

# COMMISSION COMMENT

Spring | 2017

## New Team and Advertising Regulations Effective July 1, 2017

Effective July 1, 2017, the Commission's new regulations regarding real estate teams and advertising go into effect. These rules will have a significant impact on all advertising and also on continuing education requirements for team members and those who supervise teams.

As previously noted in the Commission Comment, the passage of LB678 (2016) recognized and regulated real estate teams for the first time under the Nebraska Real Estate License Act. The law, effective October 1st of last year, requires that teams designate a leader, and that the leader and the current team membership names be maintained by the broker at all times. The name the broker does business under must be prominent in all advertising, and the team must not advertise or use a name suggesting that the team is an independent brokerage. Please see the summer 2016 issue of the Commission Comment for more details on the legislation.

Pursuant to that legislation the Commission has adopted rules and regulations which further define requirements relating to advertising (whether team related or not) and continuing education requirements as summarized below. New rules relating to record keeping have also been adopted, and are summarized elsewhere in this issue.

**Broker Prominence** LB678 (2016) requires the name the broker does business under to be prominently displayed in all advertising. The changes in Title 299, Chapter 2, of the Nebraska Administrative Code require the broker name to be displayed in a way that is "conspicuous, discernable, and easily identifiable by the public". While there are no specific size requirements, the broker name should stand out in all advertising, and be easily identifiable.

**Affiliate and Team Advertising** NAC Title 299, Ch. 2, further requires that in any instance where a team name or an affiliated licensee name is used in

advertising, the broker name must be similar or greater in size and visibility than the affiliate licensee or team name. Further examples of this can be found on the advertising guidelines illustration page at: <http://www.nrec.ne.gov/pdf/Advertising%20Do%20and%20Dont.pdf>

**Team Naming Rules** LB678 prohibits teams from advertising which suggests the team is an independent real estate brokerage. NAC Title 299, Chapter 2, specifically requires that all team names have the word "team" or "group" as part of the team name. The regulation also prohibits the use of certain words in a team name which would suggest the team is an independent brokerage, including Realtors, Company, Corporation, Corp., Inc., LLC, Inc., LP, LLP, LP, LLP. The words "real estate" or "realty" may only be used in team names if they are immediately followed by "team" or "group". Please note that these changes go into effect on July 1,

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### Commission Meeting Schedule

- May 25-26 . . . . .Lincoln
- June 21-23 . . . . .Lincoln
- August 17-18 . . . . .Lincoln
- September 28-29 . . . . .Lincoln
- October 19-20 . . . . .Lincoln
- November 16-17 . . . . .Lincoln

## New Information required on Agency Disclosure Form

The Nebraska Real Estate Commission recently approved changes to the agency disclosure form. The changes involve new language regarding the "chain of command" a company has, as well as language regarding representation and designated agency. The language is on the back of the one page form and is mandatory effective July 1, 2017. The verbiage will be as follows:

Contact Information:

1. Agent(s) name(s) and phone number(s):

Only the agent(s) named in #1 (above) is offering to represent you as your agent. Other licensees of the same brokerage or members of the same team may work for another party to the transaction and should NOT be assumed to be your agent. \_\_\_\_ Init. \_\_\_\_ Init (this paragraph is not applicable if the proposed agency relationship is a customer only or the brokerage does not practice designated agency)

2. Team name, Team Leader name and phone number (only if applicable):

3. Managing Broker(s) name(s) and phone number(s) (only if applicable):

4. Designated Broker name, name designated broker does business under (if different), and phone number:

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# DIRECTOR'S DESK

## Going Behind the Listing

From everything I am hearing from licensees across the state and indeed across most of the nation, there are a lot of areas where there are more agents wanting to sell houses than there are houses to sell. This has led to more and more reports of going "behind the listing", or licensees attempting to solicit listings from those sellers who have already entered into an exclusive listing agreement.

Neb. Rev. Stat. §81-885.24 (14) and (15), specifically provide that it is an unfair trade practice, subject to disciplinary action to:

(14) Negotiating a sale, exchange, listing, or lease of real estate directly with an owner or lessor if he or she knows that such owner has a written outstanding listing contract in connection with such property granting an exclusive agency or an exclusive right to sell to another broker or **negotiating directly with an owner to withdraw from or break such a listing contract for the purpose of substituting, in lieu thereof, a new listing contract;**

(15) **Discussing or soliciting a discussion of, with an owner of a property which is exclusively listed with another broker, the terms upon which the broker would accept a future listing upon the expiration of the present listing unless the owner initiates the discussion;**

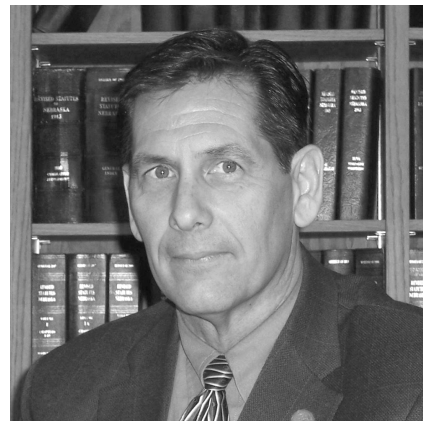
The law specifically states that you may not negotiate a listing contract with a seller who has an existing listing, and you may only discuss the terms of a future listing if the seller initiates the conversation.

It is of course possible for a licensee to begin a conversation or communication with a seller not knowing that they already have an exclusive listing agreement. A licensee should always ask if such an agreement exists and must stop any further communication regarding taking the listing if they discover there is already an outstanding listing agreement.

The Commission has, and will continue to prosecute violations of this provision if brought to us as a formal complaint. A review of our disciplinary records shows licensees getting suspensions of up to 90 days for such violations. That is a quarter of a year out of work, serious stuff, don't do it.

## Two Year License Renewal/Annual Errors and Omission Insurance

Our two-year license renewal and online renewal service are no longer new by any means, having been in effect for a number of license cycles now. However, there are a couple of issues which continue to slow the process for both licensees and the Commission, and these relate to the continuing education and errors and omissions insurance that we require with each license renewal. Please make sure you have your insurance and education complete before you renew.




Director Greg Lemon

Greg Lemon, Director  
Nebraska Real Estate Commission

# Disciplinary Actions Taken by the Real Estate Commission

*(Does Not Include Cases on Appeal)*

**2015-012 - Tyler Zach vs. Cyrus M. Khorram;** Salesperson; Elkhorn, NE. Hearing held November 17, 2016. License suspended for one (1) year with the first thirty (30) days served on suspension and the remainder of the period stayed and served on probation. Suspension commenced January 6, 2017, and continues through February 5, 2017; Probation commences on February 6, 2017 and continues through January 6, 2018; plus pay a civil fine of \$1,000.00 due January 28, 2017; Plus pay hearing fees of \$400.00 due January 28, 2017; plus complete an additional six (6) hours of continuing education with three (3) hours each in the areas of Agency and License Law by June 29, 2017. [Khorram violated Neb. Rev. Stat. § 81-885.24(22) Making any substantial misrepresentations, in that Mr. Khorram made substantial misrepresentations involving the condition of the Property and by failing to identify all material defects in the Property; Neb. Rev. Stat. § 81-885.24(29) Demonstrating negligence, incompetency, or unworthiness to act as a broker, associate broker, or salesperson, whether of the same or of a different character as otherwise specified in this section, in that Mr. Khorram made substantial misrepresentations involving the condition of the Property and by failing to identify all material defects in the Property.]

**2015-021 - Greg Wayman vs. Heeran Yi Workman;** Broker; Omaha, NE. Stipulation and Consent Order entered January 26, 2017. License suspended for six (6) months with the entire period stayed and served on probation. Probation commences on January 26, 2017 and continues through July 26, 2017; plus pay a civil fine of \$2,000.00 due February 25, 2017; plus complete an additional three (3) hours of continuing education in the area of Agency by April 27, 2017. [Workman violated Neb. Rev. Stat. § 81-885.24(29) Demonstrating negligence, incompetency, or unworthiness to act as a broker, associate broker, or salesperson, whether of the same or of a different character as otherwise specified in this section, by utilizing a preprinted Exhibit to Purchase Agreement, in multiple transactions prior to October 2015, wherein a specific contractor was excluded from performing home inspections without consulting with any client or consideration of the client's wishes regarding the selection of a home inspector.] 



## 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 . . .	<i>Alane Roubal</i> alane.roubal@nebraska.gov
Complaint Procedures . . . . .	<i>Duran Cell</i> duran.cell@nebraska.gov
Continuing Education History or Inquiries . . . . .	<i>Tawny Snider</i> tawny.snider@nebraska.gov
Curriculum Design (Education & Instructor Approval) . . . . .	<i>Alane Roubal</i> alane.roubal@nebraska.gov
Errors and Omissions Insurance Inquiries . . . . .	<i>Monica Rut</i> monica.rut@nebraska.gov
Financial Officer . . . . .	<i>Jenny Schabert</i> jenny.schabert@nebraska.gov
License Applications Packet Requests . . . . .	<i>General Staff</i> realestate.commission@nebraska.gov
License Applications Process . . . . .	<i>Marilyn Masters</i> marilyn.masters@nebraska.gov
Licensing Requirements . . . . .	<i>Monica Rut</i> monica.rut@nebraska.gov
New Licenses in Process . . . . .	<i>Patricia Menousek</i> patricia.menousek@nebraska.gov
Specialized Registrations . . . . .	<i>Monica Rut</i> monica.rut@nebraska.gov
Transfer of License. . . . .	<i>Patricia Menousek</i> patricia.menousek@nebraska.gov
Trust Account Matters . . . . .	<i>John Clark</i> john.clark@nebraska.gov
Webmaster . . . . .	<i>Monica Rut</i> monica.rut@nebraska.gov

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### New Team & Advertising Regs (cont'd)

2017, and there is no grandfather clause for existing names or grace period to bring advertising into compliance. However the Commission does understand that some types of advertising continue to exist beyond the control of the licensee, the classic example being the phone book.

**Team Membership** LB678 requires all teams to designate a leader, and for that leader to provide a current record of team membership to the broker, which the broker must maintain and make available to the Commission upon request.

**New Continuing Education Requirements** Chapter 7 of the new regulations require all team leaders, team members and those who supervise teams to take a Commission designated "teams" course within 180 days after assuming team membership or team supervision duties. The requirement is good for an additional two year continuing education cycle, in other words anyone who is required to take the course only needs to do it once every four years.

**Name Tags** A specific question

come up as to whether name tags are advertising under the License Act, and hence subject to the advertising rules. Advertising is defined as "all forms of identification, representation, promotion, and solicitation disseminated in any manner to the public" (NAC, Title 299, Chapter 2, Sec. 003). While nametags could certainly be considered advertising ("forms of identification") under the definition, the Commission is cognizant of the limited "real estate" available in a traditional nametag, and will not review traditional tags for strict compliance with the new law. However, if a tag is enlarged with additional text and graphics, etc., a clip on vest billboard if you will, it would be subject to the same advertising rules that would apply to business cards and all other advertising. 


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### Agency Disclosure Form (cont'd)

Please note, Items 1 and 4 must always be included. The other information only needs to be included if it is applicable. If there is no team involved item 2 goes away completely, if no managing brokers in the firm item 3 goes away, and you renumber the remaining items accordingly. If the brokerage firm

does not practice designated agency (brokerage firms where, for example, if one agent is acting as seller's agent that means all agents are acting as seller's agent) the initialed part under section 1 can be deleted.

The licensee filling out the form should provide the names and phone numbers as indicated. They may be pre-printed, or completed at the time the document is presented, it is suggested that at least broker and managing broker (if applicable) should be pre-printed, as it should stay relatively static across the brokerage. The purpose of the information is to let consumers know how the brokerage is structured and who they can call if they have problems.

The back of the form can still provide the optional information following the chain of command disclosure above regarding types of agency offered and services offered to unrepresented customers. 



## LB16 Passes, License Administration and Trust Account Changes


LB16 makes numerous changes relating to the administration of the License Act and broker trust accounts. The provision of the bill with the most immediate impact is the elimination of wall licenses as the legal means of proof of licensure. Under the bill, which will go into effect three months after the end of the legislative session (end of August beginning of September depending on when they adjourn), the legal method for verifying licensure will be to check online through our licensee search, or contact the Commission directly via phone, fax, or email.

The Commission will not collect old wall licenses. However, licensees are of course prohibited from using their wall licenses to demonstrate proof of licensure when not currently licensed. If a licensee were to use the wall license to prove licensure in an attempt to deceive the public when no longer licensed the existing unlicensed practice provisions would be applicable, including fines of up to \$1000 a day.

It should be noted that the elimination of wall licenses allows for electronic licensee transfers between brokers without the necessity of the wall license being mailed back and forth, this service is not yet available, but the elimination of the return of the wall licenses will be in effect as soon as the bill becomes law.

The bill also transfers the section prohibiting collection of compensation before a transaction is consummated or terminated, or advance payment of fees, from Neb. Rev. Stat. §81-885.21 to §81-885.24, the unfair trade practices statute. This provision further clarifies advance payment of fees provisions to be consistent with Commission's existing interpretation, which allows for advance payments for reimbursements of pass through funds for third party services provided by the broker.

"However, a payment for goods or services rendered by a third party on behalf of the client shall not be considered compensation or consideration if such payment does not include any profit, compensation, or payment for services rendered by the broker and the broker retains a record of the payment to the third party for such goods or services."

**Finally the bill allows interest bearing trust accounts to be continued after July 1, 2017.** The interest bearing trust account provision was set to expire on July 1 of this year. With the change brokers may use the interest bearing accounts after that date as provided by law, with no further sunset or repeal of the enabling legislation. 


## Let's Talk Trust Accounts

**Are You Managing Real Estate?  
Does Your Broker or Branch  
Manager Know About It?  
Are You Using a Registered Trust  
Account?**

by John Clark, Sr. Auditor

As examiners one of the questions that we ask brokers is: Do you or your affiliated licensees manage any real estate other than your own? Licensee's cannot manage property for a third party without the authorization and knowledge of their designated broker. If your broker does give the okay, there must be a written management agreement with the owner which spells out your duties and responsibilities as well as the terms of compensation. You will also need to provide the owner with an agency disclosure before entering into a property management agreement. Unless specifically provided for otherwise in the management agreement, rents will be deposited in the broker's real estate trust account. Security deposits will also be maintained in the trust account unless addressed differently in both the lease and management agreement. It should be noted that any cash payments must go into the trust account.

Although not specifically required, it is recommended that the broker set up a separate trust account for rental payments and security deposits. Also keep in mind that all contracts will be in the name of the broker/brokerage firm, and not in the name of the individual agent. Although the broker is ultimately responsible for the contract, both the agent and the broker need to be competent in all aspects of property management before providing such services, which are vastly different than the more common practice of residential sales.

The Commission has also recently enacted property management training to be fulfilled with your continuing education requirements, a three hour course for all those who engage in, or supervise those who engage in property management. Go to <http://www.nrec.ne.gov/licensing-forms/pminfo.html> for more information on the property management courses and requirement. 

## Handling Multiple Offers

As has been noted elsewhere in this issue, residential sales in the state have been greatly affected by a shortage of available inventory, resulting in properties selling quickly, and multiple offers situations being very common. Much of the following information is not specifically in license law, but would be considered best practice and conducive to both buyer's and seller's agents fulfilling their fiduciary duty to their clients.


### Relevant Provisions of Law:

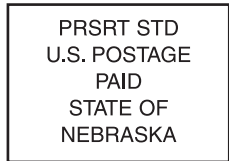
Neb. Rev. Stat. §76-2417 (seller or landlord's agent) and §76-2418 (buyer's or tenant's agent) have the same language requiring "presenting all written offers to and from the client in a timely manner regardless of whether the client is already a party to a contract to purchase property or is already a party to a contract or a letter of intent to lease"

The Commission also has a provision in the regulations requiring an offer be reduced to writing when a prospective purchaser requests it (NAC, T.299, Ch. 5, Sec. 003.18)

And last, but not least, are the fiduciary duty provisions found in the agency statutes, to promote the interests of the client with the utmost good faith, loyalty and fidelity.

### Suggestions for Handling Multiple Offer Situations:

1. Establish lines of communication, some people shut off their cell phones when they get home from work, some check texts every few minutes and email every few days, land line, cell phone, work number etc. There are no specific legal requirements but establishing the best way to communicate with your client (and the other side of the transaction) will help immensely when time is critical.
2. Follow the law, present **all** written offers to the client in a **timely** manner, always reduce offers to writing when requested.
3. Reduce offers to writing to avoid confusion or miscommunication and allow them to form the basis of a valid, legal agreement if accepted.
4. When there are multiple offers on the table there may be a temptation to show preferential treatment to the offer or offer which benefits you or your company the most, don't forget first and foremost your duty is to look out for the client's best interest.
5. Offers do not have to be presented or given priority based upon order received. Present all offers and assist in finding the deal in the best interest of the client based upon all offers on the table at any given time.
6. Get a directive, in writing if at all possible, from your seller on whether they want you to share information about other offers (open bidding) or whether they don't want you to (silent auction), or however else they would like to deal with communicating the current status of multiple offer situations to buyers or potential buyers, lay out the options and advantages and disadvantages of each.
7. Escalation Clauses—While it is fine for licensees to fill in the blanks regarding numbers, names, and dates on escalation clauses, the basic language used on any contract form should be drafted or reviewed by an attorney. If your brokerage firm uses them often have a form or forms with the clause prepared in advance. 



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## New Regulations Regarding Record Keeping

These new regulations cover record keeping requirements for brokers including new rules for team records. They were adopted by the Commission, approved by the Governor, and went into effect in February of this year.

The old regulations simply stated that broker records needed to be kept for five years after a transaction was consummated or terminated. The Commission has always interpreted “transaction” broadly to encompass many types of situations, the new rules more clearly codify the Commission’s interpretation of the “5 Year Rule”.

### **NAC, Title 299, Chapter 3:**

**Section 001.01-** New Section, essentially a restatement of the old law, require records to be kept five years after a real estate transaction is consummated or terminated.

**Section 001.02-** New Section, requires records to be retained for five years in instances where a written agency agreement is created, but no real estate transaction occurs.

**Section 001.03-** New Section, requires records to be retained for five years in instances where a real estate transaction is entered into, but not consummated or completed. Signed contract, but deal doesn’t close.

**Section 001.04-** New Section, requires records to be retained for five years in instances where a broker’s price opinion is rendered for a separate fee.

**Section 001-05-** New Section, requires records related to team membership and leadership be retained for five years.

Complete text of the rule with changes highlighted can be found here: <http://www.nrec.ne.gov/pdf/9-299CH3-902.pdf>