



COMMISSION COMMENT

Ann K. Post Appointed to the Commission



Ann Post Takes Oath of Office

Ann K. Post has been appointed as the public representative of the seven member Nebraska Real Estate Commission. Post was sworn in at the November meeting of the Commission and will serve a six year term, she replaces public member Jim Titus.

Commissioner Post is a partner at the Remboldt Ludke law firm in Lincoln, where her practice focuses on real estate, land use and development. She is also an active member of the Home Builder’s Association, the Realtor’s Association of Lincoln, the Lincoln Chamber of Commerce and a Commissioner on the Capital Environs Committee. 

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Commission Meeting Schedule

March 17-18.....	Lincoln
April 21	Lincoln
May 19-20	Lincoln
June 16-17	Lincoln

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DIRECTOR'S DESK

Customer Service

The Commission has put a lot of work into developing our new licensee portal and adding functionality so that licensees and applicants can access services when our offices are offline, or we are backed up with other calls or applications. I am not treading any new ground here by saying it is smart and efficient to expand such services, it is just the way the world has been moving for the last few decades. We plan to continue to further develop and promote our online services for the efficiencies they create for both the Commission and the industry.



Director Greg Lemon

However, the Commission and I take pride in the fact that we are a small agency with direct access for licensees and the public to the personnel in the office who are directly responsible for the functions you have questions about. I do not plan in my tenure here to ever use a call center with personnel who have a limited script and knowledge of what the office does (or make you talk to a machine, or press 1 for..., two for... etc.). If you don't know who you need to talk to please see our Communications Guide and Staff Directory on page three of this newsletter for the contact information on who these people are.

Our customer service has a number of components, including information provided on the website and through this newsletter, but is primarily delivered via interaction with us through emails, correspondence, applications and phone calls, as well as through the licensee portal.

In my 12 years as director the number of applications we process a year has nearly doubled and the continuing education requirements have become more complex with the addition of Commission approved training and CE requirements for real estate teams and property managers. With these changes the number of calls and inquiries have increased significantly. We have tried to deal with this by adding another front office staff member and automating more processes through our license portal.

Some people like to pick up the phone and make a call, some like to go online look it up or complete an online process. The plan has always been to improve and make the online more functional and easier to use, and by doing so, more staff time is available for you when online doesn't work.

So this is my long winded way of saying we plan to continue to offer old fashioned one on one service, augmented by online services through the portal, there are times when we may advise those who call that services are available through the portal, but if that is not working or easily accessible I want to be sure we are answering your questions about how to access our online information or are helping you directly, if we aren't please let me know, greg.lemon@nebraska.gov.

Greg Lemon, Director
Nebraska Real Estate Commission

Love Letters, Fair Housing and Agency

Introduction

There has been a lot of discussion in the industry lately about “love letters” or buyers’ notes to sellers about how much they would love to live in the seller’s house, expressing that they are the most worthy or deserving buyer for the home. The letters are sent in hopes of making the buyer’s offer stand out and get accepted in a very competitive market. They have become more popular in the limited inventory environment most of the state has experienced recently.

The National Association of Realtors has provided guidance documents on the use of love letters, warning of their potential for creating a fair housing violation <https://www.nar.realtor/fair-housing-corner/love-letters-or-liability-letters>. The Association recommends that if a client insists on using a buyer love letter the licensee should not help the client draft or deliver it. This article examines how the letters relate to fair housing and the license act.

The most significant concern with buyer love letters is potential violation of the state and federal fair housing acts, which generally contain protections against housing discrimination based upon race, color, national origin, religion, sex, familial status, or disability.

Love letters have the potential to be used violate fair housing laws because they often contain statements or other information such as photographs which may reveal the status or class of the buyer, “We would love to raise children in your beautiful home” (familial status), “We would love to celebrate Christmas by the fire in your living room, and have our annual Easter egg hunt in your big back yard” (religion), and if that class or status is determining factor the seller uses in choosing a buyer, a fair housing issue may be created. It should be noted that both real estate agents, sellers and landlords are potentially liable for discrimination under the state and federal fair housing acts.

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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 . . . *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) *Alane Roubal*
alane.roubal@nebraska.gov

Errors and Omissions Insurance
Inquiries *Monica Rut*
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License Applications Packet
Requests *General Staff*
realestate.commission@nebraska.gov

License Applications Process *Marilyn Masters*
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Licensing Requirements *Monica Rut*
monica.rut@nebraska.gov

New Licenses in Process *Patricia Menousek*
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Specialized Registrations *Monica Rut*
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Transfer of License *Patricia Menousek*
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Legal Considerations Under the License Act

Five provisions of law are particularly relevant.

1. Neb. Rev. Stat. §81-885.24 (1) (unfair trade practices) refusing to sell or rent to a protected class.
2. The State (Neb. Rev. Stat. §§20-301 through 20-344) Fair Housing Act, which prohibits discriminating in the sale or rental of property for protected classes as outlined in the introduction to this article.
3. The Federal (42 U.S.C. §§ 3601-19) Fair Housing Act, which prohibits discriminating in the sale or rental of property for protected classes as outlined in the introduction to this article.
4. Duties of Buyer's and Seller's agents to represent the interests of the client with the utmost good faith, loyalty, and fidelity (Neb. Rev. Stat. §76-2417 & §76-2418).
5. Duties of the buyer's and seller's agents to present all written offers in a timely manner (Neb. Rev. Stat. §76-2417 & §76-2418).

Fair Housing Compliance (#1-3 above)

Brokerages and agents should educate their clients on the potential for fair housing violations when using love letters. While buyers and tenants do not share in the potential liability, they certainly have an interest in avoiding a fair housing complaint related to their purchase or lease.

It is possible to contemplate or draft a simple note that does not create any fair housing concerns, such as "We really love your house and hope we can make a deal" or a note focusing on the features that the buyer likes about the house "it is obvious you have taken great care of the property, we also love the huge windows and open floorplan". A love letter in and of itself is not a violation of the license act or fair housing, its potential for giving rise to a violation depends on the content of the letter.

Agency Law (#4-5)

Agency law provides that an agent has an obligation to present all written offers in a timely manner when requested to do so by a customer or client. Does this rule place a requirement on a licensee to present the love letter? The Commission's position is that it does not, as the love letter is not part of the contract, it creates no obligation on the part of buyer or seller, therefore, it is not part of the offer. The love letter can be characterized more as informal communication. A client or even a licensee might suggest the love letter language be incorporated into the offer itself, the Commission does not recommend inserting such

language for a number of reasons, and a licensee could certainly refuse on the grounds that the language does not relate to the terms of the purchase and obligations of the buyer and seller and therefore should not be included in a contract.

Perhaps the more interesting question is representing the best interest of the client. A love letter could help a client in getting their offer accepted, is an agent failing to act in the buyer's best interest if they don't present the letter if requested to do so by the client? Since there is not an affirmative duty to present the letters because they are not part of the offer, and there is a significant possibility of violation of other provisions of law if the letter is presented, refusing to present a love letter should not be considered a breach of fiduciary duty to the client.

Conclusion

Love letters, in and of themselves, do not constitute a violation of fair housing or Nebraska License law, however, they have a significant potential to violate such acts, therefore it is not a violation of the license act to forward love letters or refuse to present such letters. However, because there are significant consequences should a licensee be found in violation of the Fair Housing Act (and it may not always be easy to determine if a love letter could be construed to create potential for a fair housing violation) **the Commission recommends that best practice would be for brokerages to develop a consistent policy to be followed with regards to the letters.**

The policy should provide a method for informing buyers and sellers of the potential hazards and liabilities of using love letters as they relate to fair housing, this could be done verbally or through a pamphlet or brochure. The policy should either prohibit licensees from participating in the drafting or delivery of love letters that suggest or identify the buyer's status in any of the classes named by the state and federal fair housing acts only, or, because of the difficulty of determining and policing such potential violations, prohibit licensees from participating in the drafting or delivery of love letters period, without making a determination of any potential fair housing violation. 🏠



Samantha Lowery Named Deputy Direc- tor for Enforcement



*Samantha Lowery
Deputy Director for Enforcement*

The Commission has recently hired Samantha Lowery as the Deputy Director Enforcement for the Nebraska Real Estate Commission. The Deputy Director for Enforcement investigates complaints and answers questions from licensees and the public about potential complaints and license law.

Ms. Lowery began her career in Oregon, where she worked for 11 years as an investigator for private practice attorneys, and also obtained a private investigator’s license. She has a Bachelor’s Degree in Sociology from the University of Oregon, and a Juris Doctorate Degree from the University of Nebraska Lincoln. She replaces Antwan Montague, who left the Commission to pursue other interests. 

Let’s Talk Trust Accounts

Handling trust funds in residential property management

In most situations, rents and security deposits received by the broker are deposited into their trust account and clearly identified within the accounting system. This is the requirement per 81-885.21 of the License Act unless all parties having an interest in the funds have agreed otherwise in writing. The Commission interpretation of this is that if the owner wants the funds handled through an interest bearing account or if the owner wants the funds handled through an owner operating account, it can be done with the written authorization in the management agreement. At that point, the rents should be payable to the owner of the property. This should also be accompanied by a statement informing the owner that these funds are no longer regulated by the Nebraska Real Estate Commission. If the broker is wanting to handle all the receipts and disbursements through a broker operating account, they cannot do so.

If the owner is wanting to hold the security deposits, the authorization must be clearly spelled out in both the management agreement and the lease agreement. If that authorization is in place, the deposit can either be released to the owner or comingled with owner funds within the trust account.

If you are currently managing for a third party with the funds going through a broker operating account, you need to discontinue the practice or face possible disciplinary actions from the Real Estate Commission. 



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Nebraska Real Estate Commission: Seated (l to r) Ann Post, Chairman Robert Eynen, Sheri Bourne; Standing: Darlene Starman, Doug Dohse, Joe Gehrki, Lisa Ritter