



# NEBRASKA REAL ESTATE COMMISSION

# COMMISSION COMMENT

Spring | 2011

## Legislative Roundup

The three legislative bills introduced at the request of the Nebraska Real Estate Commission have passed and will become law three months after the end of the legislative session, which at this time looks to be around September 8th if the legislature adjourns on schedule. More detail on the bills follows:

### LB 23 Administrative Changes, Two Year Renewal, Pocket Cards

LB23 is a bill which does a couple of things, it will place renewals on a two year cycle, to coincide with the continuing education submission, and it will eliminate the need for pocket cards.

The two year renewal change is pretty self explanatory, licensees will have to fill out and we will have to process, renewals once every two years instead of once a year, because we will reduce our renewal volume each year by 50% we will be able to process the renewals and answer

your questions faster, for your 2012 renewals (due November 30, 2011) everyone will renew, but the licensees that have continuing education due will renew for two years, while the licensees that don't will renew for one year, for 2013 (fall 2012 renewal) we will have fully implemented the two year cycle and only the licensee's who have their CE due that year will renew.

A number of years ago the requirement to carry pocket cards was eliminated, the bill would do away with the pocket card requirement completely as it adds paper-

work for both licensees and the Commission when people go on inactive status or transfer from one broker to another.

### LB24 Continuing Education

The proposal that the Commission has endorsed would require an additional 6 hours of broker approved training every two years, the training courses will have a broader subject matter criteria for approval than traditional CE courses and it will allow broker's to choose areas of emphasis in training and education. The bill itself simply adds 6 hours of

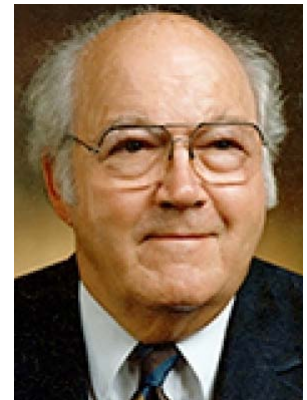
*(Continued on page 7)*

## Director Emeritus Paul Quinlan Feb. 9, 1918 – Dec. 26-2010

It is with great sorrow the Nebraska Real Estate Commission reports the death of Director Emeritus and past Director of the Nebraska Real Estate Commission Paul Quinlan.

Mr. Quinlan served as Deputy Secretary of State before becoming Director of the Real Estate Commission from 1965-1990 and had served as Director Emeritus for the Nebraska Real Estate Commission since his retirement as Director. Quinlan was President of NARELLO (now known as ARELLO) in 1973-74 and one of the founding members of The Real Estate Educators' Association.

Quinlan worked with the industry and educators to establish pre-license education curriculum and mandatory continuing education. He was also instrumental in Nebraska becoming the first state to license appraisers. He was very proud of the work he did to promote licensing and educational standards for real estate professionals.



### Commission Meeting Schedule

April 21-22 .....Lincoln  
May 19-20 .....Lincoln  
June 16-17 .....Lincoln

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1200 "N" Street, Suite 402  
P.O. Box 94667  
Lincoln, Nebraska 68509-4667  
(402) 471-2004  
www.nrec.state.ne.us  
EDITOR: Greg Lemon

#### COMMISSION MEMBERS

##### CHAIRPERSON

John Gale  
Secretary of State  
State Capitol  
Lincoln, NE 68509  
(402) 471-2554

##### PUBLIC MEMBER

David H. Ptak  
1010 Darrus Drive  
Norfolk, NE 68701  
(402) 844-7046

##### SALESPERSON MEMBER

Kathryn Rouch  
13110 W. Dodge Rd.  
Omaha, NE 68154  
(402) 498-8300

##### BROKER MEMBERS

Rita M. Griess  
5901 N. 27th St.  
Lincoln, NE 68521  
(402) 323-8700

Vince W. Leisey  
13340 California St.  
Omaha, NE 68154  
(402) 493-4663

Robert Dover  
1000 Norfolk Avenue  
Norfolk, NE 68702  
(402) 371-0200

Al Avery  
819 Diers Ave, Suite 5  
Grand Island, NE 68803  
(308) 398-6600

##### DIRECTOR

Greg Lemon  
1200 "N" Street, Suite 402  
Lincoln, NE 68508  
(402) 471-2004  
greg.lemon@nebraska.gov

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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.

Printed with soy ink

# DIRECTOR'S DESK

One of the Commission's trust account examiners came into my office the other day, flashed a piece of paper in my face, and said, "look at this". The document was a warranty deed from 1928 selling a parcel of land for a residential lot for the sum of \$304. The document also stated that "all buildings shall be placed at least 20 feet back from the front side of the lot and the premises shall never be occupied by a colored person."



*Director Greg Lemon*

Now I know enough history that the existence of such a blatantly discriminatory statement did not totally surprise me, even when contained in a publicly recorded legal document, but it did get me to thinking about how significantly the laws and practices in this area have changed in the last century, particularly as they relate to the practice of real estate.

So I did a little research, as all licensees know, the License Act specifically prohibits discrimination in the showing, sale or leasing of property. That provision was first passed by the Legislature and incorporated into the Nebraska Real Estate License act in 1965. The federal Civil Rights Act preceded it by one year, but the provisions of the Fair Housing Act were not added to the Civil Rights Act until 1968, so the Nebraska laws prohibiting housing discrimination preceded the federal requirements by a few years. The provision was also not placed on the end of the list of unfair trade practices, as new additions to such lists often are, but was placed in the first spot on the list. The license act prohibition against discrimination was expanded beyond race, color, national origin, and ethnic group to include sex, disability and familial status in 2002. As it currently reads Neb. Rev. State 81-885.24 (1) states that: "Refusing because of religion, race, color, national origin, ethnic group, sex, familial status, or disability to show, sell, or rent any real estate for sale or rent to prospective purchasers or renters..." shall be an unfair trade practice.

I became director in 2009, a long time after the first civil rights provisions were added to the Act, and a lifetime after the 1928 deed, a lot has changed in those years. In my year and a half here I have yet to hear a complaint ("in whole or in part" as the lawyers like to say) brought to the Commission based on racial, ethnic or gender discrimination, however, there are also other government agencies that deal with fair housing complaints besides the NREC. It does seem to me that the issue of fair housing has not been as high profile in recent years as it was in the 60s and 70s (the Commission Comment hasn't dealt with it in any articles since 1997), so it doesn't hurt to look back from time to time on how far we have come and remind ourselves of this important provision of the licensing act.

## Passing of Paul Quinlan

Please see the more complete article on the passing of Paul Quinlan on

*(Continued on page 7)*

# Disciplinary Actions Taken by the Real Estate Commission

*(Does Not Include Cases on Appeal)*

**2010-036** – *Commission vs. Terry Jo Hofer, Salesperson.* Hearing held October 29, 2010. License revoked. Hofer violated Neb. Rev. Stat. § 81-885.24(29) Demonstrating negligence, incompetency, or unworthiness to act as a salesperson, by engaging in repeated acts of criminal conduct and crimes of dishonesty directly connected to her duties as a rental manager, resulting in two criminal convictions. Plus, pay the Court Report’s costs associated with said hearing in the amount of \$80.00 on or before December 3, 2010. October 29, 2010

**2009-053** – *Sandra L. Nichols & George O. Nichols vs. Candice M. Potratz, Salesperson.* Stipulation and Consent Order dated December 2, 2010. License censured; plus an additional three (3) hours of continuing education in the area of Ethics to be completed by April 1, 2011. [Violated Neb. Rev. Stat. § 81-885.24 (29) Demonstrating negligence, incompetency, or unworthiness to act as a salesperson; for making inappropriate comment to Sandra Nichols.] December 2, 2010

**SC2010-004** – *Commission vs. Scott Allen Schaefer.* Show Cause Hearing held December 2, 2010 - Scott Allen Schaefer failed to show cause as to why he should not be subject to sanctions for failing to abide by the provisions of the Commission’s Order in Case No. SC2010-002. Schaefer failed to pay the Court Reporter costs associated with the Show Cause Hearing in the amount of \$200.00, by July 28, 2010. Schaefer’s license is suspended for an additional period of six (6) months with the first thirty (30) days served on suspension, to commence on December 7, 2010, and continue through January 6, 2011. The remaining five (5) months suspension shall be stayed and served on probation, and will be added to the probationary period imposed under Case Nos. 2009-005 and SC2010-002, thereby extending the probationary period through March 18, 2013. December 2, 2010

**2010-015** – *Commission vs. Laura Ann Switzer, Salesperson.* Hearing held December 2, 2010. License revoked. Switzer violated Neb. Rev. Stat. § 81-885.11 Any person desiring to act as a real estate broker or real estate salesperson shall file an application for a license with the Commission. The application shall be in such form and detail as the Commission prescribes. Switzer submitted false Annual Renewal Applications to the Commission for 2006, 2007, and 2008. Switzer violated Neb. Rev. Stat. § 81-885.12 When an applicant has made a false statement of material fact on an application, such false statement may in itself be sufficient ground for refusal of a license, and, Neb. Rev. Stat. § 81-885.24(29) Demonstrating negligence, incompetency, or unworthiness to act as a real estate salesperson; for submitting false Annual Renewal Applications to the Commission for 2006, 2007, and 2008, and, for having been convicted of Theft-Shoplifting/2nd, a Class 1 Misdemeanor. December 2, 2010

**SC2010-005** – *Commission vs. Michael Dean Slatten.* Show Cause Hearing held December 3, 2010. Michael Dean Slatten failed to show cause as to why he should not be subject to sanctions for failing to abide by the provisions of the final Order of the Commission in Case No. 2008-004. Slatten failed to abide by the requirement that he complete three hours of continuing education in the area of Trust Accounts by July 13, 2010. Therefore, the broker’s license of Michael Dean Slatten is suspended for an additional period of six (6) months, with the first thirty (30) days served on suspension and the remainder five (5) months stayed and served on probation. The suspension period commenced on December 22, 2010, and will continue through January 21, 2011. The remainder five (5) month probation period will be added to the probation period in Case No. 2008-004, extending the probationary period through January 12, 2012. Plus, pay the Court Reporter costs associated with said hearing in the amount of \$120.00, on or before February 6, 2011. December 7, 2010

**2009-055** – *Commission vs. Michelle Lynn Crowell, Broker.* Stipulation and Consent Order dated February 17, 2011. License censured; plus an additional six (6)

*(Continued on page 4)*

## MEET THE REAL ESTATE COMMISSION STAFF

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

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

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

### COMMUNICATIONS GUIDE

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

- Commission Meeting Information . . . . . *Monica Rut*  
monica.rut@nebraska.gov
- Complaint Procedures . . . . . *Terry Mayrose*  
terry.mayrose@nebraska.gov
- Continuing Education History or  
Inquiries . . . . . *Tawny Snider*  
tawny.snider@nebraska.gov
- Curriculum Design (Education &  
Instructor Approval) . . . . . *Teresa Hoffman*  
teresa.hoffman@nebraska.gov
- Errors and Omissions Insurance  
Inquiries . . . . . *Teresa Hoffman*  
teresa.hoffman@nebraska.gov
- Financial Officer . . . . . *Rebecca Hallgren*  
rebecca.hallgren@nebraska.gov
- License Applications Packet  
Requests . . . . . *General Staff*  
realestate.commission@nebraska.gov
- License Applications Process . . . . . *Marilyn Masters*  
marilyn.masters@nebraska.gov
- Licensing and Education  
Requirements . . . . . *Teresa Hoffman*  
teresa.hoffman@nebraska.gov
- New Licenses in Process . . . . . *Marilyn Masters*  
marilyn.masters@nebraska.gov
- Specialized Registrations . . . . . *Monica Rut*  
monica.rut@nebraska.gov
- Transfer of License . . . . . *General Staff*  
realestate.commission@nebraska.gov
- Trust Account Matters . . . . . *Terry Mayrose*  
terry.mayrose@nebraska.gov  
*John Clark*  
*Patricia Stehly*  
*Ron Pierson*
- Webmaster . . . . . *Monica Rut*  
monica.rut@nebraska.gov

WEBSITE: [www.nrec.state.ne.us](http://www.nrec.state.ne.us)

TELEPHONE NUMBER

(402) 471-2004

FAX NUMBER

(402) 471-4492

ADDRESS:

Nebraska Real Estate Commission

P.O. Box 94667

Lincoln, NE 68509-4667



(Continued from page 3)

## Disciplinary Actions (Cont'd)

hours of continuing education in “Agency Law” and “Contracts” to be completed by June 17, 2011; plus pay a civil fine in the amount of \$500.00 on or before March 18, 2011. [Violated Neb. Rev. Stat. § 76-2417(1)(b) for failing to exercise reasonable skill and care for the Seller, and, (c) failing to promote the interest of the Seller; for her failing to present the Seller’s Counter-Offer to the Buyer in a timely manner; Neb. Rev. Stat. § 76-2422 in that the Listing Agreement failed to include the duties and responsibilities of a limited Seller’s Agent; Neb. Rev. Stat. § 81-885.24(16) Unfair trade practice for violating any provision of sections 76-2401 to 76-2430; and 81-885.24(29) Demonstrating negligence, incompetency, or unworthiness to act as a broker, associate broker, or salesperson for violating Neb. Rev. Stat. §§ 76-2417 (1) (b) (c); 76-2422; and 81-885.24 (16). February 17, 2011

**2009-056 – Commission vs. Brenda L. Whalen, Salesperson.** Stipulation and Consent Order dated February 17, 2011. License suspended for one (1) year, with the first sixty (60) days served on suspension and the ten (10) month remainder stayed and served on probation; plus an additional nine (9) hours of continuing education in the areas of agency law, ethics and contracts to be completed by June 17, 2011. Whalen shall pay a civil fine in the amount of \$1,000.00 on or before March 18, 2011. [Violated Neb. Rev. Stat. § 76-2418(1)(b) and (c) licensee representing a buyer, as a buyer’s agent, agent shall be a limited agent with the following duties and obligations, (b) to exercise reasonable skill and care for the client; (c) to promote the interests of the client with the utmost good faith, loyalty, and fidelity, including (ii) presenting all written offers to and from the client in a timely manner, in that she failed to exercise reasonable skill and care for the Warneke buyers with regard to the transaction in question and failed to promote the interests of the Warneke buyers, by failing to present the Warnkes’ \$33,500.00 offer of December 10, 2008 to the Listing Agent for the Seller; 76-2424(1) At the earliest practicable opportunity during or following the first substantial contact with a buyer, who has not

entered into a written agreement for brokerage services with a designated broker, the licensee who is offering brokerage services to that person shall (a) provide that person with a written copy of the current brokerage disclosure pamphlet which has been prepared and approved by the commission; and (b) disclose in writing to that person the types of brokerage relationships the designated broker and affiliated licensees are offering to that person or disclose in writing to that person which party the licensee is representing, in that she offered brokerage services, as an affiliated licensee, to the Warneke buyers and failed, at the earliest practicable opportunity following the first substantial contact with the Warneke buyers, to provide them with a written copy of the current brokerage disclosure pamphlet approved by the Commission and failed to disclose in writing to the Warneke buyers the type of brokerage relationship Whalen was offering to the Warneke buyers; 81-885.24(16) Unfair trade practice for real estate licensee to “violate any provision of sections 76-2401 to 76-2430”; 81-885.24(26) Unfair trade practice for a licensee to violate any rule or regulation adopted and promulgated by the commission in the interest of the public and consistent with the Nebraska’s Real Estate License Act; 81-885.24(29) Failure to reduce an offer to writing where a prospective purchaser requests such offer to be submitted when the licensee is the prospective purchaser’s limited buyer’s agent, in that she failed to reduce to writing the various offers, alleged more particularly above, to purchase the subject property, submitted to her by the Warnkes and by Glissman in November and December of 2008; 299 NAC 5.003.18 Actions demonstrating negligence, incompetency, or unworthiness.] February 17, 2011

**2010-006 – James E. Sanford vs. Diane Lee Powers, Salesperson.** Stipulation and Consent Order dated February 17, 2011. License censured; plus an additional three (3) hours of continuing education in the area of “Disclosures” to be completed by June 17, 2011; plus pay a civil fine of \$500.00, on or before March 18, 2011. [Violated Title 299 Chapter 5 Section 003.25 Failure by a licensee who knows of an error, inaccuracy, or omission in a Seller

Property Condition Disclosure Statement completed pursuant to Neb. Rev. Stat. § 76-2,120 to disclose the error, inaccuracy, or omission, in writing, to a potential purchaser and the seller and attaching the written disclosure to the Seller Property Condition Disclosure Statement; Neb. Rev. Stat. § 81-885.24(22) Making any substantial misrepresentations; for representing in the Seller Property Condition Disclosure Statement that there had been no prior hail damage to the roof, and that there had been no insurance claims filed against the roof; and Neb. Rev. Stat. § 81-885.24(29) Demonstrating negligence, incompetency, or unworthiness to act as a salesperson; for violating Title 299 Chapter 5 Section 003.25 and Neb. Rev. Stat. § 81-885.24 (22).] February 17, 2011

**2010-006 – James E. Sanford vs. Michael Stuart Powers, Salesperson.** Stipulation and Consent Order dated February 17, 2011. License censured; plus an additional three (3) hours of continuing education in the area of “Disclosures” to be completed by June 17, 2011; plus pay a civil fine of \$500.00, on or before March 18, 2011. [Violated Title 299 Chapter 5 Section 003.25 Failure by a licensee who knows of an error, inaccuracy, or omission in a Seller Property Condition Disclosure Statement completed pursuant to Neb. Rev. Stat. § 76-2,120 to disclose the error, inaccuracy, or omission, in writing, to a potential purchaser and the seller and attaching the written disclosure to the Seller Property Condition Disclosure Statement; Neb. Rev. Stat. § 81-885.24(22) Making any substantial misrepresentations; for representing in the Seller Property Condition Disclosure Statement that there had been no prior hail damage to the roof, and that there had been no insurance claims filed against the roof; and Neb. Rev. Stat. § 81-885.24(29) Demonstrating negligence, incompetency, or unworthiness to act as a salesperson; for violating Title 299 Chapter 5 Section 003.25 and Neb. Rev. Stat. § 81-885.24 (22).] February 17, 2011

# New Version of the Real Estate Licensing Examination to be Launched April 27, 2011


In order to keep real estate licensing examinations germane to the practice of real estate a new national job analysis must be conducted periodically. Applied Measurement Professionals (AMP), the examination company with whom we contract, undertakes this process approximately every five years. A national job analysis entails sending out a survey to real estate licensees across the country that identifies all the many varied tasks that one might engage in as a licensed real estate agent and asks licensees to evaluate how important each task is to a beginning level licensee. There are separate indicators for salesperson duties and broker duties, responders are sorted so that there is a strong cross-section of the industry, geographic location, and years of experience represented. You may very well have been sent one of these surveys and, if so, we hope you took the time to fill it out and turn it in to AMP because this is how we guard against testing things that “nobody does anymore”.

## New National Salesperson Examination Passing Score

This national job analysis was completed last year and new national examination content outlines have led to the construction of new national-portions of examinations which have a somewhat different focus in keeping with real estate practice today. Two studies with regard to the difficulty of these examinations have recently been completed to determine the proper minimum competency score (pass score) to set for the examinations. The

national broker examination is, for the most part, a simulation-style exam and this information will be used to set the minimum score per section. The national salesperson examination is a multiple choice examination and will continue to indicate a percentage score. At the January meeting of the Commission it was decided to accept AMP’s recommendation that the passing score for the new national portion of the salesperson license examination be set at 70%. Studies support this score as being sufficient to protect the public and will allow for a projected pass rate roughly equivalent to the rate for the current exam.

## Examinations Remain Familiar

The Commission would like to emphasize that the state portion of both the broker and salesperson examinations has not changed. The 75% passing score for the salesperson state-specific portion of the examination remains the same. Additionally, with the changes applied to the national portion passing criteria of the examinations very little additional adjustment will be necessary. Current course review, pre-license education, and test-prep classes are appropriate study material for both the current and the new test. 



# How to Establish Proof of Prior E&O Insurance If You Have a Claim

By Cindy Rice Grissom, CEO, Rice Insurance Services Company, LLC

Nebraska's current real estate agent group errors and omissions ("E&O") insurance program administered by Rice Insurance Services Company, LLC ("RISC") offers coverage for acts, errors, and omissions that occurred prior to the date of the current policy ("prior acts coverage") under certain conditions. Prior acts coverage is determined by your retroactive date. Your retroactive date is the date you first obtained, and from which you have continuously maintained, real estate E&O coverage. It is very important that you maintain continuous coverage in order to preserve your retroactive date. A claim involving prior acts may be considered for coverage if the alleged act, error, or omission occurred after your retroactive date.

Continental Casualty Company ("Continental Casualty"), a CNA insurance company, is the insurance provider for the group program. If you have a claim, you must send documentation of your claim to RISC for a coverage determination. Whether or not the claim involves an act, error, or omission that occurred after your retroactive date affects the coverage determination. If you have been continuously insured with Continental Casualty since the date of the alleged act, error, or omission, RISC will be able to verify your retroactive date. If you were insured by an insurance provider other than Continental Casualty between the time of the alleged act, error, or omission and the time the claim was first made, then you will need to send proof of prior coverage with your claim documents.

Proof of prior coverage must con-

tain all of the following information:


- Policyholder name
- Policy number
- Identification of previous carrier
- Policy period (effective and expiration dates)
- Prior limits of liability
- Type of coverage (must be real estate E&O coverage)

If you do not have proof of your prior coverage, you may request it from your previous insurance provider. If you were insured by the group program's previous provider, Williams Underwriting Group, then you may send us a copy of your most recent "Certificate of Insurance" from that provider. The Certificate of Insurance will provide the required information, along with a retroactive date. If the alleged act, error, or omission giving rise to the claim occurred on or after the retroactive date on the Certificate of Insurance, then the Certificate of Insurance will satisfy proof of your prior coverage. If the alleged act, error, or omission occurred prior to the retroactive date listed on the Certificate of Insurance, then you will need to supply proof of coverage from the date of the alleged act, error, or omission to the retroactive date shown on the Certificate of Coverage. If you do not have evidence of such coverage, you may request a copy from the company that provided your insurance during that time period.

If you were previously insured by a provider other than Continental Casualty or the prior group program provider, then you may contact your previous insurance agent or provider for proof of prior coverage. Proof of

prior coverage may be a certificate of coverage or other documentation, including a letter or email, from the insurance provider or agent with the information listed above. Insurance providers frequently receive requests for proof of coverage and typically provide this information quickly and easily. That said, we would like you to know what information will be needed in the event of a claim, so that proper documentation can be readily obtained.

It is a good idea to keep records of your prior insurance coverage. You are not required to send proof of prior coverage to RISC if you do not have a claim. However, if you would like RISC to have proof of your prior coverage on file, you may send the information to us at the following address: RISC, Policy Department, P.O. Box 6709, Louisville KY 40206-0709. If you have questions regarding proof of prior coverage, please contact our policy department at 1-800-637-7319, Ext. 1. If you have a claim or potential claim, please call our claims department at 1-800-637-7319, Ext. 2.

This information is for illustrative purposes only and is not a contract. It is intended to provide a general overview of the products and services offered. Only the policy can provide the actual terms, coverages, amounts, conditions and exclusions. This program is only available in Nebraska. 





(Continued from page 3)

## Legislative Roundup (Cont'd)

training to the existing 12 hours of CE required every two years. If a broker fails to approve training traditional continuing education classes may be substituted. The details of the proposal will be established through the rule and regulation process after the legislation has passed.

## LB25 Asset Management Companies

There has been an ongoing problem with asset management companies that handle the sale of properties for large institutional property and mortgage holders including banks, FANNIE MAE, HUD, etc. These

companies will generally list such properties with a licensee (to get the property on the MLS), but they do not use a listing and transaction model (particularly when it comes to presenting offers) that conforms with our laws. The proposed legislation we have come up with would craft a narrow exception for licensees when dealing these companies so that licensees can continue to work with them without violating the license law. The exceptions relate to the requirements of the listing agreement (statutory duties do not have to be stated) and to presenting offers. These exceptions would only apply to asset management companies as defined in the bill. [📄](#)



## UNEXPIRED LISTING AGREEMENTS –

### What you Can and Can't do with a Represented Seller

The Nebraska Real Estate Commission recently had discussions regarding whether a listing agreement can be entered into prior to the expiration of an existing listing with another licensee, if the new listing agreement is post-dated to be effective after the existing listing expires. The short and simple answer is “no”.

The license act specifically prohibits negotiating or entering into a listing agreement if the licensee knows the owner of the property has an active current exclusive listing agreement (Neb. Rev. Stat. 81-885.24(14)).

Nebraska law (Neb. Rev. Stat. 81-885.24 (15)) does allow a licensee to discuss the terms upon which a future listing agreement would be offered with a represented owner, but only if the discussion is initiated by the owner. The Commission affirmed this interpretation through Commission policy last adopted on February 28, 1995. [📄](#)

(Continued from page 3)

## Director's Desk (Cont'd)

page one of this issue, I did not have the opportunity to work with or get to know Mr. Quinlan very well, but I will never forget the post card he sent me not long after I had come on board as Director. His note had some positive comments about one of the Articles we had recently published in the Commission Comment, considering the source, one of the highlights of my career as the current Director of the Commission.

Greg Lemon, Director  
Nebraska Real Estate Commission

Nebraska Real Estate Commission  
PO Box 94667  
Lincoln, NE 68509-4667  
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