



NORTH CAROLINA REAL ESTATE COMMISSION

Real Estate Bulletin

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COMMISSION CONSIDERS TIME SHARE REGULATIONS

As a result of the recent enactment of the North Carolina Time Share Act (Article 4 N.C.G.S. 93A), **all time share projects located in North Carolina must be registered with the North Carolina Real Estate Commission by July 1, 1984.** (For a summary of the Time Share Act, see your previous issue of the **Bulletin**.)

The Commission is currently in the process of formulating rules for implementing the registration requirements and hopes to begin registering projects by March 1.

Because "time sharing" is a relatively new concept in real estate ownership, the Commission sought the advice and assistance of its neighboring states which have previ-

ously adopted Time Share Acts. On March 14, the Commission hosted a meeting of administrators, investigators and attorneys of real estate commissions from South Carolina, Virginia, Tennessee, Georgia, and Maryland for the pur-



pose of discussing their experiences in regulating the time share industry in their states.

From this meeting, the Commission gained a better insight into certain special problems and concerns peculiar to the time share industry which will be addressed in the new rules and regulations. The meeting was planned and organized by Deputy Legal Counsel Thomas R. Miller and Director of Audits L. Ted Gayle.

Copies of the North Carolina Time Share Act are available from the Commission Office. A summary of the rules governing time share sales will be published in a future issue of the **Bulletin**, and complete copies of the rules will be available from the Commission Office upon their adoption. □

"IN-HOUSE" EXAMINATION UPDATE

Final preparations are now being made for the Commission's new licensing examination program to be implemented in January 1984.

An initial bank of approximately 1,000 examination questions has been established, and a final review of all questions was completed by the Question Review Committee in October. "Prototype" salesman and broker ex-

aminations were then assembled in accordance with previously developed "specifications". Under the direction of a testing and measurement expert, a select committee of real estate practitioners met on November 3-4 to study the prototype examinations and develop recommendations as to the passing scores which should be required for the examinations.

Subsequently, after reviewing the prototype examinations and considering the Committee's recommendations, the Commission established 75% as the required passing score for both the salesman and broker examinations.

The new examinations will be administered in Asheville, Charlotte, Greenville, Raleigh, Wilmington and Winston-Salem. The Commission is confident that the new examinations will be a highly effective tool for determining whether or not applicants for real estate licenses possess the requisite minimum competency. □



EXAMINATION PASSING SCORE ADVISORY COMMITTEE

Seated (left to right): Zack H. Bacon, Jr., Raleigh; Anne S. Duffus, Greenville; Dr. Kinnard White, UNC, Chapel Hill; Dr. Huey M. Rowe-Anderson, Charlotte; Barbara Baskerville, Asheville; Jean P. Hunt, Raleigh; Robbie M. Hale, Fayetteville. Standing (left to right): L. D. Jones, Fayetteville; Allen D. Aldridge, Durham; J. Harold Craven, High Point; Charles F. Tyson, Jr., New Bern; James F. Perry, Kill Devil Hills; Thomas H. Heffner, Chapel Hill; Charles P. Scott, Greensboro; L. David Berryhill, Jr., Charlotte; William D. Seawell, Jr., Greensboro; Robert A. York, Asheville; Larry A. Outlaw, NCREC Education Director, Raleigh.

*Season's
Greetings*

from the

*North Carolina Real Estate
Commission and Staff*

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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Have You Filed Your Broker-In-Charge Card?

On September 1, forms and information were sent to all real estate offices regarding the Commission's new Broker-In-Charge Rule (Rule .0110). Under the new rule, each office (and branch office) must designate one broker to act as Broker-In-Charge of the office.

To date, nearly 7000 forms have been received by the Commission; however, processing is slow due to the number of record changes which are often required.

If a Broker-In-Charge has not been designated for your real estate office, you should immediately contact the Commission Office for instructions. Failure by the owner(s) of a real estate firm to designate a Broker-In-Charge may result in disciplinary action by the Real Estate Commission.

For information, call 919/733-9580, and ask for the Records Clerk. □

Licensing South Carolina Residents

Based upon information recently received from the South Carolina Real Estate Commission, the North Carolina Real Estate Commission has determined that it can no longer permit South Carolina residents to sit for North Carolina real estate license examinations.

Under the South Carolina Real Estate License Law and Regulations, in order to be eligible for a South Carolina real estate license, the applicant must be either a resident of South Carolina or a licensed real estate broker or salesman in a state which has a reciprocal licensing agreement with South Carolina. North Carolina law requires that applicants from other states be treated in the same manner as North Carolinians applying for licensure in such other states.

Therefore, *residents of South Carolina cannot obtain North Carolina real estate licenses UNLESS they are licensed real estate brokers or salesmen in South Carolina and otherwise satisfy the requirements of our Reciprocal Licensing Agreement with the South Carolina Real Estate Commission.* □

Adams Certified

The Real Estate Commission is pleased to announce that Trust Account Auditor Nancy C. Adams has been designated a Certified Real Estate Investigator by the National Association of Real Estate License Law Officials.

Nancy has been a Trust Account Auditor for the Real Estate Commission since November, 1981. Prior to joining the Commission, she was an examiner for the Federal Home Loan Bank Board.

Nancy joins Director of Audits, L. Ted Gayle and Investigators James Clinard, Rodolph Hill and Everette Jenkins in achieving this designation.

1984 Realtors Institute Schedule

February 20-25
Course A, B & C
UNC-Chapel Hill

May 14-19
Course C
UNC-Charlotte

December 3-8
Course A, B & C
UNC-Chapel Hill

EXAM RESULTS		
EXAMINATION—July, 1983		
	Passed	Failed
Brokers	128	265
Salesmen	372	222
EXAMINATION—August, 1983		
	Passed	Failed
Brokers	98	250
Salesmen	228	170
EXAMINATION—September, 1983		
	Passed	Failed
Brokers	174	220
Salesmen	320	211
EXAMINATION—October, 1983		
	Passed	Failed
Brokers	149	211
Salesmen	270	130
EXAMINATION—November, 1983		
	Passed	Failed
Brokers	88	235
Salesmen	235	155

National Real Estate Report Available

The National Association of Real Estate License Law Officials (NARELLO) has announced the publication of its 1983 Interstate Cooperation Committee Report which is being made available to real estate brokers and salesmen and other interested members of the public. The report contains extensive facts and figures regarding real estate licensing in the United States and Canada.

Copies of the Report can be obtained for \$15.00 each from NARELLO, Sunset Valley Law Building, 2580 South 90th Street, Omaha, Nebraska 68124. □

Interest-Bearing Trust Accounts

By
L. Ted Gayle
Director of Audits

In recent years, many banks and savings and loan associations in North Carolina have begun to offer a variety of interest-bearing checking accounts in order to attract depositors. As a result, the Real Estate Commission has received numerous calls from bankers and real estate brokers concerning whether some of these new accounts can be used as trust or escrow accounts under the requirements of the Real Estate License Law and the Commission's Rules, Regulations and Guidelines.

Even after considerable study it is sometimes difficult to determine if an account would be acceptable since the accounts differ in so many respects. For example, some of these accounts may be used only by corporations while others can be used only by individuals or sole proprietorships. Some accounts restrict the number of checks that can be written without service charge, while others do not. Some accounts are demand accounts while others require that the funds remain on deposit for a specified minimum period of time before a withdrawal can be made; early withdrawals often reduce the principal (i.e., the amount of deposit). Nearly all accounts require that a minimum daily balance be maintained—usually \$1500 to \$2500 or even higher.

In view of the interest being shown in utilizing interest-bearing accounts and the dangers inherent in

improperly using such accounts, perhaps it is time to restate the Commission's position regarding interest-bearing trust accounts.

If you wish to place in an interest-bearing account any funds which you are holding for others in a real estate transaction, then you must comply with the following requirements:

1. You must obtain written authorization from both the buyer and seller or landlord and tenant authorizing you to deposit the funds in an interest-bearing account. This authorization must also name the beneficiary of the interest earned on the deposit.

If such authorization is incorporated in the Offer to Purchase and Contract, a lease, or a Property Management Contract, it must be set forth in a clear and conspicuous manner so as to distinguish it from other provisions of the instrument. (Audits indicate that clauses relating to interest-bearing accounts are often "buried" in the instrument and are not at all conspicuous.)

2. The account must be a trust or escrow account. Your banker must be fully aware that funds deposited and disbursed through this account belong to others and that you are the

fiduciary or trustee of these funds. Check stubs, deposit tickets, bank statements, and the authorized signature instrument must bear the words "trust" or "escrow" in the account title.

3. The account must be maintained in an insured bank or savings and loan institution in North Carolina. Insurance must provide the same protection afforded by the Federal Deposit Insurance Corporation (F.D.I.C.) in that each depositor is insured for up to \$100,000 rather than \$100,000 insurance for all depositors.
4. The account must be a demand account in that monies can be withdrawn at any time for closings, refunds, payments related to property management operations, and similar disbursements.
5. The account cannot be one that risks loss of principal (some of the original deposit) if funds are withdrawn from the account before a specified period of time.

In addition, in order to create an audit trail which is easy to follow, the depository should furnish deposit tickets, checks, bank statements, etc. to report activity in the account in the same form as is normally provided for personal checking accounts. Drafts by telephone or plastic cards are harder to trace than conventional deposit tickets and checks.

Interest-bearing trust or escrow accounts are not suitable for everyone. They can not only create a bookkeeping nightmare, but can also subject the broker to disciplinary action in the event the broker fails to strictly follow the requirements of the License Law and Commission Rules.

However, in the event that a broker receives a substantial deposit which is to be held for an extended amount of time, then a separate interest-bearing account might be advisable for this deposit. But even then, the points outlined above must be fully complied with. □

TRUST ACCOUNT SHORT COURSE

The Commission will offer the **Trust Account Short Course** on the following dates:

January 17	8:30 a.m.	1:30 p.m.
March 20	8:30 a.m.	1:30 p.m.
July 17	8:30 a.m.	1:30 p.m.
September 18	8:30 a.m.	1:30 p.m.
November 20	8:30 a.m.	1:30 p.m.

The course will be held at the Commission Office at 1200 Navaho Drive in Raleigh. Reservations should be made with Mrs. Hamm at 919/733-9580. Class size will be limited, so space will be reserved on a first come first served basis.

The Commission will again sponsor the class in Asheville, Greensboro, Charlotte, Raleigh, Fayetteville and Wilmington in April or May of 1984. Reservation forms will be included in the next **Bulletin**.

UNLICENSED ACTIVITY: TWO CASES

The Real Estate Commission has in recent weeks encountered two incidents involving persons engaged in real estate brokerage activities without a real estate license. One involved an out-of-state broker who showed real estate in North Carolina and then collected a portion of the sales commission from a North Carolina broker. And the other involved a person who had continued to engage in the real estate brokerage business for several years after her license had expired.

Although it is presumed that the recipient of this **Bulletin** is currently licensed as a broker or salesman, nevertheless the Commission felt that all licensees should be made fully aware of these incidents since they also affected in various ways persons who were properly licensed.

Cooperating With Out-of-State Brokers

Frequently, North Carolina brokers (especially brokers in "border areas" of our State) find that it is in the best interest of their clients to offer their client's property for sale to persons in other states. They will, therefore, request the assistance of licensed brokers and brokerage firms in such other states in selling the North Carolina property.

Co-brokering with an out-of-state broker **who is also licensed in North Carolina** is always preferable since the out-of-state broker may enter North Carolina and perform a full range of brokerage acts and services in connection with the transaction. If the out-of-state broker does not hold a North Carolina real estate license, then he or she may not perform **in North Carolina** any act which requires a real estate license (e.g., showing the property, negotiating or discussing terms of sale, etc.); to do so could result in criminal prosecution in North Carolina. Furthermore, **if a North Carolina broker shares a commission with or otherwise compensates an unlicensed person for performing an act which requires a real estate license, then the North Carolina broker is subject to disciplinary**

action (license suspension, revocation, etc.) by the Real Estate Commission.

In view of the serious risks involved in co-brokering North Carolina properties with out-of-state brokers who are not licensed in North Carolina, the Commission recommends that North Carolina brokers who may be contemplating such arrangements reduce to writing their co-brokerage agreements describing in detail the terms and conditions of the arrangement and expressly stating that the out-of-state broker shall not enter North Carolina to conduct or participate in any phase of the transaction. It is further recommended that the North Carolina broker obtain from the cooperating broker prior to the payment of any commission or fee, a statement from the broker certifying that neither he nor any other agent acting through him or his firm performed any act in North Carolina which required a North Carolina real estate license.

This statement and the co-brokerage agreement should be retained by the North Carolina broker in his transaction file for future reference should any question subsequently arise concerning his arrangement and relationship with the out-of-state broker.

Failure To Renew License

Qualifying for a real estate license is for most persons a very challenging undertaking. Consequently, it is not surprising that only a very few persons each year allow their licenses to expire. Indeed, more than 95% of all real estate brokers and salesmen renew their licenses each year.

Of concern to the Commission, however, are those instances where persons are found to have been engaging in the real estate brokerage business after their licenses have expired—sometimes for many years. When confronted with this fact, these persons generally respond that they did not receive a renewal application and therefore simply forgot to renew. Yet almost all admit that they con-

tinued to pay their annual real estate privilege tax to the Department of Revenue during this period.

It is the responsibility of each broker and salesman to see that his or her real estate license is renewed in a timely manner. To remind licensees of the expiration of their licenses, the Commission has in recent years sent special notices notifying them that their licenses have expired. In addition, licensees are sent renewal stickers each year to affix to their license certificates to serve as a reminder to their associates who may have forgotten to renew their licenses. And, in recent months the Commission has adopted a Rule (Rule .1001) whereby the Broker-In-Charge of a real estate office will be held responsible for the proper display of the licenses and renewal stickers of all brokers and salesmen operating from his office; that is, the Broker-In-Charge may be disciplined for allowing persons to work from his or her office after their licenses have expired.

The question arises then "What if the broker or salesman fails to observe or heed these warning signals and continues to engage in brokerage activities while his license is lapsed?" In addition to those criminal sanctions set forth in the License Law which may be imposed against persons who have engaged in unlicensed real estate activity, the Commission may also require such persons to complete certain real estate education and/or pass the licensing examination as a condition of license reinstatement.

A further sanction is also being considered by the Commission for persons who have received brokerage commissions or fees for services performed while their licenses are lapsed. Since it is an established principle of law that an unlicensed broker is precluded from recovering his compensation for services performed which required licensure, *the Commission may as a condition precedent to the reinstatement of a license, require the broker or salesman to refund to the appropriate parties all brokerage commissions and fees received during the period of unlicensed activity.* □

THE HOUSING FINANCE AGENCY: ANOTHER SOURCE OF REAL ESTATE FINANCING

By Judy B. Bynum
Director of Publications and Information Services
North Carolina Housing Finance Agency

High interest rates have caused many young families to think they may never own their own home. However, many of these people could be helped by the North Carolina Housing Finance Agency, which works with private lending institutions in providing low-interest mortgage loans.

The state-chartered HFA is self-supporting and receives no state appropriations to cover salaries or operating expenses. Gary Paul Kane is Executive Director of the HFA, which is governed by a 13-member Board of Directors representing various segments of the housing industry.

Funds are obtained to make the below market interest rate mortgage loans through the sale of tax-exempt revenue bonds. The money generated by the bond sales is channeled through private lending institutions to North Carolinians qualifying for single family homes, and to developers building apartment projects for low and moderate income persons.

The HFA has had its most active year ever in 1983, providing a total of \$216 million in mortgage financing. Of that amount, \$168 million has been for single family mortgages at 9.6, 10.15 and 10.35 percent. Approximately 4,200 home loans will be made available with the proceeds of those three single family bond sales, the most recent of which occurred in November.

More than 8,000 mortgage loans for owner-occupied homes have been made available to date through the HFA. The average mortgage is approximately \$35,000 to \$40,000; applicants cannot have owned a home in three years and the family's income cannot exceed limits set by the HFA.

In addition to the single family bond sales, \$28 million in multi-family

financing was provided in 1983 for eight apartment projects at an interest rate of 9.45 percent to developers.

Prior to 1983, the HFA's multi-family bond issues financed units which received federal rent subsidies. The new Unsubsidized Program was created this year to help fill the gap left behind when new federal rent subsidies were terminated. The new program accepts applications from developers at any time. When enough good proposals are received, the HFA plans to sell bonds to finance the apartment complexes.

The HFA also operates a Home Improvement Loan Program, which allows cities the opportunity to stretch their Community Development Block Grant (CDBG) dollars or other local funds to provide fix-up loans for low-income residents. Ten cities participated in this program this year; plans call for the expansion of the program to additional cities in 1984.

The HFA has made a concerted effort during the past 24 months to make more North Carolina Realtors, brokers, developers, city officials and prospective homeowners aware of its existence. There will probably not be another single family bond issue until mid-1984, depending on the outcome of federal legislation which has temporarily halted the program in all 50 states. But real estate professionals should keep the HFA in mind when investigating potential sources of financing.

HFA representatives are available to speak to housing related groups about the North Carolina Housing Finance Agency, its role in the overall housing picture and the services it offers. Please call or write the HFA at P.O. Box 28066, 424 North Blount St., Raleigh, N. C. 27611 (919) 733-4550 for more information. □

Brokers Liable For Bookkeepers' Actions

Few employers would disagree that among their most valuable employees is the person who maintains their company's financial records. In the case of real estate brokerage firms, this position takes on special significance since this person is also generally charged with maintaining the firm's trust account.

But while the Broker-In-Charge of a real estate office may delegate to a bookkeeper, secretary or other clerical employee the day-to-day responsibility for maintaining their firm's trust account, nevertheless the broker will not be relieved of liability in the event the funds are embezzled or otherwise misappropriated by such employee.* Several incidents of embezzlement of trust funds by unlicensed employees have been discovered by the Commission in recent months.

For this reason, it is the position of the Real Estate Commission that **those persons who maintain records pertaining to the deposit and disbursement of trust funds and who have access to such funds should be bonded.** The Commission also advises Brokers-In-Charge to closely supervise the activities and work of such persons and, if necessary, to arrange for periodic audits of the records by a qualified, independent accountant.

The Commission will be closely monitoring this situation to determine if further action is warranted. □

*Rule .0110 Designated Broker

"There shall be designated for each real estate firm and branch office thereof one duly licensed real estate broker who shall assume responsibility for . . . the proper maintenance at such office of the trust or escrow account of the firm and records pertaining thereto."

DISCIPLINARY ACTION

The Real Estate Commission revoked the broker's license of MICHAEL J. BAGALE of Charlotte. Bagale submitted offers to purchase property on behalf of some alleged buyers without their knowledge or consent. He also applied for financing in their name without their knowledge. Bagale falsely represented to the sellers that he was holding earnest money in escrow. Bagale also managed rental property and failed to turn rents collected over to his principal.

The Commission revoked the broker's license of THOMAS S. STRICKLER, JR., of Greensboro for failing to submit an offer to purchase property listed with him. Instead, Strickler presented an offer from a corporation in which he had an interest. He thus acquired an interest in his principal's property without full disclosure of all other offers.

The Commission revoked the broker's license of MURPHY WOODS, formerly of Wilmington, for failing to make mortgage payments on rental property he managed. Woods collected rent, but failed to make proper accounting to the property owner. Woods also had numerous checks drawn on his escrow account returned for insufficient funds.

The Commission's order was effective in July, 1982, but publication of this disciplinary action was delayed because he appealed to Wake County Superior Court. Judge Robert L. Farmer recently dismissed the appeal on procedural grounds.

The Commission revoked the salesman's license of VIRGINIA KAYE BROCK of Mount Olive. Mrs. Brock, as bookkeeper for a real estate firm, disbursed rent from the firm's escrow account to a landlord renting property to her husband. Mr. Brock had not in fact paid any rent, and Mrs. Brock converted trust funds to the use of her husband. Her former employing broker made up the shortage.

The Commission revoked the broker's license of PHYLLIS H. CHANDLER, formerly of Raleigh, for converting to her use trust funds of the real estate firm employing her as a bookkeeper. Her former employing broker has made up the shortage created by the money she took from the account. Mrs. Chandler has promised to repay her broker.

The Commission revoked the broker's license of BURL L. MOSS of Greensboro for depositing earnest

money into his operating business account rather than an escrow account. Moss failed to produce trust account records for inspection by the Commission.

The Commission suspended the broker's license of L. RUDOLPH KEECH of Maysville for one year for incompetently drafting an offer to purchase. As a result of his incompetent preparation of the contract, litigation resulted between the buyer and seller.

The expired broker's license of MICHAEL F. WILMOTH of Pilot Mountain was suspended because of a payment from the Commission's Real Estate Recovery Fund pursuant to an order of the Surry County District Court.

The Commission suspended the broker's license of JOHN D. GRIER of Greenville for 30 days and placed him on probation for one year. An audit by the Commission detected a shortage of Grier's trust account caused by withdrawals to non-escrow accounts. The Commission found that the errors were created by poor bookkeeping rather than actual conversion, and Grier made up the shortage as soon as he was notified.

The Commission extended the suspension of the broker's license of ALBERT J. GREGOR of Pinehurst for an additional four months for failing to comply with the Commission's order that he restore a disputed earnest money deposit to his escrow account. The Commission's directive was a condition of his probation. □

ON THE INSIDE . . .

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. . . And More

50,200 copies of this public document were printed at a cost of \$.08 per copy.



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