



COMMISSION COMMENT

Rice Insurance Service Center Selected as Insurance Provider for 2023

Rice Insurance Services Center (“RISC”) has been selected pursuant to competitive bid process as the Nebraska Real Estate Commission’s mandatory Errors and Omissions Insurance provider for 2023. RISC replaces Williams Underwriting Group “Williams” as the contractual provider. Williams will no longer be offering Errors and Omissions insurance in Nebraska after current policies expire in 2023. In order to maintain your statutorily required insurance, as well as to maintain your coverage for prior acts, all active licensees should secure a new policy with either RISC or an approved equivalent coverage provider effective immediately upon the lapse of their current coverage. It should also be noted that you need to maintain the E & O Coverage to keep your real estate license active. If you are letting your insurance lapse and your license expire or go inactive you should consider getting an extended reporting period endorsement, also known as “tail coverage” to provide protection for activity that occurred while you were licensed. You may still purchase tail coverage from Williams this year. 🏠

Mortgage Payment Assistance is Available through NHAF

Maintaining homeownership during the pandemic has been and continues to be challenging for many Nebraskans. To help those struggling with financial hardship due to COVID-19 pandemic related effects, the Nebraska Investment Finance Authority (NIFA) is assisting the State of Nebraska by providing aid through the Nebraska Homeowner Assistance Fund (NHAF). The fund is available to assist homeowners with past due payments for mortgage, property taxes, insurance and/ or homeowners’ association dues. The Program can also assist with clearing liens from

Renewal Reminder

The Online Renewal functionality in the licensee portal will open on or about October 12. If you are required to renew your license for 2023/2024 please log into the licensee portal on or after October 12 to complete the renewal process. Renewals are due on or before November 30, 2022, please start your renewal early to allow time for all continuing education and other requirements can be uploaded to the database. You will not be able to complete online renewal until all education and insurance requirements are met. Further renewal instructions will be available on our website at: <https://nrec.nebraska.gov/licensing-forms/renewalprocedures.html>

a homeowner’s property. To date NIFA has distributed over \$3.7 million to just over 1,300 applicants and will continue to provide assistance to Nebraskans in need until funds are exhausted. Funding for the NHAF program is provided by the Homeowner Assistance Fund established by the U.S. Department of Treasury as part of the congressional American Rescue Plan Act of 2021 (ARPA). If you know someone who could benefit from NHAF, the application and additional information can be found at nebraskahaf.com or by calling 1-844-565-7146. 🏠

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Commission Meeting Schedule

September 15-16	Lincoln
October 20-21	Lincoln
November 17-18	Lincoln

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DIRECTOR'S DESK

"I am Just the Broker"

The Commission has heard this answer a few times when conducting trust account exams and investigations. The Nebraska Real Estate Commission does not license companies or owners of companies, we license one individual to be the designated broker in charge or all real estate activity for their brokerage. The Commission also does not place limits on the size of the brokerage, a broker may work as a sole proprietor, or they may employ hundreds of affiliated salespersons and associate brokers in their brokerage. Similarly, there are no limits on number of offices or geographic location.



Director Greg Lemon

But regardless of the number of licensees, the number of locations or offices, or the ownership of the brokerage, the designated broker is in charge of and responsible for all activity requiring a license conducted by the brokerage. This underlying principle of broker responsibility is found throughout the license act and regulations, and is found specifically in the regulations at N.A.C. Title 299, Chapter 5, Sec. 003.22, which provides that "Failure by a designated or employing broker to supervise his or her associate brokers and salespersons"... is an unfair trade practice subject to disciplinary action.

A broker may delegate tasks and duties, including paperwork and bookkeeping tasks not requiring a license, to unlicensed assistants and employees, but the broker is ultimately responsible for establishing proper training and procedures within the brokerage, and oversight of all brokerage activity.

A broker may work for an owner of the company who is not licensed, but in those cases the Commission requires a subordination resolution be adopted by the owner, stating that the broker is in charge and has full authority regarding those activities of the brokerage requiring a real estate license.

So getting back to the quote which headlined this article, the broker is never "just the broker" and is always in charge of and responsible for all activity requiring a license conducted by his or her brokerage.

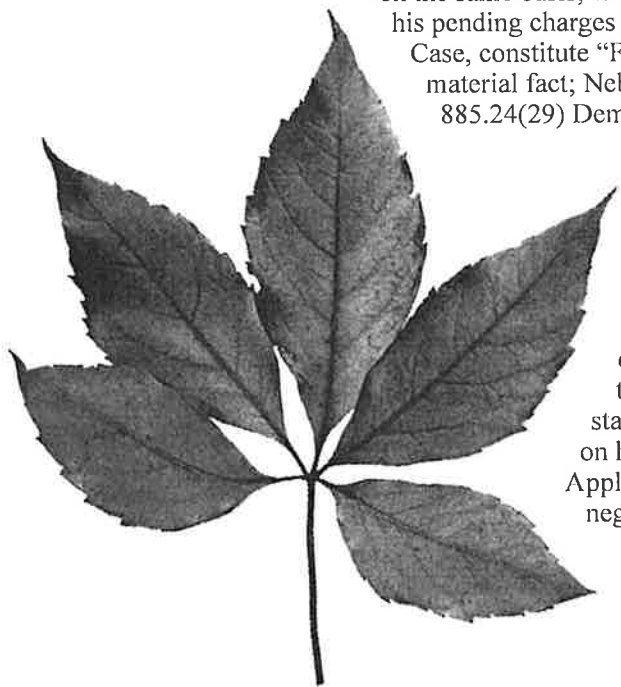
Greg Lemon, Director
Nebraska Real Estate Commission




Disciplinary Actions Taken by the Real Estate Commission

(Does Not Include Cases on Appeal)

2022-004 - Commission vs. Devon Rayschon Thompson; Salesperson; Omaha, NE. Stipulation and consent Order entered August 18, 2022. License suspended for a period of one (1) year with the entire period to be stayed and served on probation. Probation begins August 24, 2022 and continues through August 24, 2023; plus complete and additional three (3) hours of continuing education with three (3) hours in the area of Ethics by February 16, 2023; plus pay a civil fine of \$1,500.00 due November 16, 2022; plus submit to a yearly criminal background check, by having his fingerprints captured by anyone qualified to take finger prints and submitting the fingerprint cards to the appropriate law enforcement authority, paying the cost of such background check, and submitting the results of such background check to the Commission no later than February 28th of each year during the one (1) year Probation period. The first report is due February 28, 2023; plus If charged with or convicted of, another criminal offense at any time during the entirety of the three (3) Probationary suspension period report such offense to the Commission within five (5) days of being charged. [Thompson violated Neb. Rev. Stat. § 81-885.12 The Commission may deny an application for a license under certain circumstances, including: 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, when he answered no to the following questions on his 2022 Renewal application “Have you been convicted of any misdemeanor or felony offenses since your last application? (including any convictions for offenses previously reported as pending)” and “Are there any criminal charges pending against you at the present time?”; violated Neb. Rev. Stat. § 81-885.12(4) The Commission has the right in the first instance to deny and/or refuse a license to an applicant who has made a false statement of material fact on an application, the Commission may impose discipline on a licensee on the same basis, when he failed to disclose his pending charges in the Douglas County Case, constitute “False statement(s) of material fact; 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, when his statements and/or omissions on his 2022 Renewal Application constitute negligence, incompetency, or unworthiness to act as a broker (or salesperson)].



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, when his statements and/or omissions on his 2022 Renewal Application constitute negligence, incompetency, or unworthiness to act as a broker (or salesperson)]. 

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 . . . Paige Polacek
paige.polacek@nebraska.gov
- Complaint Procedures Samantha Lowery
samantha.lowery@nebraska.gov
- Continuing Education History or
Inquiries Tawny Snider
tawny.snider@nebraska.gov
- Curriculum Design (Education &
Instructor Approval) Mary Daily
mary.daily@nebraska.gov
- Errors and Omissions Insurance
Inquiries Monica Rut
monica.rut@nebraska.gov
- Financial Officer Vacant
- License Applications Packet
Requests General Staff
realestate.commission@nebraska.gov
- License Applications Process Marilyn Masters
marilyn.masters@nebraska.gov
- Licensing Requirements Monica Rut
monica.rut@nebraska.gov
- New Licenses in Process Patricia Menousek
patricia.menousek@nebraska.gov
- Specialized Registrations Monica Rut
monica.rut@nebraska.gov
- Transfer of License Patricia Menousek
patricia.menousek@nebraska.gov
- Trust Account Matters John Clark
john.clark@nebraska.gov
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monica.rut@nebraska.gov

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The Use of Escalation Clauses in Real Estate Transactions

With the recent and unprecedented limited inventory situation we have experience in residential housing in Nebraska the past couple of years, buyers have been trying unconventional methods to get their offers considered and accepted. We have already talked about “love letters” (*Spring 2022*), this article is going to talk about escalation clauses. Generally speaking, an escalation clause in a purchase offer states that the buyer is offering to exceed the next highest offer on the property by a stated amount, such as five hundred or a thousand dollars over the next highest offer.

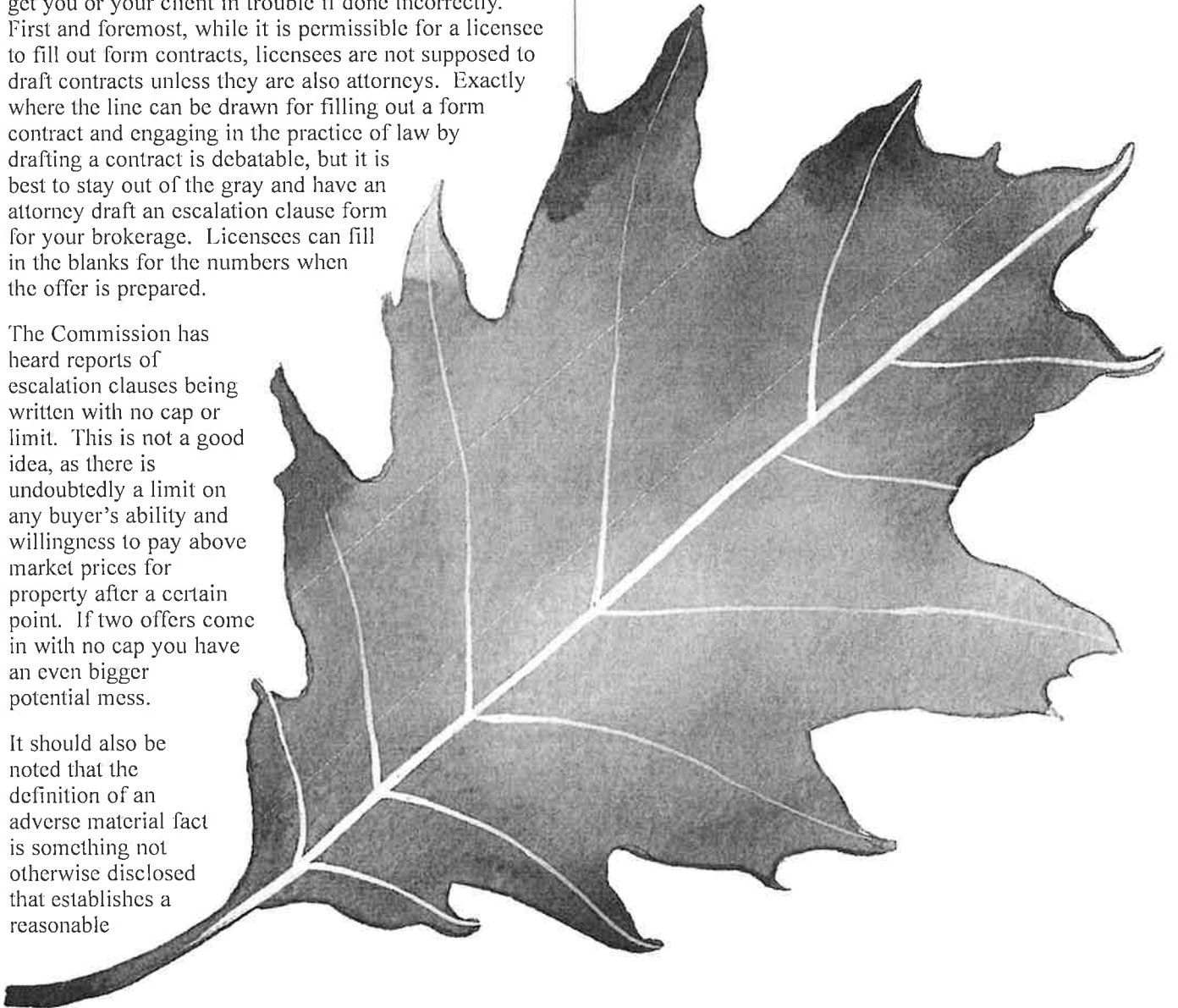
Escalation clauses are not illegal in an of themselves, but like everything else you do as a licensee, they can get you or your client in trouble if done incorrectly. First and foremost, while it is permissible for a licensee to fill out form contracts, licensees are not supposed to draft contracts unless they are also attorneys. Exactly where the line can be drawn for filling out a form contract and engaging in the practice of law by drafting a contract is debatable, but it is best to stay out of the gray and have an attorney draft an escalation clause form for your brokerage. Licensees can fill in the blanks for the numbers when the offer is prepared.

The Commission has heard reports of escalation clauses being written with no cap or limit. This is not a good idea, as there is undoubtedly a limit on any buyer’s ability and willingness to pay above market prices for property after a certain point. If two offers come in with no cap you have an even bigger potential mess.

It should also be noted that the definition of an adverse material fact is something not otherwise disclosed that establishes a reasonable

belief that a party may not be able to complete their obligations under a contract. An uncapped escalation clause could very well result in a purchase price beyond the buyer’s ability to pay if accepted.

Lastly, as a practical hint, the seller and seller’s agent can essentially remove the uncertainty of the escalation clause by reviewing the offers presented, and countering with a specific price offer to the party whose offer is most acceptable to them, signing the counter by the buyer gets us back into the more comfortable world of a well-defined price and terms. 🏠



Third Party Service Providers

This article originally appeared in the Fall 2017 issue of the Commission Comment. The Commission continues to get calls relating to this issue. There are some minor revisions for clarification from the previously published article.

One of the things we get both questions and also a few complaints on is an agent's recommendations or steering with regards to third party service providers used in real estate transactions. Most clients probably have not recently worked with a home inspector, title company, or home warranty service, and may seek names or guidance in selecting those service providers to assist in the transaction. An agent's duty to their client is to provide information and advice so that the client can make an informed decision, not substitute the agent's own judgment, interests, or experience for those of the client. Please also note that the choice of closing service providers is negotiable between buyer and seller, but once again, a licensee's recommendation or requirement should not be what is driving the negotiation, or even worse, derailing a transaction.


The Commission has been hearing of many examples of licensees putting in purchase or even listing contracts or advertising, mandatory inclusions "this title company must be used", or inclusions with warning of consequences "failure to use XYZ company will delay closing" as well as mandatory exclusions "abc inspection company may not be used".

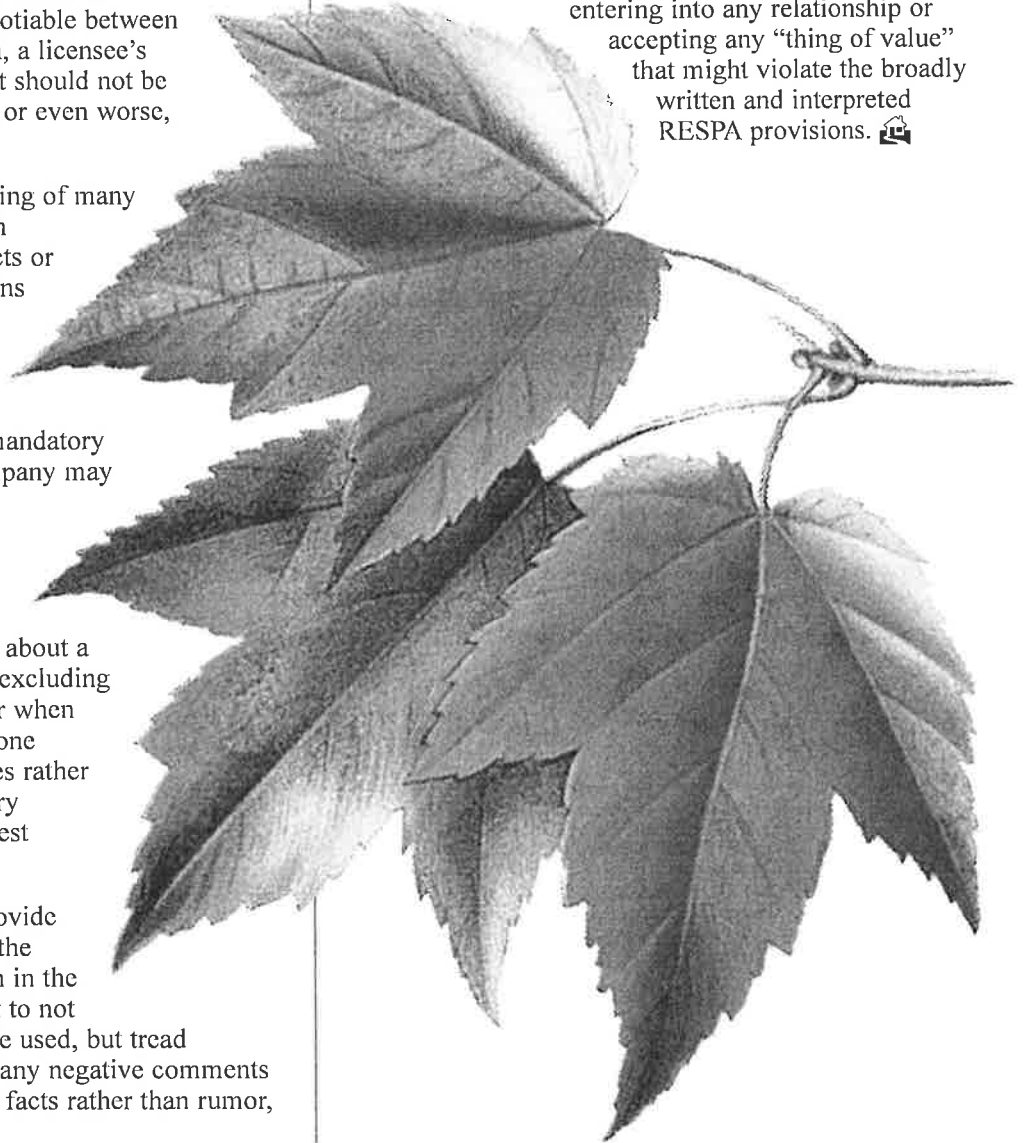
In a series of complaints the Commission has clearly established making unsubstantiated representations about a third party service provider, or excluding or mandating a service provider when such exclusion or mandate is done pursuant to the licensee's wishes rather than the client's, is a disciplinary violation, failing to act in the best interests of the client.

It is certainly permissible to provide the names of trusted providers the licensee has done business with in the past. A licensee also may want to not recommend certain providers be used, but tread carefully in this area, and base any negative comments or recommendations on known facts rather than rumor, feelings, or speculation.

Under the License Act, **If you have a financial interest or benefit from the use of the service recommended** you may still *recommend* the use of the service, but such interest or benefit must be disclosed in writing to the client (Neb. Rev. Stat. §81-885.24(6))

RESPA

We urge licensees to be cognizant of RESPA (Real Estate Settlement Procedures Act) as it relates to kickbacks or referral fees. RESPA prohibits a real estate broker or agent from receiving a "thing of value" for referring business to a settlement service provider, such as a mortgage banker, mortgage broker, title company, or title agent, home warranty or inspection service. There is much more detail on the rule than we have time and space to go into here, but the Commission urges licensees to consult an attorney before entering into any relationship or accepting any "thing of value" that might violate the broadly written and interpreted RESPA provisions. 



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