



NORTH CAROLINA REAL ESTATE COMMISSION

Real Estate Bulletin

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COMMISSIONER CARLTON TO LEAD LICENSING OFFICIALS



Real Estate Commission Member **A. P. "Red" Carlton** has been elected President-Elect of the National Association of Real Estate License Law Officials (NARELLO). The election was held at the Association's annual conference in Albuquerque, New Mexico in October.

NARELLO is a federation of real estate licensing officials from the United States and Canada. Formed in 1930, the Association endeavors to promote better administration and enforcement of real estate license laws and cooperation among the member jurisdictions. The Association's headquarters are in Salt Lake City, Utah.

As President-Elect, Mr. Carlton will work closely with current President Harold Dawson of Georgia in

planning and coordinating the Association's activities as well as attending various meetings of the Association and its many committees. Mr. Carlton had previously served as District Vice President and Director of the Association and had chaired numerous committees.



Also elected at this meeting was Commission Executive Director **Phillip T. Fisher** as District Vice President. As Vice President, Mr. Fisher will head the Association's North Central District consisting of Delaware, District of Columbia, Maryland, North Carolina, Ohio, Pennsylvania, Virginia and West Virginia. Mr. Fisher had chaired NARELLO's Interstate Cooperation Committee for the past two years. □

Miller Named Legal Counsel



Mr. Thomas R. Miller has been appointed by the Attorney General to serve as Legal Counsel to the Real Estate Commission. Mr. Miller will succeed current Legal Counsel Harry H. Harkins who will be joining the Charlotte firm of Erdman and Boggs, practicing in their Chapel Hill office.

A Durham native, Tom received his undergraduate degree from Davidson College and his J.D. degree from the University of North Carolina School of Law, graduating in 1981. Since 1981, Mr. Miller has been employed by the Commission as Deputy Legal Counsel where he has been instrumental in administering North Carolina's new Time Share Act.

Mr. Miller will assume his new duties effective January 2.

ADMINISTRATOR'S NOTES



Susan Marshburn has been employed by the Real Estate Commission as Assistant Applications Clerk. She will assist Applications Clerk **Gloria Williams** in processing the nearly 1600 applications for real estate licenses received each month as well as perform other secretarial and clerical duties . . . Trust Account Auditor **Emmet Wood** presented a five-hour program on the auditing of time share projects at a September Investigator Seminar in Denver, Colorado conducted by the National Association of Real Estate License Law Officials (NARELLO) . . . Deputy Legal Counsel **Thomas Miller** and Auditor **Emmet Wood** participated in

three rap sessions at the North Carolina Association of REALTORS recent Annual Convention in Charlotte. The topic of their remarks was "How to Protect Your Real Estate License" . . . Commission Executive Director **Phillip T. Fisher** recently addressed a meeting of real estate license law administrators on the subject of computerization in real estate licensing examinations. The meeting was held in conjunction with the annual conference of the National Association of Real Estate License Law Officials in Albuquerque, New Mexico. At this conference, Director of Audits **L. Ted Gayle** presented an audio-visual program on the Commission's Trust Account Short Course and Legal Counsel

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Brogden Named Deputy Legal Counsel



Mr. Blackwell M. Brogden, Jr. has been named Deputy Legal Counsel of the Real Estate Commission.

A 1977 graduate of the University of North Carolina School of Law, he has had two years experience in private practice in Durham, three years with the N. C. Attorney General's Office, and has for the past two years been an Assistant District Attorney in Durham.

He will assume his new duties in January.

REAL ESTATE BULLETIN

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Asst. Atty. Gen.

Thomas R. Miller Dep. Leg. Counsel
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EXAM RESULTS

EXAMINATION—August, 1984

	Passed	Failed
Brokers	230	279
Salesmen	275	369

EXAMINATION—September, 1984

	Passed	Failed
Brokers	356	433
Salesmen	415	478

EXAMINATION—October, 1984

	Passed	Failed
Brokers	86	162
Salesmen	406	319

EXAMINATION—November, 1984

	Passed	Failed
Brokers	76	189
Salesmen	345	289

Administrator's Notes

(Continued from Page 1)

Harry H. Harkins, Jr. spoke on "Solicitation of Unexpired Listings" Receptionist **Carrie Worthington** was recently recognized by the Commission on having completed five years of service Executive Director **Phillip T. Fisher** and Deputy Legal Counsel **Thomas R. Miller** appeared before the North Carolina Housing Commission to brief the Commission on the current status of time share registration and regulation Commission Vice-Chairman **Thomas Council** and Education Director **Larry Outlaw** have been named to serve on a study committee of the North Carolina Structural Pest Control Committee to review and make recommendations regarding wood-infestation reporting forms Assistant Education Director **Mike Hughes** met with the North Carolina Association of Real Estate Educators to discuss the new Brokerage Operations Course Commission Member **A. P. "Red" Carlton** attended the Annual Convention of the National Association of REALTORS. Mr. Carlton represented the National Association of Real Estate License Law Officials in the absence of Association President Harold Dawson (Georgia) who was unable to attend. At the convention, Mr. Carlton addressed and appeared before numerous committees to discuss various issues of concern to real estate licensing officials. □

FORMER COMMISSION MEMBERS HONORED

Former Commission Members **Fred H. Adams** (Cary) and **William C. Stokes** (Reidsville), were honored at a recent meeting of the Real Estate Commission.

Mr. Adams and Mr. Stokes were recognized for their dedicated and distinguished service as Members of the Commission during their terms of office.



Fred H. Adams (left)
William C. Stokes (right)

Trust Account Short Course 1985 Schedule

The Real Estate Commission's Trust Account Auditing Staff will conduct courses on trust account record-keeping in the Commission's Raleigh office on the following dates during the coming calendar year.

- January 15, 1985
- February 19
- March 19
- April 16
- May 21
- June 18
- July 16
- August 20
- September 17
- October 15
- November 19
- December 17

The courses are designed to better inform real estate brokers and their bookkeepers regarding proper methods of handling and accounting for client funds. The course consists of an audio/visual presentation after which participants work through specially designed "practice sets" containing sample bookkeeping forms.

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BULLETIN ISSUE DATE

It has come to our attention that many readers save their copies of the **Bulletin** or specific **Bulletin** articles for their future reference. Therefore, at the request of our readers, future issues of the **Bulletin** will contain the year and number of the issue on each page to assist in retrieving information and determining the date on which the article was published.

For example, the issue date of this **Bulletin** is expressed as 84-3 indicating that it was published in the Fall Quarter of 1984. (Note: Spring Quarter is #1, Summer #2, Fall #3, Winter #4.) Bulletins are normally scheduled for distribution to licensees at the end of each quarter.

The Commission encourages all licensees to carefully read each issue of the **Bulletin** and to retain them in their files for future reference.

ANSWERLINE

By Thomas R. Miller
Deputy Legal Counsel

- Q. I am a licensed real estate broker. About a month ago, I employed a salesman and became her supervising broker. Although she agreed to work for me for one year, she has now informed me that she is leaving me to work for a competitor, and she asked me to send her license to the Commission for transfer. I believe that the salesman has breached her agreement with me. Must I return her license to the Commission?
- A. **Yes. The License Law requires a salesman to be supervised by a broker and, as a part of his supervisory role, the broker is given custody of the salesman's license certificate. However, custody is not ownership. When asked to do so by a salesman, the supervising broker must return the salesman's license certificate to the Commission according to the procedure outlined in Commission Rule A .0506(a). Under no circumstances may a broker attempt to enforce an employment contract by refusing to return a salesman's license to the Commission.**
- Q. I am a licensed real estate agent. Recently, I listed a house which I measured to be 1450 heated square feet in area. I placed the property in the local multiple listing service, and it was soon sold by another firm. After closing, I discovered that the MLS book had incorrectly reported the square footage as 1650 square feet, and that the selling agent had passed the erroneous measurement on to the buyer. The buyer is now also aware of the mistake. Am I guilty of a misrepresentation?
- A. **Yes. According to Section 93A-6(a)(1) of the License Law, the Commission may discipline a licensee for making negligent misrepresentations. In this case, your lack of care (negligence) in reviewing your listing in the MLS book resulted in a misrepresentation. Furthermore, statements in the MLS book to the effect that, "information on the multiple listing sheet is subject to buyer verification" will not relieve a listing agent of his duty to carefully prepare and review his MLS listings and other advertisements. □**

"REVERSE COMMINGLING"

All real estate brokers and salesmen should be aware that it is a violation of the License Law and the Real Estate Commission's Rules to deposit funds received from others in a real estate transaction (earnest money, tenant security deposits, rents, etc.) in a bank account other than a properly designated "trust" or "escrow" account. When "trust funds" are mixed with other funds, they are said to be commingled.

Typically, commingling involves a broker placing an earnest money deposit or some other form of trust money in his business or personal account. However, the Commission's Trust Account Auditors have discovered an increasing incidence of another form of commingling, sometimes referred to as "reverse commingling", whereby earned commissions (i.e., the broker's monies) are left in the broker's trust account long after the transaction has been closed. Consequently, the broker's monies are commingled with that of his/her clients.

The Commission's auditors report that this practice is especially prevalent in firms which engage in property management as a sideline to their other regular

day to day sales activities, where the income from property management is considered a supplement to their primary income rather than a necessity for financial survival. They retain earned commissions from their rental activities in their trust account primarily as a hedge against bounced checks from their trust or escrow accounts. According to the auditors, these firms believe that it is better to have too much money in their trust accounts than not enough. They state, "If my tenant gives me a bad check and my trust account checks begin to bounce, then I am certain to draw unwanted attention from the Real Estate Commission." Although these brokers may be well motivated, nevertheless, failure to promptly remove earned commissions and fees from a trust account creates several problems.

First of all, as already discussed, it constitutes a commingling of trust funds with "non-trust" funds which can result in disciplinary action by the Real Estate Commission.

Secondly, the IRS prefers to have income reported in the calendar year that it is earned. If a real estate agent is

Section 235 Recapture Provisions

Did you know that assistance payments made to homebuyers under the HUD 235 program must be repaid when the borrower either pays off the loan or sells the property to someone who does not qualify for assistance? According to the Housing Management Division of the U.S. Department of Housing and Urban Development, this "recapture" provision affects all mortgages insured by HUD since May 27, 1981.

However, borrowers may not be required to repay the entire amount of subsidy. They must pay either the amount of assistance received or 50% of the "net appreciation of the property", whichever is less. The term "net appreciation" is defined as any increase in the value of the property over the original purchase price less reasonable costs of sale (broker's commission, discount points, attorney fees, etc.) and reasonable costs of improvements to the property (room additions and other permanent improvements).

To determine the amount of "recapture" (i.e. repayment), complete documentation must be submitted to the HUD office including a statement of the total subsidy received, a copy of the settlement statement and mortgage instruments when the property was purchased, receipts for improvements, and a
(Continued on Page 4)

audited by the IRS and the audit determines that earned commissions (the agent's funds) are left in the trust or escrow account, then the legitimacy of the trust account might be called into question and the account "frozen."

Finally, overages in a trust account can hide a multitude of sins. Consider the case, for example, where a bookkeeper or secretary for a real estate firm fails to deposit cash receipts for rents or security deposits. However, because the broker cushions the account by leaving in his/her rental commissions, he finds out when he attempts to withdraw his commissions that there are not only insufficient funds in the account to pay his commissions, but that additional funds are frequently required in order to cover the shortage. Several firms have encountered this problem in recent months.

CAVEAT: Brokerage fees (when earned) should be disbursed promptly (within 30 days) from the broker's trust account to his/her general operating account, with each commission check clearly indicating the specific transaction to which it applies. □

REFLECTIONS

by
Harry H. Harkins, Jr.
Assistant Attorney General
and Legal Counsel

Over the past six years, I have handled thousands of complaints against real estate agents in North Carolina. Hundreds of these complaints resulted in some action by the Real Estate Commission, and I have prosecuted far too many cases resulting in license suspensions or revocations.

Seeing the dark side of so many complaints and questionable transactions, one might think I have a negative impression of the real estate industry in this state. I really don't. To the contrary, I am impressed with the number of licensees who are sincerely interested in representing buyers and sellers in a trustworthy and competent manner.

Much work needs to be done, however, before the public perceives real estate agents as professionals. Your industry deserves the status of a profession, but has not attained it. Although most real estate agents are competent and honest, an alarming number are not doing their jobs properly. The sheer volume of complaints received by the Commission reflects an unacceptable level of consumer dissatisfaction.

Licensees get into trouble for two basic reasons: dishonesty and incompetence. The Commission will always act swiftly to protect the public from the former; those who abuse their license through misrepresentation, breach of fiduciary duty and mishandling of trust funds. The second category is more difficult. Many agents honestly mean well, but injure their clients through errors, lack of attention to detail and sheer ignorance of changing trends in real estate. The Commission must protect the public from incompetent agents as well as dishonest ones.

DISCIPLINARY ACTION

The Real Estate Commission revoked the salesman's license of SUSAN ANN VARGO of Ocean Isle Beach for making false statements on her application for licensure.

The Commission revoked the broker's license of MARY ANN MINNISH of Statesville for converting trust funds to her own use, and failing to deposit funds of others in a trust account.

The Commission suspended the broker's license of JAMES M. MEDFORD of Asheville for thirty days, but suspended the order and placed him on probation for one year. The Commission found that Medford misrepresented to a VA lender that the purchaser occupied the property.

The Commission suspended the broker's license of JOSEPH E. HALE of Fayetteville for sixty days, but suspended the order and placed him on probation for one year and required him to attend the Commission's trust account course. The Commission found Hale guilty of mishandling trust funds.

The Commission suspended the broker's license of ROBBIE M. HALE of Fayetteville for thirty days, but suspended the order and placed her on probation for one year. As broker-in-charge of her firm, she was held re-

sponsible for another licensee's mishandling of trust funds.

The Commission suspended the broker's license of VIRGINIA S. PARKS of Statesville for sixty days for negligently misrepresenting the amount of acreage to a home purchaser, and for continuing to advertise the incorrect acreage after the error was called to her attention.

The Commission fined the Moore County time share project, FOXFIRE INTERVAL OWNERSHIP RESORT PROGRAM, \$11,500 for employing time share salesmen who were not licensed as real estate brokers or salesmen. The Commission found that 23 unlicensed Foxfire employees had sold or offered to sell time shares at the project.

Trust Account Short Course (Continued from Page 2)

Two sessions of the course will be held each day (8:30 a.m. and 1:30 p.m.). Class size is limited, so space will be reserved on a first come-first served basis.

Interested persons should contact Administrative Secretary Jeanette Hamm at 919/733-9580. □

Section 235—Recapture Provisions (Continued from Page 3)

copy of the settlement statement and transaction documents for the sale of the property.

Persons who desire further information should contact: HUD, 415 North Edgeworth Street, Greensboro, N.C. 27405, Attention: Loan Management Staff. □

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