



## NORTH CAROLINA REAL ESTATE COMMISSION

# Real Estate Bulletin

Volume 14

1983

Number 2

## LEGISLATURE ENACTS TIME SHARE ACT Broker Education Requirements Increased

In addition to those amendments to the Real Estate License Law which were reported in the last issue of the *Bulletin*, the General Assembly further amended the License Law by enacting the North Carolina Time Share Act and by strengthening the education requirements for persons applying for real estate broker licenses. Following is a summary of these amendments.

### Time Shares

In recent years a new concept in real estate ownership has emerged known as "time sharing" or "interval ownership." The term "time share" generally refers to the ownership or the right to use a specific housing unit (usually a condominium) for a given week each year over a period of many years. Time sharing is especially popular in resort areas where it is promoted as an attractive alternative to the high cost of vacation lodging. Consequently, as a vacation state, North Carolina has attracted a number of time share projects to its mountain and coastal areas.

Recognizing the need for regulation of this rapidly expanding industry, the North Carolina General Assembly during its 1983 Session enacted the North Carolina Time Share Act to become effective July 1, 1984. The legislation creating the Time Share Act was recommended by the North Carolina General Statutes Commission and supported by both the North Carolina Real Estate Commission and the Consumer Protection Section of the North Carolina Attorney General's Office.

Following is a summary of the major provisions of the Time Share Act:

1. **All persons who sell time shares in North Carolina must hold North Carolina real estate licenses.**

Prior to enactment of the Time Share Act, *employees* of time share owners and developers were not required to be licensed when selling time shares owned by their employers.

2. **Developers of time share projects located in North Carolina must register their projects with the North Carolina Real Estate Commission.**

Project registration involves paying a registration fee and filing an application for registration setting forth detailed information about the ownership of the project and its facilities.

3. **Time shares are defined as being real estate.**

Documents evidencing ownership of a time share may be recorded, thus providing time share owners the same protections afforded to owners of other real estate.

4. **Purchasers must be given a public offering statement.**

This document provides basic information to the purchaser regarding his total financial obligation under the purchase contract and other information regarding the time share offering.

5. **Purchasers may (without penalty) cancel their purchase contract at any time within five days after the execution of the contract.**

6. **Purchasers must be given detailed information regarding exchange programs.**

Under certain conditions, time share owners may be given the right to exchange their time share unit for a unit in another location. Under the new Act, purchasers must be given specific information regarding the potential for effecting an exchange and other information regarding any exchange program available to the purchaser.

7. **Purchasers must be given a release of all liens affecting their time share.**

8. **The Real Estate Commission may discipline any broker, salesman or developer for violating the Time Share Act and may also fine developers for each violation of the Act.**

Real estate brokers who are currently engaged in the sale of time shares or who are contemplating such activity are advised to contact the Real Estate Commission for a complete copy of the North Carolina Time Share Act.

### Broker Education Requirements

After considerable discussion and debate, the General Assembly amended those provisions of the Real Estate License Law relating to qualification requirements for real estate *broker* licenses. The qualification requirements for salesman licenses were not changed.

Under the new law, **effective September 1, 1984** applicants for broker licenses who have not had at least two years' experience as a licensed real estate salesman (or its

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## REAL ESTATE BULLETIN

Published quarterly as a service to real estate licensees to promote a better understanding of the Real Estate Licensing Law, Rules and Regulations, and proficiency in ethical real estate practice. The articles published herein shall not be reprinted or reproduced in any other publication without specific reference being made to their original publication in the **North Carolina Real Estate Commission Real Estate Bulletin**.

## NORTH CAROLINA REAL ESTATE COMMISSION

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Harry H. Harkins, Jr. .... Legal Counsel  
Asst. Atty. Gen.  
Thomas R. Miller ..... Legal Inf. Off.

### EXAM RESULTS

#### EXAMINATION—May, 1983

	Passed	Failed
Brokers	126	176
Salesmen	243	129

#### EXAMINATION—June, 1983

	Passed	Failed
Brokers	162	205
Salesmen	316	168

### RENEWAL REPORT

Brokers and Salesmen Renewed  
as of July 1, 1983 ..... 44,026  
Corporations Renewed  
as of July 1, 1983 ..... 2,133  
Total Licensees  
as of July 1, 1983 ..... 46,159

Approximately 90% of all brokers, salesmen and corporations renewed their licenses before the June 30 expiration date. Last year, 88% had renewed their licenses by that date.

## COMMISSION NOTES

### Commission Elects Officers

**Bart Bryson** has been elected Chairman of the North Carolina Real Estate Commission for a one-year term commencing August 1, 1983. Mr. Bryson is owner of Realty World-Bryson Realty in Hendersonville.

A Member of the Appraisal Institute (MAI), he is a past President of Chapter 40 of the American Institute of Real Estate Appraisers and a member of the Society of Real Estate Appraisers.

**B. Hunt Baxter, Jr.** has been elected Vice Chairman of the Commission for the coming year. Mr. Baxter is an attorney and partner in the New Bern law firm of Henderson and Baxter.

In addition to his legal practice, Mr. Baxter is currently serving as Public Administrator of Craven County and is also Professor of Business at Craven Community College.

### Adams Reappointed

**Fred H. Adams** of Cary has been reappointed to the Real Estate Com-

mission for a three-year term expiring July 31, 1986.

Mr. Adams is Executive Vice President and General Manager of Adams Concrete Products Manufacturing and a past President of the Carolina's Concrete Masonry Association. He is currently serving on the Board of the National Concrete Masonry Association and is a member of its National Marketing Committee.

### Carlton Elected

#### NARELLO Vice-President

**A. P. Carlton**, a Member and former Chairman of the Real Estate Commission, has been elected Vice-President of the National Association of Real Estate License Law Officials. Mr. Carlton is also currently serving on the Board of Directors of the Association which is comprised of real estate licensing officials from the various states and provinces in the United States and Canada. □

## Broker-In-Charge Forms in the Mail

Forms and information were mailed September 1 to all real estate offices in North Carolina regarding the Commission's new Broker-In-Charge Rule. The package of materials includes:

1. A **Broker-In-Charge Declaration Card** to be completed by the Broker-In-Charge;
2. A **Supervision of Salesmen Form** on which to list the names of all licensed real estate salesmen who work at the office of the Broker-In-Charge;
3. An **Instruction Sheet**; and
4. A **Return Envelope** for use in returning the Declaration Card and Supervision of Salesmen Form to the Commission Office.

Under the new Rule, each office must designate one broker to act as Broker-In-Charge of the office. He/she will assume responsibility at this office for the proper maintenance of the trust or escrow account, the supervision of all licensed salesmen working at the office, the display of all licenses and renewal stickers, and other acts specifically set forth in the Rule. Failure to properly carry out these

duties and responsibilities can result in disciplinary action by the Commission.

A licensed broker may act as Broker-In-Charge for *only one office location of the firm*. If a real estate firm maintains a branch office(s), then each separate office location must have its own Broker-In-Charge.

In the case of licensed real estate brokerage corporations, the "principal broker" of the corporation (must be an executive officer of the corporation) will continue to be considered by the Commission to be the primary contact person for the corporation. But while a "principal broker" may serve as Broker-In-Charge of one of the corporation's offices, each additional office location of the corporation must have its own Broker-In-Charge.

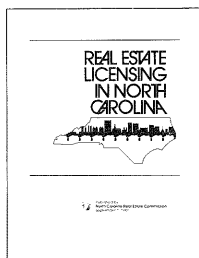
Owners of real estate firms (and principal brokers of real estate corporations) *at which two or more licensed real estate brokers or salesmen are employed or associated* should contact the Commission Office if they have not received the Broker-In-Charge Forms by September 20. □

# EDUCATION REPORT

## Commission Publications

### Real Estate Licensing in North Carolina

Persons applying for North Carolina real estate licenses are now finding a new booklet of information in their package of application materials. The booklet, entitled *Real Estate Licensing in North Carolina* has been prepared by Commission Executive Director Phillip T. Fisher and



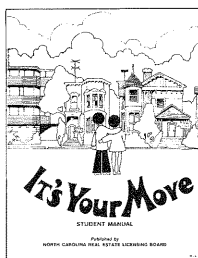
Education Director Larry A. Outlaw for the purpose of providing more detailed information to license applicants regarding the process, procedures, and requirements for obtaining North Carolina real estate licenses.

In addition to giving a step-by-step description of the application—examination—licensing process, the booklet also contains detailed information on the new licensing examinations to be administered by the Commission beginning in January, 1984.

Copies of the booklet are being furnished without charge to all persons applying for real estate licenses and may be obtained by other interested persons from the Commission Office upon request.

### It's Your Move

North Carolina high schools have requested 30,000 additional copies of the Commission's publication, *It's Your Move*, for use during the 1983-84 school year. This booklet is designed to give high school students (tomorrow's real estate consumers) basic information concerning buying, selling, and leasing real estate.



To date, more than 150,000 copies of the booklet have been printed and distributed free-of-charge to high schools by the Real Estate Commission, including Braille and large-print versions for the visually impaired.

### Current License Law Booklets

Copies of the current North Carolina Real Estate License Law, the Rules and Regulations of the Real Estate Commission, and Trust Account Guidelines are now available from the Commission Office. The booklets reflect the recent amendments to the License Law (including the North Carolina Time Share Act) as well as the changes in the Commission's Regulations.

Interested persons may obtain a free copy by writing or calling the Commission Office. □

## 1983 Instructor Workshop

The Real Estate Commission and the North Carolina Real Estate Educators Association (NCREEA) recently co-sponsored the 4th Annual Real Estate Instructor Workshop, which was held in Raleigh on June 2-3, 1983. This workshop, like those in previous years, was very successful, with 111 participants representing 68 different schools and several other organizations involved with real estate education. Also present were several guest participants and representatives from three leading real estate publishers.

Some of the major topics addressed at this year's workshop were:

- \* Pre-Licensing Update
- \* Special Problems of Adult Education
- \* Investment Analysis: Teaching with a Micro-Computer
- \* Instructional/Learning Techniques
- \* Resource Information for Instructors
- \* The Commission's "In-House" Licensing Examination Program

The NCREEA also held its 2nd Annual Meeting in conjunction with the workshop. This meeting featured a presentation by Elinor Maskell-Mason of Arizona, who is President-Elect of the [National] Real Estate Educators Association. The newly elected President of the NCREEA for 1983-84 is Arthur E. Johnston, a Winston-Salem real estate broker and real estate instructor at Forsyth Technical Institute.

The 1984 Real Estate Instructor Workshop will again be held in Raleigh on April 3-4, 1984. Instructors and other interested persons should mark their calendars and plan now to attend. □

## 1984 EXAMINATION SCHEDULE

Application Filing Deadline	Examination Dates
December 28, 1983 .....	January 28, 1984
January 25, 1984 .....	February 25
February 24 .....	March 24
March 28 .....	April 28
April 19 .....	May 19
May 23 .....	June 23
June 28 .....	July 28
July 25 .....	August 25
August 22 .....	September 22
September 27 .....	October 27
October 17 .....	November 17
November 15 .....	December 15

## "In-House" Examination Update

Developmental work on the "in-house" licensing examination program to be implemented in January, 1984 is proceeding according to plan. Computer hardware has been purchased and most of the computer software programs needed to administer the program will be completed, tested, and in place by mid-September. New forms (answer sheets, admission

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## Sales Tax on Temporary Lodging

As a result of the recent amendments to the North Carolina Sales and Use Tax Law, owners of cottages, apartments, condominiums, etc., who rent to transients (temporary occupants) and *rental agents* who rent such accommodations to transients on behalf of the owners are required to collect sales tax on such rental income to be remitted to the North Carolina Department of Revenue. When the rental agent is liable for the tax, the owner is not liable.

However, owners and rental agents are not required to collect sales tax on accommodations which are (1) rented to transients less than 15 days per calendar year or (2) acquired as a permanent residence. When accommodations are supplied to the same person for a period of 90 or more continuous days, the receipts therefrom are exempt from sales tax. After the accommodations have been rented to the same person for the required period, the tax collected should be refunded to such person and the rental agent or owner who remitted the tax may claim a refund or credit for any tax remitted to the Department which has been refunded to the customer.

The three per cent State sales tax and one per cent local sales tax (where applicable) is computed based upon the gross receipts derived from the rental of such accommodations. *Such funds when collected by a rental agent should be deposited and maintained in the agent's real estate brokerage trust account pending remittance to the Department of Revenue and should be handled in accordance with all applicable provisions of Commission Rule .0107 governing the handling and accounting of trust funds.*

Owners and rental agents who are subject to the new requirements must register with the Department of Revenue by filing an application for a Merchants Certificate of Registration License (Form E-504) and paying a \$5.00 license fee.

**Persons desiring additional information are advised to contact one of the field offices of the Department of Revenue or the Sales and Use Tax Division (919/733-3661). □**

## ANSWERLINE

by Thomas R. Miller  
Legal Information Officer

In recent months, I have been asked several interesting questions concerning the acceptance of offers to purchase real estate. The following questions are representative of the most common inquiries.

**Q.** I am a licensed real estate broker in North Carolina. Not long ago, I received a written offer to purchase one of my listings. Naturally, I rushed to present the offer to the seller. He accepted the offer and I returned to my office with the signed contract. When I got there, I was astonished to discover that another offer to purchase the same property had been received, and for a price higher than the offer I had just presented. Since the seller has already signed and accepted the first offer, is it now too late for him to consider the second, higher offer?

**A.** No. The seller may consider and accept the second offer if he so desires. To create a legally binding contract for the purchase and sale of real estate, the written offer must be accepted and signed, and the acceptance must be communicated to the offeror. Although the seller in question had assented to and signed the first offer presented by the broker, he is not contractually bound to sell because the broker has not communicated the seller's acceptance to the first offeror.

Unless otherwise specified, the acceptance may be communicated by any means adequate to manifest the accepting party's assent. To communicate the acceptance of an offer to purchase real estate, it is not necessary for the broker to return the offer bearing the seller's signature to the buyer. Once the seller has accepted and signed the contract, a letter, telegram or telephone call to the buyer will be sufficient to communicate the acceptance and bind the parties. Of course, even though the acceptance is communicated by mail or telephone, Commission Rule .0106 requires the broker to supply both parties a copy of the contract within five days after it is executed.

Since he has not communicated his seller's acceptance to the first offeror, the broker in the question should return both offers to the seller so that he may consider their relative merits and choose between them.

**Q.** I am a licensed North Carolina real estate broker. One of the houses I have listed is owned by a seller who lives in California. When I received an offer to purchase the house, I called the seller in California and read him the important provisions. After considering the offer briefly, the seller accepted it over the telephone. I then immediately informed the offeror and I mailed the offer to California for the seller's signature. When I returned from the post office, my secretary informed me that another written offer to purchase the same property at a higher price had been received. Since I already have informed the first offeror that his offer was accepted, may the seller withdraw his verbal acceptance of the first offer in order to consider and possibly accept the second, higher offer?

**A.** Yes. Although the broker has communicated the seller's verbal acceptance to the first offeror, the seller is not bound and may consider and accept the second offer. To create a binding contract for the purchase and sale of real estate in North Carolina, the Statute of Frauds, G.S. 22-2, requires the contract to be in writing and signed by the party to be charged. Because the seller has not yet signed the first written offer, the communication of his verbal acceptance of the offer is insufficient to create a contract which can be enforced against him. The broker should contact the seller immediately to inform him that two offers are being sent for his consideration and that he may accept either or reject both. If the seller rejects the first offer, the broker in the question will be faced with the unenviable task of explaining to the first offeror that his offer was not accepted as he had been informed previously, but rejected by the seller.

[CAVEAT: *Unless the written offer has been signed by the accepting party, real estate brokers and salesmen should not represent to the person who made the offer that his offer has been accepted.*] □

### BROKER ENDS 60-YEAR CAREER

The Real Estate Commission extends to Mr. H. B. Keller of Charlotte its sincere best wishes upon his retirement from nearly 60 years' active involvement in the real estate profession. □

# Trust Account Audits/ Disciplinary Action

## A Licensee's Perspective

*The following article was written and submitted for publication by a real estate broker who was disciplined by the Real Estate Commission for trust account violations following an audit of his trust account. The Commission wishes to express its appreciation to the author for his willingness to share his experience with other licensees in the hope that they might avoid similar action.*

It was a few days after Christmas. A gloomy day at that, both in weather and events. It got even more gloomy when I received a telephone call at home from my assistant who advised me that the auditor from the North Carolina Real Estate Licensing Board had come by to audit my accounts.

On my way to the office many thoughts passed through my mind. I thought "They're just out 'to get me.'" They have their quota to nail down so they can print it in the quarterly bulletin and scare others to death." And "Why should it have to be me. After all, I have never had a single complaint from either a buyer, seller, property owner, tenant, or even another broker which would be serious enough to turn over to the Licensing Board." I remembered reading that an audit or check-up could be made on anyone at any time without prior notice, but I never thought that it could happen to me; furthermore, I kept my records so there was always plenty of money in my bank account so that checks would not bounce. Why should it be me?

When I arrived at my office I was very surprised to find that the auditor was most cordial and yet at the same time very professional. She advised me that this was a routine audit, that no complaint had been made against my operation, and that she would be glad to help me in any way possible. It took the auditor quite some time to perform the audit due to my confused system of bookkeeping. Yet during the entire time she continued to remain cordial and friendly, yet very

professional. A number of discrepancies were found and shortages detected. But although I corrected the shortages at once, the matters were still serious enough to warrant a hearing before the Real Estate Licensing Board.

The waiting period before the hearing was enough to keep me guessing and very uptight, and when I went to the hearing I had predicted that they would be out "to get me." Instead I found a very considerate group who certainly rendered the least punishment they could. To me the real punishment was in waiting for the hearing and having my name appear in the disciplinary column of the bulletin for the many thousands of real estate brokers, salesmen and others to read about. This is where the real punishment comes into being.

But since going through the experience of an audit and a hearing, I have at least changed my views about the Real Estate Licensing Board. It is not the "witch hunting agency" that I had pictured it to be. But rather, it is a group of people charged with the responsibility to protect the public—which is all of us. And I further believe that it is our responsibility as brokers and salesmen to help them upgrade the real estate industry.

My purpose in writing this letter is to warn others of the dangers and punishments involved in not having your trust accounts in order, hoping that they can escape what I went through. My advice to them is this: To avoid this happening to you, get your trust and escrow accounts in order quick! As I found, ignorance and indifference are no excuses. □

## Authors Wanted

Perhaps you have had an interesting experience or you have encountered a particular problem or question which you feel would be of interest to other brokers and salesmen. If so, you are invited to sub-

mit an article on the subject for possible publication in the *Real Estate Bulletin*. Articles should be typewritten, double-spaced and sent to the attention of the Editor: *Real Estate Bulletin* at the Commission Office.

## "In-House" Examination

(Continued from Page 3)

tickets, score reports, etc.) have been developed and ordered.

With regard to examination development, the Commission has approved some necessary minor technical revisions in the previously adopted examination "specifications" and these are now final. Proposed new examination questions have been written and submitted by real estate practitioners/educators in accordance with detailed guidelines provided by the Commission. These proposed questions, along with questions obtained from the Arizona Real Estate Commission, are currently undergoing Staff review. A select committee of real estate practitioners/educators will be meeting in late September to review all proposed examination questions. The questions approved by this committee will constitute the initial question bank (expected to be at least 1,000 questions) from which the first few examinations will be formed. Another select committee will review prototype examinations in November and advise the Commission regarding the passing scores which should be required.

Details regarding examination content are contained in the Commission's new publication *Real Estate Licensing in North Carolina*, which is discussed elsewhere in this edition of the *Bulletin*. □

## Education Requirements

(Continued from Page 1)

equivalent) will be required to complete a real estate education program approved by the Commission consisting of at least 120 classroom hours of instruction. The current education requirement is 90 classroom hours.

The new program is to consist of a "Fundamentals Course" of at least 30 classroom hours which will qualify the student to take the salesman license examination; a 30-hour course in "Real Estate Law"; a 30-hour course in "Real Estate Finance"; and a 30-hour course in "Real Estate Brokerage Operations" which will address some of the more practical aspects of operating a real estate office.

It is hoped that through these increased requirements applicants for broker licenses will be better prepared for their licensing examinations and for entry into the real estate business as brokers. □



# DISCIPLINARY ACTION

The Real Estate Licensing Board revoked the broker's license of MARVIN E. MINTON of Nags Head for converting trust funds to his own use. The Board found that Minton "borrowed" advance rental deposits for other business purposes.

The Licensing Board revoked the salesman's license of THOMAS R. MANN of Beaufort for failing to turn over an earnest money deposit to his employing broker. Instead, Mann converted the funds to his own use.

The Licensing Board revoked the broker's license of ANNIE JOINES BOWMAN of Statesville after she was convicted in the Superior Court of Iredell County of two counts of the felony of forging endorsements on a check.

The Licensing Board suspended the broker's license of LINDA C. PARKER of Fayetteville for two years. The Board found that Parker withdrew rental income from a trust account for her own use. All funds withdrawn were restored to the account.

The Licensing Board suspended the broker's license of MERLE J. DIENSTBERGER of Fayetteville for one year. The Board found that Dienstberger provided false information to the Veterans Administration and encouraged and assisted a home purchaser to furnish false information to the VA so that the borrowers could obtain financing to which they were not entitled. The Board found that Dienstberger also arranged for secondary financing, which is normally prohibited on VA loans.

The Licensing Board suspended the broker's license of WILLIE C. HUBBARD of Trinity for one year.

The Board found that Hubbard provided false information to the Veterans Administration and encouraged and assisted a home purchaser to furnish false information to the VA so that the borrowers could obtain financing to which they were not entitled. The Board found that Hubbard also arranged for secondary financing, which is normally prohibited on VA loans.

The Licensing Board suspended the broker's license of C. FRED ABERNETHY of Charlotte, formerly of Chapel Hill. Mr. Abernethy was convicted in the Superior Court of Orange County of the felony offense of obtaining property by false pretense. The license suspension will run concurrently with Mr. Abernethy's probation imposed as a result of the conviction.

The Licensing Board suspended the broker's license of BILLY E. HUFFINE of Wilmington for three years (3 months active, remainder on probation). The Board found that Mr. Huffine converted trust funds to his own use. The Board noted that all shortages in Mr. Huffine's trust account were immediately made up after the Board's audit. The Board further ordered Mr. Huffine to take its trust account course and provide the Board with quarterly statements from a CPA that his trust account is in compliance with the License Law.

The Licensing Board suspended the broker's license of DONALD R. FONVILLE of Burlington for two years. An audit of Mr. Fonville's trust account revealed shortages, and proper records of his trust account activity were not maintained as required by Board regulations.

The Licensing Board suspended the broker's license of GENE E. WARD, SR. of Eden for six months (3 months active, probation for two years). The Board found that Mr. Ward issued a check drawn on his trust account which was returned for insufficient funds, and a subsequent audit of his trust account revealed shortages. The Board further ordered Mr. Ward to take its trust account course.

The Licensing Board suspended the broker's license of ALASKA H. PRESLEY of Maggie Valley for two years (2 months active, remainder on probation). The Board found that Presley sold a motel without disclosing to the purchasers all material facts concerning her previous ownership of the property.

The Licensing Board suspended the broker's license of DAVID M. MCKINNON of Charlotte for one week. He was also placed on probation for two years. McKinnon did not contest allegations that he procured "straw buyers" for property, who purchased it upon favorable financing terms available only to owner-occupants. The purchasers did not occupy the property and rented it or listed it for resale.

The Licensing Board suspended the salesperson's license of MIRIAM P. WALLACE of Charlotte for one week. She was also placed on probation for two years. Wallace did not contest allegations that she procured "straw buyers" for property, who purchased it upon favorable financing terms available only to owner-occupants. The purchasers did not occupy the property and rented it or listed it for resale. □

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BULK RATE  
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## ON THE INSIDE . . .

New Time Share Act  
Broker-In-Charge Info  
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Acceptance of Offers

. . . . . And More