

SECTION 81-855.24(24) - FAILURE TO GIVE BROKER MONEY IN TIMELY MANNER

VIOLATION	COMPLAINT	DATE OF ORDER	PENALTY
Section 81-885.24(3) and (24) by failing to account for and remit money coming into his possession and by failing, as an associate Broker, to place, as soon after receipt as practical, in the custody of his employing Broker, and deposit money entrusted to him and by demonstrating negligence to act as an associate Broker in violation of 81-885.24(29).	91-009 - Commission vs. Charles D. DeVetter, Jr.	May 22, 1991	Stipulation and Consent Order. License suspended for 30 days, set aside and on probation.
Section 81-885.24(24) and (29) and Title 299, Ch. 5-003.10 by accepting other than cash or an immediately cashable check as earnest deposit, by failing as a Salesperson to place, as soon as possible after receipt, in the custody of employing Broker, any deposit money and by demonstrating negligence and incompetency to act as a Salesperson.	91-031 - Commission vs. George E. Murray	August 28, 1991	Stipulation and Consent Order. License suspended for 60 days.
Section 81-885.24(24) and Ch. 5-003.11 by failing to place as soon after receipt as practical in the custody of his or her employing Broker any deposit money or other money or funds entrusted to her by any person dealing with her as a representative of her licensed Broker, and by failing to disclose to the purchaser that all licensees involved in the transactions are agents of and representing the seller, and by demonstrating negligence, incompetency and unworthiness to act as an associate Broker in violation of 81-885.24(29).	92-049 - Commission vs. Janice R. Boan	November 12, 1992	Stipulation and Consent Order. 6 months probation plus 9 hours additional continuing education.
Section 81-885.24(26) by violating a rule or regulation adopted and promulgated by the Commission in the interest of the public and consistent with the Nebraska Real Estate License Act; Ch. 5-003.09 by failing to advise the owner that the earnest deposit would not be submitted at the time of the offer; 81-885.24(24) by failing to place in the custody of his employing Broker any deposit money entrusted to him by any person dealing with him as the representative of his licensed Broker; and 81-885.24(29) by said actions demonstrating negligence, incompetency or unworthiness to act as a Salesperson.	94-005 - Commission vs. Jeriel Lee Weatherford	March 15, 1994	Stipulation and Consent Order. License suspended for 90 days with last 45 days stayed and served on probation, plus three hours additional continuing education.

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Section 81-885.24(3) by failing to account for and remit any money; 81-885.24(20) by failing to deliver Purchase Agreement within a reasonable time; 81-885.24(24) by failing to place any deposit money in custody of his employing Broker as soon after receipt as possible; 81-885.24(29) by demonstrating negligence, incompetency or unworthiness to act as a Broker.	95-001 - Commission vs. John Chapman Bussey	May 9, 1995	Stipulation and Consent Order. 30 day suspension, with last 15 days stayed and served on probation.
Section 81-855.24(24) and 81-855.24(29) by negligently failing as an associate broker, to place as soon after receipt as practicable in the custody of his employing broker any deposit money entrusted to him by any person dealing with him as the representative of his licensed broker.	98-011 - Commission vs. Robert Joseph Patenaude	May 19, 1998	Stipulation and Consent Order. License censured.
Section 81-885.24(24) by failing as an associate broker or salesperson to place, as soon after receipt as practicable, in the custody of his employing broker, any deposit money or other money or funds entrusted to him by any person dealing with him as the representative of his licensed broker; 81-885.24(29) by demonstrating negligence, incompetency, or unworthiness to act as a broker, associate broker, or salesperson.	2001-039 - Tracy A. Lee vs. John Robert Miller	January 24, 2002	Stipulation and Consent Order. License suspended for thirty (30) days from February 1, 2002, through March 2, 2002; plus an additional six (6) hours of continuing education including three (3) hours in the area of contracts and three (3) hours in the area license law to be completed by July 31, 2002.
<p><u>Kirkeby</u>: Title 299, N.A.C. Ch. 5-003.14 by the failure of his associate broker to deposit funds received as earnest money deposits within 48 hours or before the end of the next banking day after an offer is accepted, in writing; Ch. 5-003.22 by failing to supervise his associate brokers and salespersons, specifically Respondent Dreyer, in the transactions set forth herein above; 76-2420(1) by failing to adopt a written policy which the designated broker and affiliated licensees may engage with any seller, landlord, buyer, or tenant as part of any real estate brokerage activities.</p> <p><u>Dreyer</u>: Title 299, N.A.C. Ch. 2-003 as his advertising for the parcels in question failed to include all forms of identification, representation, promotion and solicitation disseminated in any manner and by any means of communication to the</p>	2001-046 - Commission vs. Kenneth Lloyd Kirkeby & Melvin R. Dreyer	January 24, 2002	<p><u>Kirkeby</u>: Stipulation and Consent Order. License suspended for thirty (30) days from February 4, 2002, through March 5, 2002; plus an additional nine hours of continuing education including three (3) hours in the area of agency, three (3) hours in the area of license law, and three (3) hours in the area of disclosures to be completed by August 4, 2002.</p> <p><u>Dreyer</u>: Stipulation and Consent Order. License suspended for sixty (60) days from February 4, 2002, through April 4, 2002; plus an additional nine (9) hours of continuing education including three (3) hours in the area of agency, three (3) hours in the area of license law, and three</p>

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<p>public for any purpose related to licensed real estate activity; respondent Dreyer's advertising was not under the direct supervision of his broker and was not in the name his broker was conducting business as recorded with the Commission. Said advertising constitutes misleading or inaccurate advertising pursuant to 81-885.24(2) of the Nebraska Real Estate License Act; Ch. 5-003.09 by acting for more than one party in a transaction without the Nebraska-approved informed written consent of all parties involved in the transaction as required by the Rules and Regulations of the Commission. Respondent Dreyer failed to obtain the written agreement of said parties as well as Respondent Dreyer's employing broker prior to acting in such a manner in a form required by the Rules and Regulations of the Commission; 81-885.24(24) by failing to deposit within forty-eight (48) hours, in the trust account of his employing broker, deposit money entrusted to him by any person dealing with him as he representative of his licensed broker; Ch. 5-003.23 by failing, as the agent of the Seller, to assure that a copy of the Seller Property Condition Disclosure Statement approved by the Commission was delivered to the purchaser or to the agent of the purchaser on or before the effective date of any contract entered into on or after January 1, 1995, which binds the purchaser to purchase the residential real estate property; 76-2421(1)(a)&amp;(b) by failing at the earliest practicable opportunity during or following the first substantial contact with a seller, landlord, buyer, or tenant who has not entered into a written agreement for brokerage services with a designated broker, to provide that person with a written copy of the current brokerage disclosure pamphlet prepared and approved by the Commission; 76-2422(2) by failing, before engaging in any of the activities enumerated in subdivision (2) of 81-885.01, to enter into a Nebraska written Agency Agreement with the Seller, which agreement shall include a licensee's duties and responsibilities as specified in 76-2417, the terms of compensation, and whether an offer of subagency may be made to any other designated broker; 76-2422(3) by entering into a written Agency Agreement with the Buyer which did not meet the requirements of the Nebraska Agency Relationships Statutes. Said Agreement</p>	<p>2001-046 - Commission vs. Kenneth Lloyd Kirkeby &amp; Melvin R. Dreyer</p>		<p>(3) hours in the area of disclosures to be completed by August 4, 2002.</p>

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<p>shall include a licensee's duties and responsibilities as specified in 76-2418, the terms of compensation, and whether an offer of subagency may be made to any other designated broker; 76-2422(4) by failing to obtain the written agreement of the seller and buyer permitting the designated broker to serve as a dual agent in the proposed transaction in a form required by the Agency Relationships Statutes before engaging in any of the activities enumerated in subdivision (2) of 81-885.01. Respondent Dreyer's South Dakota Real Estate Relationships Disclosure form further failed to include a licensee's duties and responsibilities as specified in 76-2419 or the terms of compensation; 81-885.24(2) by using advertising which is deemed misleading or inaccurate in any material particular or in any way misrepresents any property, terms, values, policies, or services of the business conducted, in that the auction sale bill, failed to identify the name under which Respondent Dreyer's designated broker is conducting business as recorded with the Commission; 81-885.24(29) by demonstrating negligence to act as a broker, associate broker, or salesperson by utilizing individuals not licensed to sell real estate in Nebraska when selling the four parcels in question.</p>	<p>2001-046 - Commission vs. Kenneth Lloyd Kirkeby &amp; Melvin R. Dreyer</p>		
<p>Section 81-885.24(24) by failing to place as soon after receipt as practicable, in the custody of his employing broker, any deposit money or other money or funds entrusted to him by any person dealing with him as the representative of his employing broker. Appealed to District Court - July 16, 2003. District Court upheld decision - April 7, 2004.</p>	<p>2003-006 - Marilyn Christensen vs. Robert L. Pelshaw, Broker.</p>	<p>June 13, 2003</p>	<p>License censured; plus an additional three (3) hours of continuing education in the area of trust accounts to be completed by December 12, 2003.</p>
<p>Section 81-885.24(2) by intentionally using advertising which is misleading or inaccurate in any material particular when Respondent sends correspondence regarding a listing to a client or customer on his own company letterhead rather than on letterhead under the direct supervision of the broker and not in the name the broker is conducting business as recorded with the Commission; 81-885.24(3) by failing to</p>	<p>2003-017 - Commission vs. Vincent Muniz, Sr.</p>	<p>September 24, 2003</p>	<p>Stipulation &amp; Consent Order. License suspended for 5 years, from October 1, 2003, through September 30, 2008.</p>

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<p>account for and remit any money or funds coming into his or her possession belonging to others; 81-885.24(24) by failing to place as soon after receipt as practicable, in the custody of his broker, any funds entrusted to him by any person dealing with him as the representative of his licensed broker; 81-885.24(26) by violating a rule or regulation adopted and promulgated by the Commission in the interest of the public and consistent with the Nebraska Real Estate License Act, to wit: Title 299, Ch. 2-003 by failing to advertise in the name his designated broker is conducting business as recorded with the Commission; and Ch. 3-003 by failing to account for money advanced by a buyer or seller for the payment of expenses in connection with the closing of a real estate transaction and advancing money by his principal for expenditures on behalf of said principal; 81-885.24(29) by demonstrating negligence, incompetency or unworthiness to act as a salesperson; and 76-2419(2) by failing to exercise reasonable skill and care on behalf of a client and to promote the interest of the client with the utmost good faith, loyalty and fidelity as identified in 76-2417 and 76-2418.</p>	<p>2003-017 - Commission vs. Vincent Muniz, Sr.</p>		
<p>O'Shea violated Neb. Rev. Stat. § 81-885.24 (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. O'Shea presented an Offer direct to an owner knowing such owner had an exclusive right-to-sell listing contract with another designated broker. Violated Neb. Rev. Stat. § 81-885.24 (24) Failing by an associate broker or salesperson to place, as soon after receipt as practicable, in the custody of his or her employing broker any deposit money or other money or funds entrusted to him or her by any person dealing with him or her as the representative of his or her licensed broker. O'Shea failed to deliver the buyer's earnest money deposit to his designated broker. Violated Neb. Rev. Stat. §</p>	<p>2008-037 Theresa Marie Garthright vs. Matthew Barrett O'Shea and Kimberly Anne Topp</p>	<p>November 20, 2009</p>	<p>Topp: Dismissed. O'Shea: License suspended for a period of one (1) year, with the first ninety (90) days of the suspension period to be actually served on suspension and the remainder of the 1 year suspension period stayed and served on probation. The suspension period of your real estate license commenced on December 1, 2009 and will continue through February 28 2010. During this suspension period you are not permitted to conduct any real estate activity which would require the holding of a Nebraska real estate license. The suspension period will be followed by a probation period which will commence on March 1, 2010, and continue through December 1, 2010; plus an additional nine (9) hours of</p>

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<p>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. O'Shea failed to present an Offer direct to an owner knowing such owner had an exclusive right-to-sell listing contract with another designated broker, and O'Shea failed to deliver the buyer's earnest money deposit to the designated broker.</p>	<p>2008-037 Theresa Marie Garthright vs. Matthew Barrett O'Shea and Kimberly Anne Topp</p>		<p>continuing education to include three (3) hours in the area of agency, three (3) hours in the area of ethics and three (3) hours in the area of license law to be completed by May 30, 2010.</p>
<p>Violated Neb. Rev. Stat. § 76-2422(4) Before engaging in any of the activities enumerated in subdivision (2) of section 81-885.01, a designated broker intending to act as a dual agent shall obtain the written consent of the seller and buyer or landlord and tenant permitting the designated broker to serve as a dual agent. The consent shall include a licensee's duties and responsibilities specified in section 76-2419. The requirements of this subsection are met as to a seller or landlord if the written agreement entered into with the seller or landlord complies with this subsection. The requirements of this subsection are met as to a buyer or tenant if a consent or buyer's or tenant's agency agreement is signed by a potential buyer or tenant which complies with this subsection. The consent of the buyer or tenant does not need to refer to a specific property and may refer generally to all properties for which the buyer's or tenant's agent may also be acting as a seller's or landlord's agent and would be a dual agent. If a licensee is acting as a dual agent with regard to a specific property, the seller and buyer or landlord and tenant shall confirm in writing the dual-agency status and the party or parties responsible for paying any compensation prior to or at the time a contract to purchase a property or a lease or letter of intent to lease is entered into for the specific property, by failing to disclose in writing brokerage services, to have clients sign an Agency Disclosure and to note the refusal of an individual to sign an Agency Disclosure; Neb. Rev. Stat. § 81-885.01(2) Broker means any person who, for any form of compensation or consideration or with the intent or expectation of receiving the same from another, negotiates or attempts to negotiate the listing, sale, purchase, exchange, rent, lease, or option for any real estate or</p>	<p>2014-013 – Commission vs. Jane Hartman Heimboch</p>	<p>June 25, 2014</p>	<p>Stipulation and Consent Order entered June 25, 2014. License revoked.</p>

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<p>improvements thereon, or assists in procuring prospects or holds himself or herself out as a referral agent for the purpose of securing prospects for the listing, sale, purchase, exchange, renting, leasing, or optioning of any real estate or collects rents or attempts to collect rents, gives a broker's price opinion or comparative market analysis, or holds himself or herself out as engaged in any of the foregoing. Broker also includes any person: (a) Employed, by or on behalf of the owner or owners of lots or other parcels of real estate, for any form of compensation or consideration to sell such real estate or any part thereof in lots or parcels or make other disposition thereof; (b) who auctions, offers, attempts, or agrees to auction real estate; or (c) who buys or offers to buy or sell or otherwise deals in options to buy real estate, by failing to disclose in writing brokerage services, to have clients sign an Agency Disclosure and to note the refusal of an individual to sign an Agency Disclosure; Neb. Rev. stat. § 81-885.24(16) Violating any provision of sections 76-2401 to 76-2430; by failing to disclose in writing brokerage services, to have clients sign an Agency Disclosure and to note the refusal of an individual to sign an Agency Disclosure; Neb. Rev. State § 76-2421(1) At the earliest practicable opportunity during or following the first substantial contact with a seller, landlord, buyer, or tenant 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 or who is providing brokerage services for that property 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, by failing to disclose in writing brokerage services, to have clients sign an Agency Disclosure and to note that an individual refused to sign an Agency Disclosure; Neb. Rev. State § 81-885.24(3) Failing to account for and remit any money coming into his or her possession belonging to others by failing to timely deposit or remit earnest monies, failed to</p>	<p>2014-013 – Commission vs. Jane Hartman Heimbouch</p>		

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<p>keep separate earnest money from clients and to account for money belonging to others with respect to irrigation payments or utility charges; Neb. Rev. Stat. § 81-885.24(4) Commingling the money or other property of his or her principals with his or her own, by failing to timely deposit or remit earnest monies, also failed to keep separate earnest money from clients and to account for money belonging to others with respect to irrigation payments or utility charges; Neb. Rev. Stat. § 81-885.24(24) Failing by an associate broker or salesperson to place, as soon after receipt as practicable, in the custody of his or her employing broker any deposit money or other money or funds entrusted to him or her by any person dealing with him or her as the representative of his or her licensed broker, by failing to timely deposit or remit earnest monies, to keep separate earnest money from clients and to account for money belonging to others with respect to irrigation payments or utility charges; Neb. Rev. Stat. § 81-885.24(26) Violating any rule or regulation adopted and promulgated by the commission in the interest of the public and consistent with the Nebraska Real Estate License Act; by failing to timely deposit or remit earnest monies, to keep separate earnest money from clients and to account for money belonging to others with respect to irrigation payments or utility charges; 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 failing to timely deposit or remit earnest monies, to keep separate earnest money from clients, to account for money belonging to others with respect to irrigation payments or utility charges, to deliver a written copy of offers and/or purchase agreements and to protect interests of her clients. Heimboch also failed to truthfully and timely inform her clients of the status of transactions concerning their properties and to competently complete paperwork; 299 NAC 3-005 Earnest money deposits and other deposits relating to the sale of real estate shall be kept in a separately identified trust account and all other trust funds may be deposited in another separately identified trust account, by failing to timely</p>	<p>2014-013 – Commission vs. Jane Hartman Heimboch</p>		



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<p>deposit or remit earnest monies, to keep separate and/or commingling earnest money received from clients, to account for money belonging to others with respect to irrigation payments or utility charges, to deliver a written copy of offers and/or purchase agreements and failed to protect the interests of her clients; 299 NAC 5-003.14 Failure to deposit any funds received as an earnest money deposit within 72 hours or before the end of the next banking day, after an offer is accepted, in writing, unless otherwise provided in the purchase agreement. In the event an offer is not accepted, said earnest money deposit shall be returned forthwith, by failing to timely deposit or remit earnest monies, to keep separate earnest money from clients and to account for money belonging to others with respect to irrigation payments or utility charges; 299 NAC 5-003.15 Withholding earnest money when the purchaser or seller is rightfully entitled to the money; provided, a broker may retain funds to cover expenses he or she has prepaid for a purchaser or seller from the broker's funds, by failing to timely deposit or remit earnest monies, to keep separate earnest money from clients, and to account for money belonging to others with respect to irrigation payments or utility charges; Neb. Rev. Stat. § 81-885.24(20) Failing to deliver within a reasonable time a completed and dated copy of any purchase agreement or offer to buy or sell real estate to the purchaser and to the seller, by failing to deliver a written copy of the offer and/ or purchase agreements; 299 NAC 5-003.18 Failure to reduce an offer to writing where a prospective purchaser requests such offer be submitted when the licensee is: the limited seller's agent for the property; the prospective purchaser's limited buyer's agent; or the dual agent of the seller and the prospective purchaser, by failing to deliver a written copy of offers and/or purchase agreements; Neb. Rev. Stat. § 81-885.24(22) Making any substantial misrepresentations, by advising clients of offers without the necessary documents and also disclosing personal information about possible clients.</p>	<p>2014-013 – Commission vs. Jane Hartman Heimbouch</p>		

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