



COMMISSION COMMENT

Spring | 2012

Broker-approved Training FAQ's

[Note: The Broker-approved Training program is up and running. Several Training programs have now been recognized by the Commission with more to come. Additional information on the Training may be found on the Commission's website at: <http://www.nrec.ne.gov/licensing/forms/educationinfo.html>.]

What is the requirement for broker-approved training?

The total education requirement for all active licensees is a total of 18 hours every two years. Of that 18 hours, at least 12 hours must be approved continuing education with 6 hours in designated subject matter, "R" courses. The remaining 6 hours may be in training approved by the licensee's broker that has been recognized by the Commission or may be in additional approved continuing education activities. "R" courses may be duplicated in subsequent CE periods but non-"R" continuing education may not be duplicated within 4 years. There is no prohibition on duplicating training activities approved by the licensee's broker.

Commission Meeting Schedule

April 19-20Lincoln
May 17-18Lincoln
June 21-22Lincoln

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What is Broker-approved Training?

Broker-approved training is an opportunity for designated brokers to seek out and approve training activities that they believe will benefit their licensees in performing real estate duties. It is hoped that brokers will exercise care in analyzing performance, diagnosing indicated needs and seeking out training to address those needs. Designated brokers will then go on record as endorsing certain training activities through their approval. Licensees may take up to six hours of broker-approved training as a part of their 18 hour education requirement every two years.

Why is the Commission getting involved in training?

The Commission believes that it is the duty of designated brokers to supervise and provide meaningful training for their affiliated licensees. The Commission also believes licensees will generally benefit from meaningful training and that the public will benefit from a better-trained licensee. For years the Commission has been told that training is poorly attended and designated brokers cannot insist their affiliated licensees, who are independent contractors, attend. Therefore, the Commission decided to support broker approved training by giving licensees up to six hours of credit toward the eighteen hour education requirement for

attending training their broker has specifically approved for this purpose.

Can I get credit for attending training that any broker has approved?

No. To get credit for attending broker-approved training it has to have been approved by your designated broker. **Please note:** this must be your designated broker, managing brokers do not have the authority to sign the Notice of Scheduling document verifying the employing broker's approval.

Where does the training come from?

These activities may be developed by the broker, in-house trainers, guest trainers, independent educators, etc. Providers of the training take on the administrative responsibilities as directed by the Commission in order for licensees to receive credit.

There is a big training session being held and several brokers have approved the same activity. Can I get credit for this activity?

As long as your designated broker is one of the brokers that has gone on record as approving the activity and the Commission has recognized the training you can get credit for attending the activity.

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1200 “N” Street, Suite 402
P.O. Box 94667
Lincoln, Nebraska 68509-4667
(402) 471-2004
www.nrec.ne.gov
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

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

Drew Stange
1248 “O” St.
Lincoln, NE 68508
(402) 441-5800

DIRECTOR

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

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DIRECTOR’S DESK

Name Calling—Don’t Do it

The Commission has pursued a number of disciplinary actions in the last couple of years based upon disparaging comments, or “name calling” by licensees. While the number has not been huge, it has been significant, many more than we have received in the past. Such inappropriate comments have been determined by the Commission to “demonstrate negligence, incompetence, or unworthiness” to act as a licensee, a violation of the License Act. We don’t enjoy prosecuting such matters, and such actions reflect poorly on the profession, so please remember to act and speak professionally at all times when acting as a licensee, whether talking with clients, sending e-mails, posting to social media sites or any other means of communication.



Director Greg Lemon

Rita Griess Correction

In the last issue of the *Commission Comment* the past commissioner Rita Griess was incorrectly identified as a Broker for Woods Brothers Realty in Lincoln, Griess works for Home Real Estate, we apologize for the error, and wish Rita the best in her future endeavors.

2012 Legislation

Usually the Spring issue has some space devoted to legislative changes, however, with no pending legislation sponsored by either the Commission or the State Realtor’s Association this year, there is not much to report on the legislative front.

Greg Lemon, Director
Nebraska Real Estate Commission



Disciplinary Actions Taken by the Real Estate Commission

(Does Not Include Cases on Appeal)

2011-006 – Matthew M. Steinhausen vs. Shelly J. Nitz, Salesperson, Seward, NE. Stipulation and Consent Order entered on December 6, 2011. Additional six (6) hours of continuing education in “Ethics” to be completed by March 18, 2012. [Violated Neb. Rev. Stat. § 81-885.24(29) Demonstrating negligence, incompetency, or unworthiness to act as a salesperson, for sending an inappropriate mass e-mail to other licensed real estate professionals affiliated with her designated broker’s real estate companies.]

2011-012 – Commission vs. Gary Thomas Thompson, Broker, Lincoln, NE. Hearing was held on December 6, 2011. Thompson’s license will be suspended for an additional three years, to commence on May 31, 2012, and shall continue through May 31, 2015. The entirety of the additional three (3) years shall be stayed and served on probation; Thompson’s trust accounts and the trust account records maintained by Realty Linc. shall be posted current and accurate at all times and without exception. Should Thompson utilizes a computer-generated bookkeeping system, Thompson shall be required to maintain a back-up to the bookkeeping system. The trust accounts and trust account records maintained by Realty Linc. are subject to examination by a Commission trust account examiner at any time, and such examinations shall occur at least quarterly commencing with the signing of this Order; Thompson is to pay \$400.00 for Court Reporter fees and \$40.00 for witness fees for a total of \$440.00 due January 11, 2012. [Violated Neb. Rev. Stat. § 81-885.24(29) Demonstrating negligence, incompetency, or unworthiness to act as a broker, by his ongoing pattern of mismanagement of the financial affairs of Realty Linc., particularly the debt owed by Realty Linc., since 2004, to the NDOL for delinquent state unemployment taxes, in violation of the Nebraska Employment Security Act, which caused Realty Linc.’s trust accounts to become subject to the NDOL levies, which, in turn, caused Realty Linc.’s trust accounts to be short of funds and Realty Linc.’s trust account records to be inaccurate, from July of 2010, through May of 2011.]

2011-002 – Jason K. Hesser vs. Charles Robert Winkler, Broker, Grand Island, NE. Stipulation and Consent Order dated January 19, 2012. License censured; Winkler must pay a civil fine of \$500.00 by March 19, 2012; plus an additional three (3) hours of continuing education in “Contracts” to be completed by April 18, 2012. [Violated Neb. Rev. Stat. § 81-885.24(29) Demonstrating negligence, incompetency, or unworthiness to act as an associate broker, for failing to collect an earnest money deposit from the buyer.]

2011-035 – Commission vs. Robby Gene Predmore, Broker; Lincoln, NE. Stipulation and Consent Order entered January 19, 2012. License censured; Civil fine of \$500.00 by February 18, 2012; and three (3) additional hours of continuing education in “Disclosures” to be completed by April 18, 2012. [Violated Neb. Rev. Stat. § 81-885.24(29) Demonstrating negligence, incompetency, or unworthiness to act as an associate broker; for failing to review the Seller Property Condition Disclosure Statement completed by the sellers on October 19, 2009, for errors, inaccuracies or omissions.]

2011-039 – Commission vs. John Anthony Clark, Broker; Omaha, NE. Stipulation and Consent Order entered January 19, 2012. License suspended for two (2) years with the entire two (2) year suspension period stayed and served on probation, commencing January 19, 2012, and continuing through January 19, 2014; Plus a civil fine of \$1,000.00 to be paid by February 18, 2012; plus six (6) hours of additional continuing education with three (3) hours each in the areas of “Disclosures” and “Ethics”, to be completed by May 18, 2012. [Violated Neb. Rev. Stat. § 81-885.11 Any person desiring to act as a real estate broker or real estate salesperson shall file an

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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	Paige Stuart paige.stuart@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	Patricia Menousek patricia.menousek@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.ne.gov

TELEPHONE NUMBER

(402) 471-2004

FAX NUMBER

(402) 471-4492

ADDRESS:

Nebraska Real Estate Commission

P.O. Box 94667

Lincoln, NE 68509-4667

Authority to Sign Listing Agreements and Purchase Agreements, What to do when a Business Entity or Multiple Parties Own a Property

The Commission continues to receive a large number of questions and a significant number of complaints which revolve around whether real estate licensees have gotten the correct signatures on listing and purchase agreements or properly ascertained who has authority to buy or sell property or bind the potential seller or buyer to contractual obligations. The rule is that all parties with an interest in the property must sign listing and purchase agreements. This article explores licensees' obligations and best practices in situations where there may be exceptions to the rule or the applicability of the rule is not straightforward.

Statutory Provisions

There are several relevant statutes that should be mentioned before beginning this discussion.

1. Neb. Rev. Stat. §76-2403, Adverse Material Fact, "Adverse Material Fact shall mean a fact which significantly affects the desirability or value of the property to a party and is not reasonably ascertainable or known to a party or (2) *establishes a reasonable belief that another party will not be able to, or does not intend to, complete that party's obligations under a contract creating an interest in real property*" (emphasis added). As all licensees know, there is an obligation under the law to disclose adverse material facts actually known by the licensee in writing.

2. Neb. Rev. Stat. §76-2417 (seller's or landlord's agent) and §76-2418 (buyer's or tenant's agent), these statutes provide that a licensee "owes no duty to the client to inde-

pendently verify the accuracy or completeness of statements made by the client."

3. Neb. Rev. Stat. §76-2417 (seller's or landlord's agent) and §76-2418 (buyer's or tenant's agent), these statutes also provide that a licensee "promote the interests of the client with the utmost good faith, loyalty, and fidelity" including "advising the client 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" and also to "exercise reasonable skill and care for the client".

Statutes should be considered as a whole and read in a way to give meaning to all provisions of law when interpreting legal obligations and that is the approach taken here in providing guidance to licensees.

General Rule

The Commission strongly recom-

mends that in situations involving multiple party ownership or interest in the property, including listing agreements, purchase agreements, and other contracts where all parties with an ownership interest in the property are not signing the agreement, that the agreements contain a statement to be affirmed by the party or parties signing the contract that they have legal capacity to enter into a binding contract regarding the property. The Commission recommends that licensees enlist the services of an attorney to draft the language to be used in such agreements. If such a statement is made, and the licensee is not aware of any facts or circumstances that would lead them to reasonably conclude the party or parties signing do not have authority, such a provision satisfies the licensee's duty to the client.

If the licensee is aware of grounds

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Authority to Sign (Cont'd)

to reasonably conclude that the party or parties signing the document do not have authority to enter into an contract, the licensee should disclose this to all parties to the transaction in writing, and advise the use of an attorney to ascertain who has capacity to act if such information is not readily ascertainable or beyond the expertise of the licensee to ascertain.

Specific Situations

1. Husband and Wife

“One to buy, two to sell” is often quoted in the industry when dealing with married persons. This rule has been interpreted to apply to listing agreements as well as purchase agreements by the Commission, and any listing agreement or amendment to any such agreement should be signed by both husband and wife. Although more limited than the above statement in scope, Neb. Rev. Stat. §40-104 specifically provides that “The homestead of a married person cannot be conveyed or encumbered unless the instrument by which it is conveyed or encumbered is executed and acknowledged by both husband and wife.” There are exceptions to this rule of course, such as instances where one spouse is incapacitated and the other spouse may execute on his/her behalf under a power of attorney.

2. Business Entities, Corporations, Limited Liability Companies, etc.

Business entities must grant authority to a person or persons to acquire or convey an actual interest in real estate. Licensees should include, for their own protection and the protection of the parties involved, a statement on listing agreements, purchase agreements, or other contracts involving the transfer of an interest in real

estate, that the person or persons executing the document have authority to act on behalf of the entity bound by the agreement. Because the License Act does not impose a duty on the licensee to independently verify facts represented by the client, this will usually meet the licensee’s obligation to promote the interests of his or her client.

However, what if the licensee is made aware that the party purporting to have authority to contract does not, in fact, have that power? If the licensee can reasonably conclude the party does not or may not have power to contract, that information should be disclosed to all parties to the transaction, in writing. Additionally, the licensee should either solicit the advice of an attorney or competent professional, or advise his/her client to seek the advice of an attorney or competent professional if the question of who has authority to contract is not readily ascertainable by a layperson.

3. Joint Ownership

If the licensee is aware that the property is jointly owned by more than one individual or entity it should be assumed that all individuals or entities with an ownership interest in the property must sign any agreements (and don’t forget the Husband and Wife rules above if some or all of the owners are married). If a party represents they have the authority to act on behalf of all parties the licensee should exercise reasonable diligence in determining if this is, in fact, the case. This may or may not require looking at any supporting documentation. Any listing agreement or purchase agreement should contain a statement by the person purporting to act on behalf of the other parties that he/she, in fact, have that authority.




As stated above, if the licensee can reasonably conclude the party does not or may not have power to contract that information should be disclosed to all parties to the transaction, in writing. Additionally the licensee should either solicit the advice of an attorney or competent professional, or advise his/her client to seek the advice of an attorney or competent professional if the question of who has authority to contract is not readily ascertainable by a layperson.

Power of Attorney, Guardianships, etc.

These should be treated similarly to multiple owner situations as described above. Although the law might not require it, due diligence would suggest that a copy of the empowering document be obtained.

Seller’s or Landlord’s Agent vs. Buyer’s or Tenant’s Agent

The duty with regards to ascertaining authority to sign does not just apply to the party you are representing. There is also a duty for the agent on the “other side” of the transaction to ensure there is some statement, in writing, verifying the authority of an individual to act on behalf of the entity or person represented. For example, a buyer’s agent would want to make sure the purported seller has authority to sell on behalf of a corporation, LLC, or other entity. 

Conducting A Real Estate Auction

The Nebraska Real Estate Commission often gets questions about real estate auctions. This article is an attempt to answer some of the basic and frequently asked questions about auctions as they relate to the License Act.

Licensing

When is a Real Estate License Required?

The simplest way to look at this is to look at an auction like any other sale or potential sale, if the auction involves the sale or lease of an interest in real property, and it is being conducted by a third party, who does not own that property, for a fee, then it is activity requiring a real estate license. For example, if the auction is for the sale or lease of a business, if the business acquired includes land or a building permanently affixed to the land (and it is being conducted by a third party for a fee) then a real estate license is required.

Who is Required to be Licensed?

The person crying or calling the auction and any ringmen or spotters need a license for an auction involving real estate. The person at the bidder's registration desk does not have to be licensed, as long as he/she is not taking bids or negotiating the sale or lease in any way, including taking online bids.

What are the Requirements for an Auctioneer's License in Nebraska?

Auctioneers are regulated at the local level in Nebraska, check with the city/and or county clerk for requirements. Nebraska statutes give municipalities authority to regulate auctions (Neb. Rev. Stat. §14-102) and require that out of state auctioneers be licensed by the county clerk (Neb. Rev. Stat. §81-887.02).

Before the Auction

What are the Advertising Requirements?

The basic rule of advertising applies to auctions involving real estate. If the auction is being conducted by a licensee who is an auctioneer the name under which the licensee does business as registered with the Real Estate Commission must be used in the advertising for the auction. If a broker is partnering with an auctioneer who doesn't hold a real estate license for the real estate portion of the auction, the name under which the licensee does business as registered with the Commission should appear in the advertising.

Proper way to Partner with an Auctioneer to Conduct an Auction

A personal property auctioneer may partner with a real estate auctioneer to auction the real estate. However, a contract between the seller and the real estate auctioneer should be entered into which identifies the real estate auctioneer as the seller's agent in selling the real estate, establishes the duties that will be performed for the seller and the terms of compensation. Sale bills should clearly state that the real estate shall be sold by [the name under which the licensee does business as registered with the Commission]. When the real estate is auctioned the personal property auctioneer needs to give up the ring to the contracted listing auctioneer and his/her appropriately licensed ringmen.

A real estate broker may partner with a real estate auctioneer to auction the real estate. If the real estate broker has already entered into a listing contract he/she may seek to

amend the agreement to allow for subagency to be exercised (this may require changing the agency policy of the brokers involved). With the real estate auctioneer recognized as a subagent of the original listing broker and the seller's written agreement, the real estate auctioneer and his/her ringmen may conduct the real estate auction.

Paperwork and Disclosures

As always, an agency disclosure pamphlet should be done at the first substantial contact between the seller and the licensee who becomes the listing agent. If subagency is utilized, another pamphlet may be utilized that recognizes the additional broker as a listing agent or the amendment to allow the subagency may evidence the seller's acknowledgement of the additional broker as a seller's agent.

It is recommended practice for sale bills to identify the agents of the seller. It is also recommended that when the real estate auction begins an announcement that identifies the auctioneer as the agent of the seller should be made.

At the Auction

Adverse material facts should be disclosed in writing prior to any bidding taking place.

If the property at auction is a residential property which requires the delivery of a Seller Property Condition Disclosure Statement, the statement should be made available to potential bidders prior to bidding, and must be made available to the winning bidder at or prior to the time of entering into a written contract for the purchase of the property.

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Broker Approved Training (Cont'd)

How do I know what training my broker has approved?

You should get this information from your broker. You can also verify this information with the Commission.

I attended a very good training program but my broker had not approved it. Can he approve it after-the-fact or retroactively?

No, a Notice of Training Scheduling which includes the broker's statement of approval must be on file with the Commission prior to conducting every training activity for credit.

I have a conflict or I don't want to attend my broker's approved training, what can I do?

Licensees may substitute continuing education activities for all or part

of the training hours. The reverse is NOT true, broker-approved training may not be substituted for continuing education hours. Licensees will continue to need at least 12 hours of continuing education with at least six hours in the "R" courses every two years. All licensees will need 18 total hours of education/training.

I have noticed that all of the Commission recognized training activities have the same 4-digit content number. How can I guard against duplicating training if all the numbers are the same?

Training activities are distinguished by the content number 9999T. There is no prohibition on duplicating training activities approved by the licensee's broker. The thought is that some training may need to be repetitive—it is up to the broker to decide. Please note, however, that the prohibition on duplicating continuing education

remains the same i.e. "R" courses may be duplicated in subsequent CE periods but non-"R" continuing education may not be duplicated within 4 years.

I am the designated broker or I am an independent broker with no affiliated licensees, do I have to do the training?

The education requirement is the same for everybody with an active real estate license. Designated brokers (which include independent brokers with no affiliated licensees) have to get either 6 hours of training plus 12 hours of CE OR a total of 18 hours of CE. They can find training they want from a Provider and sign on to it for their own credit OR they can set themselves up as a Provider and take on the responsibility for maintaining the record, etc. for 1 person (him/herself) OR they can take the six hours in CE. [📄](#)

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Conducting An Auction (Cont'd)

After the Auction

An agency disclosure form with the buyer does not need to be filled out prior to bidding, but must be provided to the winning bidder at the earliest practicable opportunity after the auction closes and before a written contract on the property is executed.

Remember: A Seller Property Condition Disclosure Statement must be made available to the winning bidder (and should be received for) prior to entering into a contract for the purchase of the property.

A written contract will need to be

entered into after the auction is concluded, because the statute of frauds

requires a written contract for all sales of real estate. [📄](#)



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Disciplinary Actions (Cont'd)

application for a license with the commission. The application shall be in such form and detail as the commission prescribes; Violated Neb. Rev. Stat. § 81-885.12(4) When an applicant has made a false statement of material fact on an application, such false statement may be sufficient ground for refusal of a license; Violated Neb. Rev. Stat. § 81-885.24(29) Demonstrating negligence, incompetency, or unworthiness to act as a broker, for repeatedly and knowingly submitting materially false Renewal Applications for 2009, 2010 and 2012 to the Nebraska Real Estate Commission, and for violating Neb. Rev. Stat. § 81-885.11 and 81-885.12.]

2011-003 – Mark W. and Roy D. Timm vs. Craig Alan Timm, Salesperson; Omaha, NE. Stipulation and Consent Order entered February 16, 2012. License censured; Plus a civil fine of \$250.00 to be paid by March 17, 2012; plus nine (9) hours of additional continu-

ing education with three (3) hours each in the areas of “Agency”, “Contracts” and “License Law”, to be completed by June 15, 2012. [Violated Neb. Rev. Stat. § 81-885.24 (12) Offering real estate for sale without the knowledge and consent of the owner or his or her authorized agent or on terms other than those authorized by the owner or his or her authorized agent; Violated Neb. Rev. Stat. § 81-885.24 (29) Demonstrating negligence, incompetency, or unworthiness to act as a salesperson, for offering real estate for sale without the knowledge and consent of the owners or on terms other than those authorized by the owner, and for failing to present offers to all owners of the subject acres.]