, i.e. the extent of the neighborhood where the sex offender lives, and the method of disseminating the information has not been determined.

Based upon the fact that a licensee may gain personal knowledge of the presence of a sex offender in a neighborhood, the Commission made an inquiry to the Attorney General as to whether the presence of a sex offender in a neighborhood would be an adverse material fact requiring disclosure if the licensee gained the knowledge through the disclosure requirements of LB204. The Attorney General initially responded to the inquiry based on the assumption that the Commission only requested the information in the context of the seller's agent to the buyer. Att'yGen.Op.98-051 (Dec. 15, 1998). The commission requested a supplemental opinion to address other agency relationships. In the supplemental opinion, the Attorney General responded to the duty of the buyer's agent to his or her own client, the seller's agent to his or her own client and the dual agent to his or her client. Att'yGen.Op.99-006 (Feb. 24, 1999).

The conclusion is, within the context of the Commission's authority, the presence of a sex offender in the neighborhood is not an adverse material fact the licensee must disclose; however, this does not protect the licensee from potential civil liability. The Attorney General reasoned that the term "adverse material fact", as used in Neb.Rev.Stat.Sec.76-2403 (1996), is a fact which either significantly affects the value of the property for sale or establishes a reasonable belief that a party will not complete the transaction being contemplated. Further, an "adverse material fact" is a fact not reasonably ascertainable or known to a party.

The duty of the seller's agent to the buyer is set forth in Neb.Rev.Stat.Sec.76-2417(3)(a). The Attorney General's Opinion reasoned that the categories of facts which

must be disclosed pertain to the particular property and its defects rather than conditions of the neighborhood. While the list is not exhaustive, the presence of a registered sex offender in the neighborhood appears to be a condition of the neighborhood rather than a condition of the property and is, therefore, probably not an adverse material fact for the purposes of the Agency Law or the License Law.

The duty of a seller's agent to a seller is set forth in Neb.Rev.Stat.Sec.76-2417(1)(c)(iii), and the Attorney General assumes the requirement to disclose an adverse material fact means informing the seller of the buyer's ability to complete the transaction. Therefore, actual knowledge of a registered sex offender would not be at issue.

The buyer's agent is required to disclose to the buyer those material facts actually known by the licensee. Neb.Rev.Stat.Sec.76-2418(1)(c)(iii). The opinion states that this probably means adverse facts concerning the property listed for sale and the seller's ability to complete the sale. The opinion noted that certain types of adverse material facts to be disclosed to the buyer are set forth in Neb.Rev.Stat.Sec.76-2417(3)(1). This section outlines the adverse material facts a seller's agent is to disclose to the buyer and identifies factual circumstances relating specifically to the property but not the neighborhood. The Attorney General, therefore, concluded that it is questionable whether facts regarding the neighborhood must be disclosed by the buyer's agent to the buyer.

The same conclusions were reached with regard to the dual agent to his or her client.

The Attorney General's opinions clearly state that they do not apply to a licensee's potential civil liability to a third person. Therefore, the licensee should contact his or her attorney for an opinion regarding potential civil liability.

# They're Playing Hardball!

## EPA Audits for Lead-based Paint Disclosure Violations

By: Sylvia Shelnett, CRS, GRI, LTG, ABR

*(Editor's note: Sylvia teaches pre-license, post license, and continuing education courses through her school, Sylvia Shelnett Training and Seminars. Sylvia also teaches through the Georgia Institute of Real Estate, the Atlanta Institute of Real Estate, Clayton State College and University and the Atlanta Board of Realtors, among others. The following was reprinted with permission from the March, 1999 issue of the REEAction, the newsletter of The Real Estate Educators Association.)*

The Environmental Protection Agency, EPA is playing hard ball with lead-based paint violators. In an article in The Oklahoman newspaper on July 30, 1998, they cited two instances of fines for non-disclosure of lead-based paint.

A broker in Ponca City, Oklahoma, faces a fine of \$11,000.00. The EPA alleged that a realty agent in the company failed to give a tenant information about the danger of lead-based paint. In the second instance, a fine for \$408,375.00 was assessed against the Kingsville naval Air Station in Texas. Here, the EPA alleged that the military housing office did not give lead-based paint disclosure information to 11 military housing units, before finalizing leasing agreements.

Title 10, Section 1018, states disclosure of lead-based paint must be made to both purchasers and renters of properties built before January 1, 1978. The compliance dates were September 6, 1996, for owners of more than four residential dwellings, and December 6, 1996, for owners of one to four dwellings.

**The question is, are you touching all the bases in this lead-based paint disclosure ball game?**

Do you personally own or manage rental property built before 1978? Do you manage agents who sell, manage or own property that will fall into this time category? If the answer is YES, have you made and documented proper disclosure? If you haven't,

now is the time to go back and touch all the bases. Get two copies of the rental lead-based paint disclosure form to the tenant immediately, along with the approved brochure. Have them sign and return a copy of the disclosure form for your files. This is your proof of compliance in case of an audit.

**Have you sold properties built before January 1, 1978?**

Check your files from the compliance dates forward, to ensure that the proper forms have been attached, and all sections properly filled out.

The EPA stresses the importance of not omitting any blocks, initials or signatures. Audits will usually be initiated through a tip or complaint.

Inspectors will also conduct random audits while in the area, often targeting locations that have a majority of homes built prior to 1950. An audit inspector will usually ask for twelve random files for properties sold or rented that were built prior to January 1, 1978. The inspector's job is to review files and submit a written assessment of their findings. The inspector has no authority to make judgement regarding non-compliance.

The decision regarding non-compliance and any subsequent fine is made by EPA officials and is based on the information contained in the written report submitted by the inspector. Notification of any non-compliance, and the fine assessment should follow within three weeks. If no violation is found there will be no further contact by EPA.

"Play ball" with the EPA by being a lead-based paint advocate.

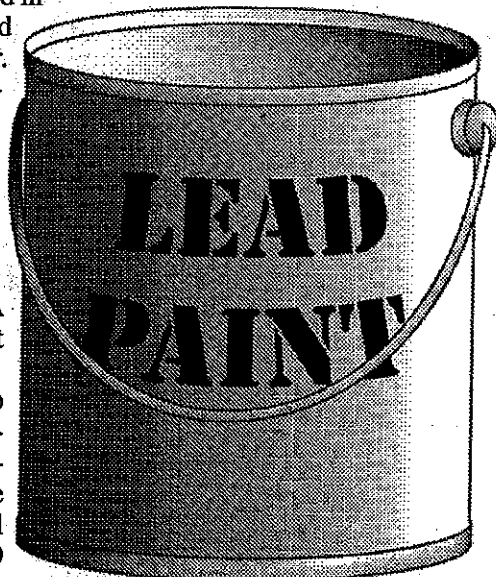
One way you can help your community and yourself is by using the lead-based paint disclosure requirement as a contact tool to meet FSBO's. A FSBO

attempting to sell a home built prior to 1978 probably doesn't know about lead-based paint disclosure rules, or how to get the necessary forms. The Title X disclosure requirement applies to all homes built before 1978. Make the pamphlet and disclosure information available to them. Doing so will place you in a position to establish a relationship that could give you a "catcher's mitt" for the listing. What a great way to create a reason for a helpful contact! Even if you don't get a listing, your reward is protecting an unsuspecting family with small children from the possible danger of lead-based paint.

EPA isn't out there trying to find problems. They are simply enforcing Title X compliance. If audited, cooperate and make necessary changes.

Cover your bases... get your files in order... make sure proper disclosure is made... and all forms are signed.

Don't get fined and thrown out of the ball game for missing a base.



# Open Mouth – Insert Foot

## (What is it about equal you don't understand?)

By: Brenda K. Russell, M. Ed., CRS, GRI, ITI

*(Editor's note: Ms. Russell earned her Bachelor's and Master's degree in education before entering the real estate industry in 1979. During her real estate career her unique teaching style earned her the title "Tennessee Realtor-Educator of the Year". Brenda is a Vice President/Broker at Crye-Leike Realtors, Inc., the largest real estate firm in Tennessee. She is also the Director of the Success Real Estate School in Memphis. This article was reprinted with permission from the Fall 1998 edition of the State of Alabama Real Estate Commission Update.)*

You're penalized ten yards in football when the referee calls a clipping penalty against you for an illegal physical contact. In the real life game of real estate, an illegal verbal clipping call can cost you the entire game...and your career. The referees making the tough calls in real estate today aren't playing games...but they're playing for keeps. Remember--an illegal verbal clipping call can put you on the bench, kick you out of the game or end your career. It's your call: know the rules and stay in the game.

Although agents are inundated with paper, most communication with clients and customers is still verbal. We need to be careful that when we "open mouth" we don't "insert foot." The information delivered must be prepared, professional, and within the confines of the Federal Fair Housing Law. Sometimes it's not "what we say" but "how we say it" that can be a problem. We need to develop an internal stash of messages that are appropriate for the common problem areas we encounter. When a situation presents itself, the agent can turn on his or her "internal tape player" of acceptable responses.

### Increasing Cultural Diversity

According to the Harvard University Joint Center for Housing Studies, the minority population is projected to increase by a total of 16.5 million during the 1990's. Furthermore, minorities are expected to account for more than three-quarters of total population growth between 2000 and 2010. Increased minority population will mean more minority buyers, sellers and renters. Agents must be adept at working with diverse population groups in order to stay in the mainstream of the real estate market. They also must be prepared to deal with customer/client questions of a sensitive nature concerning existing property owners and the make-up of residential neighborhoods.

### Answering the Tough Questions

The following examples are situations which agents are likely to encounter in their daily work. I have suggested dialogues and answers that I have used successfully in my own real estate business. Preparing and practicing in advance of these situations can make a positive difference in the agent's skill at handling sensitive topics.

### Selecting the First Neighborhood to Show

Customers/clients moving in from out of town often ask, "Where are you taking us first today? How did you decide where to start?" Rather than beginning with, "I've selected a nice area that fits your parameters to show you first." What if this "nice area" happens to be predominantly occupied by one particular race?

The use of the word "nice" could be construed to mean the area selected is "nice" because of the racial composition.

Instead, base your comments on objective data.

"You told me you

wanted to be no more than 30 minutes to your work. This first area is about 25 minutes from your office. The other areas are a little closer." OR: "You mentioned you wanted to be close to shopping. The first area is the closest in your price range that is very near shopping. The others are a bit further away."

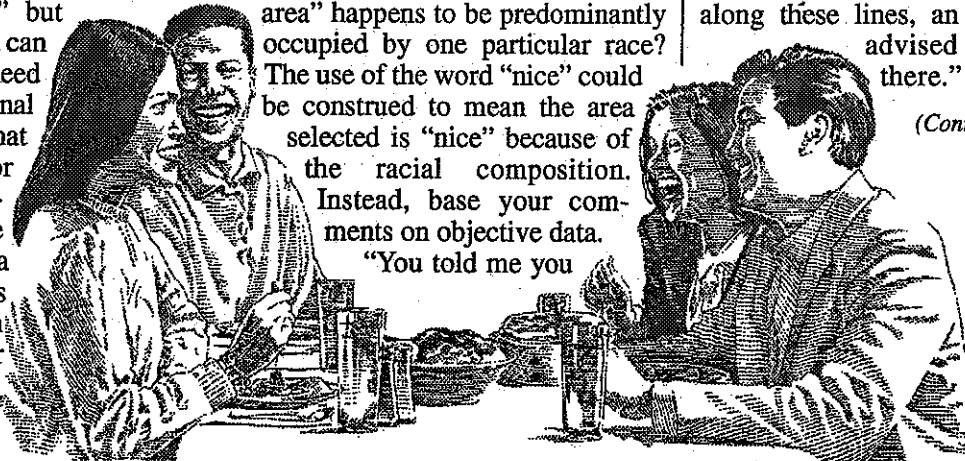
### Handling the "Safety" Issue

When the customer/client says, "Please show me homes in a safe area," agents need to ask questions back. "What do you mean by 'safe' area?" Once I had a client who repeatedly asked to be shown homes on a safe street. As my tension mounted as to how to handle the touchy issue, she finally commented, "Oh, great. Finally a safe street." We were on a dead end street or cul-de-sac. To her "safe" meant no traffic. If the issue is crime, be sure to refer those questions to the proper source. "Are there crime problems in this area?" A good response might be as follows: "I don't know of any (if you in fact don't), but if you are interested in crime statistics, I'll be happy to give you the number of the police department. They can furnish you with that information."

### Racial Composition Questions

Questions about ethnic make-up or national origin can be difficult whether they are positive or negative in tone. Once a client of mine said in a very upbeat, enthusiastic manner, "You know, I like all kinds of people. What is the racial composition of this neighborhood?" On any questions along these lines, an agent is best advised "Don't go there." A good

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(Open Mouth - Insert Foot continued from page 8)

answer: "Federal law prohibits our discussing race or national origin. If you want specific population data, it is available from local census information." OR: "You know, anyone can live wherever he or she can afford to live. We are not allowed to discuss racial issues under the federal fair housing law." One agent in our office had a particularly difficult situation in this regard. There were only four houses in the subdivision, and she lived in one of them. Of course, she knew the answer to the question! Still she prudently chose option one answer above.

### Conducting a Kid Search

"Will my kids have other kids to play with?" This could be simply another way of saying, "Are there other children in the area?" However, the customer/client could be implying, "Will my (minority) kids be accepted in this area?" Try to involve the individuals in answering these types of questions. When showing property to clients with children, we often conduct a "big wheel count." We keep track of the number of big wheels we see in the yards. Sometimes information can be obtained from the listing agent who may know specific gender and ages of neighboring children. Also encourage agents to make this suggestion to the family. "I don't know who lives in these particular houses, but you may want to come back to the area just after school

is out or on a Saturday morning to see how many kids are out playing." The buyers can do some of their own due diligence. It is dangerous for an agent to make any comment about community acceptance. On the flip side of this issue are the people who do not want to live around children for whatever reason. Families are a protected class under



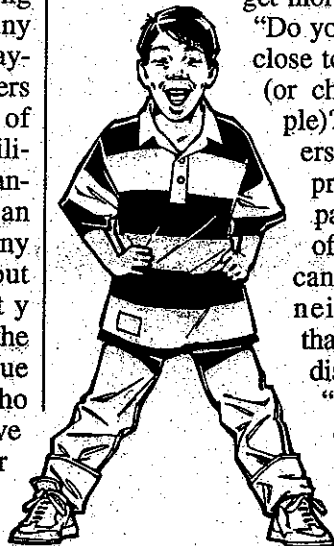
the law, so we should use caution when dealing with buyers who want an adult only environment. These buyers can also visit neighborhoods in afternoons and on weekends to draw their own conclusions about the age range of the occupants.

### Appreciation of the Neighborhood

A concern of all buyers is the soundness of the monetary investment they are making by buying a home. This leads to difficult questions about whether the buyer can expect to experience appreciation in the selected area. It also can bring up issues such as "declining" or "changing" neighborhoods. If the customer/client is represented by a buyer's agent, he or she is entitled to solid factual information provided by the agent regarding sales and listings in the area. Restricting comments to the printed data is the best approach. "In the past two years house prices in this area have risen approximately 10% according to this sales data." Above all, resist the temptation to predict the future. Although agents would welcome a crystal ball, one does not exist! Statements such as, "You're sure to make money in this area," or "This area is sure to appreciate" should be avoided. You could be held liable if such predictions don't come true.

### Inquiries Concerning Religious Affiliations

What if you are asked, "Can you show me homes in a good Jewish neighborhood?" (Substitute any denomination for Jewish in the sentence.) Ask questions to get more information. "Do you want to live close to a synagogue (or church or temple)?" If the buyers do want proximity to a particular place of worship, you can look for neighborhoods that are a certain distance from it. "Which places of worship are you considering? Would you



like to be in walking distance or a short drive away? Tell me your distance requirements, and I'll try to find homes within your parameters that meet them." Make certain that the buyers do their own research on the religious facilities available. Supply a Yellow Pages or perhaps the name of a resource person. One of my agents/friends has a list of people in the community her buyers can contact about various religious facilities and activities in the city and surrounding areas.

### Inquiries About AIDS

The new fair housing question of the '90's is this one: "Does the seller of this house have AIDS?" Although this is not the typical question about race or religion or ethnicity that we expect, it will probably be asked with increasing frequency in the next few years as buyers conscientiously question every possible aspect of their home purchase. The most poised and professional agent can be thrown by this inquiry. Prepare your answer and practice in advance. We are usually more comfortable talking about national origin issues than about Acquired Immune Deficiency Syndrome. However, the responses should be similar. AIDS is considered a handicap in the fair housing law under the 1988 amendments; therefore, it is a protected class just as is national origin. None of the protected classes should be discussed as a criterion to select or reject a particular property. Suggested responses: "AIDS is classified as a handicap under the federal fair housing law. Agents are not allowed to discuss this issue." OR: "Federal fair housing laws prohibit agents from discussing this issue. AIDS is a protected class just as is race or national origin." Being a helpful agent does not mean that one has to answer every question the client raises.

### Making the Final Home Selection

Often persons relocating from out of town to the area can pose particularly challenging queries. Many times I have had the customer/client turn to me and say, "O.K., Brenda. We're down to two home choices. You live here; which one should we

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(Open Mouth – Insert Foot Continued from page 9)

buy?” Never put yourself into the position of “choosing” the home for the buyer, no matter what the circumstances. If the agent picks the house, then the agent could be blamed later for whatever the buyers decide they don’t like about the new neighborhood. You could be charged with “steering” either away from or to a particular area for racial or national origin reasons. When faced with this situation, I put on a big smile and say, “You know what, John? It’s not up to me. It’ll be your house, not mine. Let’s take a sheet of paper and list the pros and cons of your final two selections.” Then hand the buyer the pen and paper. The agent can assist in

recalling the objective features that were either positive or negative, but the buyers make their own list. For example: “You really seemed to like the room sizes in the house on sycamore Street, but you commented that the lot was smaller than you wanted.” After the buyers have made their list, the decision usually becomes simplified.

The Super Bowl of real estate is played out every day on the phone, at your office, in your car, at an open house or at a house for sale. Any time you’re “on the field” going toe-to-toe with buyers or sellers the clock is running. And the referees are watching, itching to blow their whistles, throw down their flags and make a penalty call against you. No matter how long you’ve been in the busi-

ness, you can never, ever let your guard down. You’re never out of the game; there are no time outs. You must expect the unexpected and prepare for it by practicing your verbal game plans—scripts of what to say when-over and over and over again until you don’t have to think about what your lips are going to say. In sports it’s called muscle memory: the training of the body to instinctively respond in a pre-determined way to a given situation automatically, without hesitation, without thinking. This reflex action in real estate I call “mouth memory.” “The training of the brain to protect you by prelearning what to say to avoid a catastrophic, career-crippling “slip of the tongue.”

## Embezzlement – That Could Never Happen To Me

*(Editor’s note: The following article was written by a Colorado licensee whose identity is protected. The article appeared in a recent issue of the Colorado Real Estate News. It is reprinted here with permission because the subject matter is relevant to Nebraska licensees.)*

Or so I thought. Embezzlers were a class of thieves I had only read about. I pictured them as white collar businessmen in large corporations who would have no interest in small everyday business where the pickings were slim.

My story is one of lifelong trust in people close to me. This necessity of trust was magnified during my 20 years as a carrier Naval Aviator. This type of complete trust in your squadron mates could literally mean the difference between life and death.

I brought this type of trust into my next career as a broker and owner of relatively small real estate sales organizations. I would train and oversee my office managers to the extent I was satisfied of their competence and integrity in all aspects of their duties which ultimately included complete maintenance of the checkbook and accounts. I was comfortable in this scenario as we were a small organization which was easy to keep an eye on and we never had a real problem

with any of our real estate commission audits. The complete trust I had in my first ten years of office managers was never abused.

The above scenario set me up nicely for what happened next. I hired a matronly lady whom I had casual contact with previously in a related business. She quickly proved to be perfectly suited to our needs. She handled our clients, customers and other agency REALTORS in an outstanding manner. As far as I could ascertain, she was efficiency personified in overseeing our books, accounts and agent contracts. She quickly became a loved member of our small but very close real estate family. She would never forget a birthday and worked hard in many ways to ingratiate herself with each individual member of our organization.

At this time our organization began a rapid expansion and I preoccupied myself with guiding this growth in a manner to allow it to rise to the top in our real estate community. This, along with my need to sell real estate, was a full time job. Because of the increasingly heavy load

this rapid increase in business was placing on her, I commenced a number of goals and procedures designed to streamline the accounts and related bookkeeping. I dismissed her “feet dragging” on the implementation of these programs as she was just too busy with the everyday business. I was still comfortable because of my trust in her and the fact that our business, due to the 100% commission concept, was a cash in and out with no profit center to steal from. Additionally, she had successfully been through real estate commission audits in the past. (I later found out that a clever embezzler with complete control of the books can often fool an auditor if given enough advance warning of an audit.)

Does the above scenario sound similar to yours? If so, get wise, quickly! She was caught on our last audit with what, on the surface, looked like a couple of minor deposit mistakes. This led me to do something I should have done a long time ago. I hired a bookkeeper to take over all accounts, and her investigation



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# 'Everything A-OK on Y2K?

*(Editor's note: The following article appeared on the Editorial Page of the Lufkin Daily News, Lufkin, Texas. It was penned by the Managing Editor, Ernest Murray. It is reprinted, here, with Mr. Murray's permission.)*

Just when you think every aspect of the Y2K problem has been addressed, up comes a new issue. This report was sent to me allegedly from one of Texas' premier universities.

"Our staff has completed the 18 months of work on time and on budget. We have gone through every line of code in every program in every system.

"We have analyzed all databases, all data files, including backups and historic archives, and modified all data to reflect the Change.

"We are proud to report that we

have completed the 'Y-to-K' date change mission, and have now implemented all changes to all programs and all data to reflect your new standards: Januark, Februark, March, April, Mak, June, Julk, August, September, October, November, December. As well as: Sundak, Mondak, Tuesdak, Wednesdak, Thursdak, Fridak, and Saturdak.

"We trust that this is satisfactory because to be honest, none of this Y-to-K change has made any sense to us. But we understand that it is a global problem, and our team is glad to help in any way possible. And what does the year 2000 have to do with it?

"Speaking of which, what do you think we ought to do next year when the two-digit year rolls over from '99 to '00?"

*(Disciplinary Actions Continued from page 5)*

the maintenance of trust accounts; Ch. 5-003.10 by failing to identify to the seller, in writing, at the time the offer is presented and accepted, those categories of costs the seller will be expected to pay at closing, failing to prepare a written estimate of the cost the seller will be expected to pay at closing, and failing to obtain the signature of the seller on said written document; Ch. 3-006 by failing, in the case of cooperative sales between brokers, to deposit an earnest money payment in her real estate trust account within forty-eight hours or before the end of the next business day after an offer is accepted, in writing, and then forthwith transferring such earnest money deposit to the listing broker; Ch. 5-003.07 and Ch. 5-003.08 by failing to comply with Neb.Rev.Stat. § 76-2401 through § 76-2430 in the following particulars: i) Neb.Rev.Stat. § 76-2420 by failing to adopt a written policy which identifies and describes the relationships in which the designated broker and affiliated licenses may engage with any seller, landlord, buyer, or tenant

as part of any real estate brokerage activities; and ii) Neb.Rev.Stat. § 76-2421 by failing to provide a written copy of the current brokerage disclosure pamphlet to a seller, landlord, buyer, or tenant who has not entered into a written agreement for brokerage services with a designated broker at the earliest practicable opportunity during or following the first substantial contact; Neb.Rev.Stat. § 81-885.02 by conducting the business of a broker without an active real estate license; Neb.Rev.Stat. § 81-885.24(29) by demonstrating negligence, incompetency or unworthiness to act as the broker.)

February 24, 1999

*(Embezzlement Continued from page 10)*

discovered that our beloved and trusted office manager had been cleverly stealing money from our accounts for years amounting to many tens of thousands of dollars. It is now apparent that she came to work every day to lie and steal.

I have since learned a lot about embezzlement. First of all, it is rampant in both large and small businesses throughout the country. It is a disease where once started most often becomes an obsession which the embezzler cannot stop until caught. It is an addiction!

I now realize that trust, especially absolute trust, should have nothing to do with proper control of records and accounts especially where public monies are involved. I don't have to tell you what procedures to use; they are logical and well published. I now realize that every business can be vulnerable unless they are set up properly.

The final thought I will leave you with is this: if you've never been in the type of situation we found ourselves in, you can't imagine the many ways it hurts. *(The company partnership was responsible to repay the missing funds, and the author, being and feeling ultimately responsible, personally repaid a significant portion of the shortage.)*



# 1999 Legislative Session

The Real Estate Commission did not have any legislation drafted for this Legislative Session. Two pieces of legislation, however, have been introduced at the request of the Nebraska Realtors Association which could, if enacted, affect the Nebraska Real Estate License Act and/or the practice of real estate in Nebraska.

## LB-618

The intent of LB-618 is to allow real estate licensees to charge a separate fee for conducting a broker price opinion or comparative market analysis.

As of the writing of this article, LB-618 has been placed on General File with an amendment pending. The pending amendment, AM-0349, does not change the intent of LB-618 but clarifies certain issues of concern which were expressed at the Hearing on the bill.

As proposed for amendment the legislation will allow licensees to charge separately for a BPO or CMA.

It will also require a disclosure on the BPO or CMA which, in part, indicates the BPO or CMA is not an appraisal and is **only** for the purpose of assisting buyers or sellers, or prospective buyers or sellers in deciding the listing, offering or sale price of real property. The Real Estate Commission has gone on record supporting LB-618 as it is proposed to be amended by AM-0349.

## LB-627

This legislation was intended to end after-the-fact referral fees and limit referral fees to parties adding value to the transaction. As of the writing of this article, LB-627 is being held in the Judiciary Committee with an amendment pending. The pending amendment, AM-0612, protects the consumer from being denied benefits by a relocation company, affinity group, or other like groups; requires certain disclosures by the person paying a referral fee; and sets forth penalties

for violations of the legislation. The Real Estate commission has gone on record as supporting AM 0612 as it amends LB-627 but is neutral on LB-627 as proposed to be amended.

Copies of legislative bills and amendments to said bills are available from the Clerk of the Legislature by calling the Legislature's 24-hour Request Line at: (402) 471-2877.

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