



NORTH CAROLINA REAL ESTATE COMMISSION

Real Estate Bulletin

Volume 18

1988

Number 4

NEW RULES PROPOSED

The North Carolina Real Estate Commission, pursuant to authority vested in it by the General Statutes of North Carolina, proposes to adopt and amend certain rules contained in Title 21, Chapter 58 of the North Carolina Administrative Code, to be effective July 1, 1988.

The Commission proposes to amend Rule A .0301 regarding the information requested on applications for real estate licenses and to amend Rule A .0506 to emphasize that salesmen may be disciplined by the Commission if they perform acts requiring a license without the active, personal supervision of their Broker-In-Charge.

The Commission also proposes to amend Section A .0600 regarding the conduct of administrative hearings and Rule B .0501 to clarify the method by which time share project brokers transfer time share trust funds from their custody and to correct a technical error misstating the word "properly" as "property."

Perhaps of particular interest to real estate licensees is a proposed amendment to Rule A .0107 regarding the handling and accounting of funds and the proposed adoption of Rule A .0111 concerning drafting legal instruments and Rule A .0112 regarding offers and sales contracts. Because of their special significance, the proposed rules are reprinted in their entirety.

Handling and Accounting of Funds

"A .0107 HANDLING AND ACCOUNTING OF FUNDS

- (e) Real estate brokers shall maintain and retain for a period of three years records sufficient to verify the adequacy and proper use of their trust accounts, including, but not limited to
- (1) bank statements;
 - (2) cancelled checks which shall be referenced to the corresponding transaction or owner ledger sheet;
 - (3) deposit tickets and, if necessary, a supplemental worksheet for each deposit ticket identifying the property and the parties to each transaction for which funds are deposited;

- (4) a separate ledger sheet for each sales transaction and for each owner of property managed by the broker identifying the property and the parties to the transaction, the amount, date, running balance and purpose of deposits and from whom received, and the amount, date, balance, check number and purpose of disbursements and to whom paid;
- (5) a journal or check stubs identifying each transaction and showing a running balance for all funds in the account;
- (6) copies of contracts, leases and management agreements;
- (7) closing statements and property management statements; and

(Continued on page 6)

NOTICE OF PUBLIC FORUM ON APPRAISER LICENSING

(See page 5)

The Real Estate Commission will conduct a public forum in Raleigh on April 14 at 11:00 a.m. to afford licensees and members of the public an opportunity to review and comment on a proposed plan for the licensing of real estate appraisers.

The forum will be held at the North Raleigh Hilton, 3415 Wake Forest Road, Raleigh, North Carolina, approximately two blocks from the Real Estate Commission Office. Or you may obtain a free copy of the proposed plan in its current state of completion by writing or calling the Real Estate Commission Office, P.O. Box 17100, 1313 Navaho Drive, Raleigh, N.C. 27619 (Phone: 919/733-9580).

COMMISSION MEMBERS HONORED

Members of the North Carolina Real Estate Commission from its inception in 1957 to the present were recently honored at a reception in the Commission's new offices in Raleigh hosted by the Commission's Executive Director, Phillip T. Fisher, and Mrs. Fisher. Those attending included:



Seated left to right, June P. Mooring (Goldsboro, 1987-), William B. Harrison (Rocky Mount, 1957-59), A. P. Carlton (Greensboro, 1968-74, 1978-87), Grace T. Steed (Randleman, 1987-), Gilbert L. Boger (Mocksville, 1985-). Standing left to right, Dee McCandlish (Charlotte, 1978-84), Rufus L. Brock (Mocksville, 1974-77), Judge James A. Beatty, Jr. (Winston-Salem, 1979-81), Bart T. Bryson (Hendersonville, 1979-85), Brantley T. Poole (Raleigh, 1970-73, 1977-86), Chandler B. Lee (Pinchurst, 1987-), B. Hunt Baxter, Jr. (New Bern, 1979-85), J. Edward Poole (Spring Lake, 1975-78, 1986-), Thomas Council (Fayetteville, 1981-85), Ernest C. Pearson (Raleigh, 1986-87), Lee R. Barnes (Durham, 1984-86), Fred H. Adams (Cary, 1981-84), and John C. Olive (Wrightsville Beach, 1969-73).

REAL ESTATE BULLETIN

Published quarterly as a service to real estate licensees to promote a better understanding of the Real Estate License 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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- June P. Mooring Goldsboro
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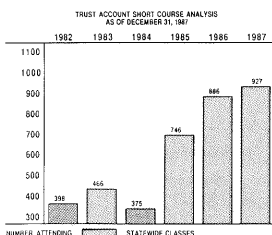
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- Miriam J. Baer Examination Coord.
- Evelyn Johnston Education Coord.

Editor
Miriam J. Baer
Editor-in-Chief
Phillip T. Fisher

ON THE ROAD AGAIN

The Commission's Trust Account Auditors will be taking their Trust Account Short Course on the road again in May, visiting six different cities and towns from Asheville to Wilmington (See adjacent Registration Form).

The popularity of this course has increased steadily over the past several years as demonstrated by the following graph.



BULLETIN BOARD

The Real Estate Commission welcomed **Chandler B. Lee** into its membership following his November 18 installation. Court of Appeals Judge Robert F. Orr administered the oath of office to Mr. Lee.



From left to right, Judge Orr, Commission Members June P. Mooring, Patricia B. Casey, Chandler B. Lee, Vice Chairman J. Edward Poole, Chairman Gilbert L. Boger, and Member Grace T. Steed (Commission Member Elmer C. Jenkins not pictured).

...Robin Hammond Clark of the Commission's legal staff has recently assumed a new title and duties. Formerly the Commission's Legal Information Officer, she is now Assistant Legal Counsel... Penny Childress, the

Commission's Education Secretary, was honored by the Commission in January for her ten years' combined service with the Commission and the State of North Carolina... Deputy Legal Counsel **Blackwell M. Brogden, Jr.** recently addressed the Brunswick Island and Dare County Boards of REALTORS and presented a program on Real Estate Law at a seminar conducted at Central Carolina Technical College... **L. Ted Gayle**, the Commission's Director of Audits and Investigations, conducted his Trust Account Short Course at the Annual Conference of the North Carolina Auctioneers' Association in Charlotte... Assistant Legal Counsel **Robin Hammond Clark** conducted a program on real estate contracts at the offices of the Charlotte Board of REALTORS... **Larry A. Outlaw**, Director of Education and Licensing, discussed the topic of "continuing education" at a meeting at the Charlotte Board of REALTORS office. He also briefed the Asheville and the Hickory-Catawba Boards of REALTORS on the revised REALTOR Offer to Purchase and Contract form; Larry is a member of the N. C. Association of Realtors/N. C. Bar Association Joint Committee on Forms. □

REAL ESTATE INSTRUCTOR WORKSHOP

The North Carolina Real Estate Commission, in cooperation with the North Carolina Real Estate Educators Association (NCREEA), will sponsor the 1988 Real Estate Instructor Workshop on April 11 and 12 at the Quality Inn Mission Valley in Raleigh.

The workshop is conducted primarily for the benefit of real estate pre-licensing course instructors who have been certified by the Commission. Its goal is to provide a forum for the dissemination of practical information

and the exchange of ideas and information among North Carolina real estate educators.

Brochures containing complete information and registration forms will be sent to approved pre-licensing schools and instructors during the second week of March. Other interested persons who are involved in real estate education may contact the Commission's Education Department for further information. □

TRUST ACCOUNT SHORT COURSE

Registration Form

1. The Trust Account Short Course is designed to bring participants up to date on current laws, rules and procedures governing the handling of client funds and to assist real estate firms in developing good bookkeeping and recordkeeping practices.
2. Any real estate licensee, trust account bookkeeper or other person who handles real estate trust funds or accounts may attend.
3. These free courses require 3-3½ hours to complete and are offered at the following locations in April and May and monthly in Raleigh.
4. Registration forms must be received in the Commission Office at least 10 days prior to the course. Registrations will be confirmed in writing giving registrants more detailed information concerning the location and content of this course.

I wish to attend the following Trust Account Short Course:

- Fayetteville (May 10, 9:30 a.m.)
- Greensboro (May 24, 10:00 a.m.)
- New Bern (May 11, 1:00 p.m.)
- Statesville (May 25, 9:00 a.m.)
- Wilmington (May 12, 9:00 a.m.)
- Asheville (May 26, 9:30 a.m.)

OR

McKimmon Center, Raleigh, N.C.
(All Raleigh Classes Begin at 1:00 p.m.)

- April 19
- May 17
- June 21

Name: Phone:

Address: City

Mail to: N.C. Real Estate Commission, P.O. Box 17100, Raleigh, N.C. 27619-7100, Attn: Ms. Hamm

DISCIPLINARY ACTION

Penalties for violations of the Real Estate License Law and Commission Rules and Regulations vary depending upon the particular facts and circumstances present in each case. Due to space limitations in the Bulletin, a complete description of such facts cannot be reported in the following Disciplinary Action summaries.

AMERICAN RESORT MANAGEMENT CORPORATION (Mecklenburg County)—By Consent, the Commission revoked American Resort Management Corporation's corporate real estate license effective December 1, 1987. The Commission found that due to the acts of several corporate officers who did not hold North Carolina real estate licenses, the corporation had failed to deposit and properly disburse trust funds.

WILSON BLANKENSHIP (New Hanover County)—By Consent, the Commission revoked Mr. Blankenship's broker's license effective January 1, 1988, with the provision that he would receive a salesman's license on February 1, 1988 and that he would be eligible to have his broker's license reinstated on or after February 1, 1991. The Commission found that Mr. Blankenship, in order to induce a purchaser to purchase certain real estate, had made promises which he was unable to keep which were based upon collateral promises made by Mr. Blankenship's employer.

G. MILLER BUSSEY (Lexington)—By Consent, the Commission revoked Ms. Bussey's salesman's license effective February 1, 1988. The Commission found that Ms. Bussey had acted as a real estate broker while licensed only as a salesman. The Commission also found that Ms. Bussey had failed to deposit rents, tenant security deposits and other trust monies into a trust or escrow account, failed to deliver such funds to her supervising Broker-In-Charge, and had failed to produce trust account records for inspection by the Commission's authorized representative.

JAMES E. EAVENSON (Boone)—The Commission suspended Mr. Eavenson's salesman's license for three years effective February 1, 1988. The Commission found that Mr. Eavenson had misrepresented himself as a broker while engaging in and receiving compensation for rental management services without the knowledge of his Broker-In-Charge. The Commission also found that he had failed to deposit rents into a trust account or to deliver them to his Broker-In-Charge, and that he did not properly account for or remit the funds of others coming into his possession.

DELBERT D. GARRISON (Greenville)—By Consent, the Commission revoked Mr. Garrison's broker's license effective March 1, 1988. The Commission found that Mr. Garrison had, on two separate occasions,

signed the name of a seller as having accepted an offer to purchase without the seller's knowledge or consent, and had submitted two false contracts to a lender.

JOHN I. HARRIS (Kinston)—By Consent, the Commission suspended Mr. Harris' broker's license for two years effective February 1, 1988. The Commission found that Mr. Harris had converted to his own use funds which were to be held in escrow, and that he had failed to remit trust funds in a timely manner and to produce trust account records for inspection by the Commission's auditor. The Commission also found that Mr. Harris had recommended to a seller a refinancing method which violated VA loan guarantee rules, and when directed by the Veterans Administration to refund his fee to the sellers for arranging the transaction, he furnished the VA a copy of a check made payable to the seller which was false. In addition, the Commission found that Mr. Harris had encouraged and assisted a purchaser in misrepresenting to a lender and to the Veterans Administration that the purchasers would occupy the property as their primary residence.

JEAN D. HATHAWAY (Dare County)—The Commission reprimanded Ms. Hathaway for assisting in the payment of sales commissions to an unlicensed corporation. The Commission also found that Ms. Hathaway, while acting as project broker for a time share project, allowed the use of sales contracts which did not contain the required rescission notice and failed to deposit earnest money receipts in a trust account; however, the funds were otherwise properly accounted for. Additionally, the Commission found that public offering statements were not furnished to purchasers in a timely manner during her tenure as principal broker for a corporation engaged in time share sales. The Real Estate Commission exercised its discretion in imposing lenient disciplinary action on Ms. Hathaway in recognition of her cooperation in the investigation of this matter.

BILLY HOWARD (Emerald Isle)—By Consent, the Commission reprimanded Mr. Howard for certain deficiencies in his handling and accounting of funds received pursuant to rental management agreements.

FRANK MEZIAS (Atlantic Beach)—The Commission suspended Mr. Mezas' broker's license for six months effective December 15, 1987. The Commission then suspended its Order and placed Mr. Mezas on probation for six months. The Commission found that Mr. Mezas, while acting as Broker-In-Charge for a time share project, had employed and compensated unlicensed persons for selling time shares at the project.

JOHN W. PIERSON (New Bern)—By Consent, the Commission suspended Mr. Pierson's broker's license for thirty days effective January 1, 1988. The Commission then suspended its Order and placed Mr.

Pierson on probation for one year on condition that he complete the Commission's Trust Account Short Course by May 1, 1988. The Commission found that Mr. Pierson had failed to maintain an earnest money deposit in a trust account; failed to account for or remit such deposit within a reasonable time; and disbursed the deposit to one of the parties when the disposition of said deposit was in dispute.

RONNIE B. RICKS (Clayton)—By Consent, the Commission accepted the voluntary surrender of Mr. Ricks' broker's license without any admission of guilt on his part for two years effective November 1, 1987. The Commission dismissed without prejudice certain charges against Mr. Ricks alleging that he had been convicted of a criminal offense involving moral turpitude which would reasonably affect his performance in the real estate business; namely, violations of Title 13 U.S.C., Section 641 relating to the conversion of funds in real estate transactions involving property financed by the Farmers Home Administration.

MITZIE D. ROBINETTE (Lake Lure)—By Consent, the Commission suspended Ms. Robinette's broker's license for one year effective December 15, 1987. The Commission then suspended its Order and placed Ms. Robinette on probation for one year on condition that she complete the Commission's Trust Account Short Course. The Commission found that Ms. Robinette, while acting as a rental manager, without criminal intent cashed a rental check and failed to insist that her employer establish a trust account for the receipt of such funds.

WALTER LEE ROGERS (Scotland County)—By Consent, the Commission suspended Mr. Rogers' broker's license for four years effective December 1, 1987. Two years of the suspension are to be active and two years on probation. The Commission found that Mr. Rogers had been convicted of a criminal offense involving moral turpitude which would reasonably affect his performance in the real estate business; namely, offering a bribe and conspiring with another person to offer a bribe.

FASIH A. SHAIKH (Cary)—The Commission accepted the voluntary surrender of Mr. Shaikh's broker's license without any admission of guilt on his part for five years effective December 1, 1987. The Commission dismissed without prejudice certain charges against Mr. Shaikh alleging that he had made misrepresentations of material facts to various parties in connection with the purchase of real estate on his own account.

MARY H. SILVER (Charlotte)—By Consent, the Commission suspended Ms. Silver's salesman's license for ninety days effective February 1, 1988. The Commission found that Ms. Silver had failed to disclose to

(Continued on page 4)

DISCIPLINARY ACTION

(Continued from page 3)

sellers that an offer to purchase and contract on the seller's property had been secured by a promissory note rather than a cash deposit.

TONYA-MILLER REALTY, INC. (Lexington)—By Consent, the Commission revoked the corporate real estate broker's license of Tonya-Miller Realty, Inc. effective February 1, 1988. The Commission found that an officer, director and part-owner of the corporation had failed to deposit rents, tenant security deposits and other trust monies into the corporation's trust or escrow account, and failed to produce the corporation's trust account records for inspection by the Commission's authorized representative. □

LICENSE RENEWAL ALERT

Plans are already being made for the renewal of real estate licenses for the coming year. Renewal applications are scheduled to be mailed to all licensed real estate brokers, salesmen and corporations in mid-May to give you more than adequate time to return your renewal application and fee to the Commission office by the June 30 deadline.

In addition to your renewal application and return envelope, you will also receive this year a current copy of the North Carolina Real Estate License Law and the Commission's Rules and Regulations. The Commission trusts that each licensee will consider this to be **Required Reading!**

With renewal season only two months away, it is important for you to verify that the **Real Estate Commission has your correct mailing address on file.** Otherwise, your renewal application will be delayed or perhaps never received. Since your license renewal application will be sent to the same address as this *Bulletin*, check the mailing label on page six to verify that your name, business and address are correct. If any of this information is in error, please notify the Records Department of the Real Estate Commission immediately. □

EXAM RESULTS

	Passed	Failed
NOVEMBER 1987		
Brokers	78	77
Salesmen	429	283
DECEMBER 1987		
Brokers	137	99
Salesmen	487	316
JANUARY 1988		
Brokers	120	79
Salesmen	627	357

AUDITS & INVESTIGATION STATISTICS

1987

Each year, the Real Estate Commission receives more than 1,000 consumer complaints against real estate agents and time share projects. Many of these complaints are resolved "in house" by the Commission staff, but some require "field investigations" and/or audits of trust accounts by the Commission's Department of Audits and Investigations.

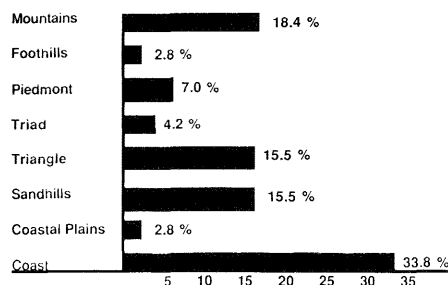
Outcome of Investigations

During Calendar Year 1987, field investigations were performed in connection with 156 cases. Sixty-six resulted in disciplinary action taken against a real estate broker or salesman or time share project; of these, 10 disciplinary actions followed hearings and 56 were by consent of the parties and the Commission. The remaining 90 cases (58% of the total) resulted in dismissal of charges.

Geographical Distribution

The largest number of investigations were conducted in the coastal and mountain areas of the state, reflecting the large number of conventional and time share transactions involving resort property.

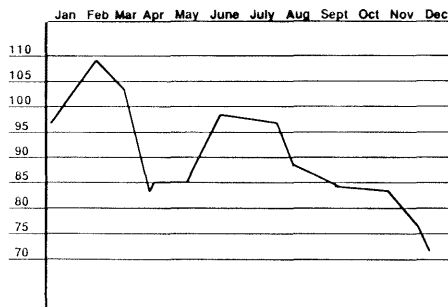
Field Investigations
By Geographical Location
On December 31, 1987



Chronological Distribution

Illustrated below are the number of cases which were being investigated "in the field" on a monthly basis.

Investigations in The Field
For Year 1987



ANSWERLINE

By Robin Hammond Clark
Assistant Legal Counsel

Q: I am a licensed real estate salesman interested in property management; however, the firm with which I am associated does not engage in property management. May I manage real estate for others on my own outside the real estate office if my Broker-In-Charge consents?

A: No. Managing property for others requires a real estate license, and is therefore subject to the same laws and rules governing other real estate brokerage activities. Consequently, as a salesman, your acts in connection with managing property for others must be "actively and personally" supervised by a Broker-In-Charge. Furthermore, since a salesman can have only one supervising Broker-In-Charge at a time, you would be precluded from engaging in property management under the supervision of another Broker-In-Charge while associated with your current real estate firm. See, G.S. 93A-6(a)(5) and (15) and Rules A .0110 and A .0506.

Q: I am a licensed North Carolina real estate broker. I own a tract of real property that is listed for sale with my firm. May I advertise the property as "For Sale by Owner"?

A: No. Listed property must be advertised in the name of the firm that holds the listing or in a manner that indicates that the advertiser has a real estate license. See, Rule A .0105. Therefore, if you list your property with your firm, the firm's advertisements of the property must include the firm's name or the type of license held by the listing agent. Furthermore, persons who have real estate brokers or salesmen licenses and who choose to sell their property on their own rather than listing it with their firm, should disclose in any advertisements that they hold a real estate license. □

1988 LICENSE EXAMINATION SCHEDULE

Filing Deadline	Examination Dates
January 27	February 27
February 26	March 26
March 23	April 23
April 21	May 21
May 25	June 25
June 23	July 23
July 27	August 27
August 24	September 24
September 22	October 22
October 19	November 19
November 17	December 17

COMMISSION CONSIDERS APPRAISER LICENSING PLAN

Background

The failure of various savings and loan associations and financial institutions in Texas and elsewhere has prompted a Congressional Subcommittee investigation into banking and lending practices across the nation. The Commerce, Consumer and Monetary Affairs' Subcommittee, headed by Representative Doug Barnard, has dramatically concluded that a significant contributor to the weakened condition of many of the nation's financial institutions is "faulty and fraudulent real estate appraisals that overvalue property securing loans and investments." Recognizing that very few states impose any significant requirements on the conduct of real estate appraisals,¹ Congressman Barnard has sought a federal solution.

Pending Federal Legislation

On November 20, Congressman Barnard introduced legislation entitled the "Real Estate Appraisal Reform Act of 1987" (H.R. 3675) which would require the "certification" of persons who perform appraisals in connection with "federally covered transactions." Although the term "federally covered transaction" is not specifically defined in the Bill, it would appear to cover nearly every transaction in which the federal government is either directly or indirectly involved, including transactions where a federal agency insures the deposits of the financial institution which makes a mortgage loan (F.D.I.C., or F.S.L.I.C.) and where it insures or guarantees the mortgage loan in the event of borrower default (e.g., VA and FHA loans).

To become "certified", the appraiser would be required to satisfy certain education and/or experience requirements established by a Federal Interagency Appraisal Council and pass an examination. Once certified, the appraiser must then comply with uniform standards for conducting appraisals which would also be established by the Council. Although each state could create a "State Appraiser Certifying Agency" to implement and enforce the Council's certification requirements and standards, such agency must operate under the Council's supervision and oversight.

State Plan Considered

Reacting to the concerns raised by the Congressional study, the North Carolina Real Estate Commission has, during the past year, discussed the need for and desirability of establishing a means for identifying persons who have demonstrated a certain level of competency in the real estate appraisal field

and who subscribe to generally accepted standards of practice. While recognizing that various private appraisal organizations and institutes currently impose educational requirements and standards of conduct on their members, the Commission determined that a governmentally sanctioned program would be of additional benefit to consumers, financial institutions and governmental bodies which rely on the services of real estate appraisers.

The Commission was also of the opinion that this program could best be carried out at the state level where local needs could be more easily identified and local concerns more readily addressed. And it was concluded that the Real Estate Commission is the most logical and appropriate agency to administer a regulatory program for real estate appraisers because the subject matter of the real estate brokerage and appraisal disciplines overlaps and because the Commission currently has in place the core administrative, technical and fiscal resources necessary to develop and administer a program of this nature (resulting in substantial savings to the State when compared with the expense of creating a new agency specifically and exclusively for this purpose.)

In its discussion and study of this issue, the Commission examined "model" appraiser certification and licensing acts developed by various appraisal organizations as well as legislation currently pending and recently enacted in several states. In the final analysis, the Commission determined that a combination of the approaches represented in these model acts and legislation would best serve the needs of our State, and from this synthesis, the Commission's proposed "appraiser licensing plan" has emerged.

Appraiser Licensing Plan

If approved and directed by the North Carolina General Assembly, the Real Estate Commission would accept responsibility for administering a program for the licensing of real estate appraisers whereby persons who satisfy certain minimum competency requirements could be licensed by the Commission as either a "General Appraiser", enabling the person to appraise all types of real property; a "Residential Appraiser" restricting the person to performing appraisals of residential real property of one to four units; or an "Associate Appraiser", enabling the person to perform certain acts in connection with real estate appraising under the supervision of either a General or Residential Appraiser.

At this early stage in its consideration of the program, the Commission has made no determination as to the educational and/or

experience qualifications necessary for licensure, preferring instead to withhold any decision pending input from real estate licensees, persons currently engaged in the appraisal business, and others. However, the Commission is strongly considering as a part of the licensing process, a requirement that applicants for licensure complete a program of instruction in real estate fundamentals and appraising, have a certain minimum amount of experience in the real estate appraisal business; and pass a written examination covering such subjects as fundamentals of appraising, standards of appraisal practice, and other practical aspects of performing and communicating appraisals. Provisions for exempting persons from the education and/or examination requirements are also being considered by the Commission for persons with exceptional experience in real estate appraising.

To assist the Commission in developing and administering the appraiser licensing program, it is envisioned that a new department would be added to the existing Commission staff and that knowledgeable, experienced appraisers would be called upon to advise the Commission on such matters as the formulation of standards for performing and reporting appraisals; the approval and monitoring of any pre-licensure and continuing education courses; the development of license examinations; the conduct of investigations and hearings on complaints against licensed appraisers; and similar matters. It is anticipated that the appraiser licensing program would be financially self supporting, deriving its income entirely from application and license fees.

Public Comment

To assure that all interested persons are afforded an opportunity to review and comment on the proposed program for licensing real estate appraisers, the Commission has scheduled a public forum which will be held on Thursday, April 14 at 11:00 a.m. at the North Raleigh Hilton, 3415 Wake Forest Road, in Raleigh. You may obtain a free copy of the proposed plan in its current state of completion by writing or calling the Real Estate Commission Office, P.O. Box 17100, 1313 Navaho Drive, Raleigh, N. C. 27619 (Phone: 919/733-9580).

¹According to a recent report based upon data from a NARELLO Interstate Cooperation Committee Report, only 16 states currently impose any requirements on real estate appraisers or appraisals. In ten of these states, licensure as a real estate broker or salesman is the only requirement; four states (Delaware, Nebraska, Oregon, and South Dakota) issue appraiser licenses; Louisiana certifies appraisers; and California certifies appraisals.

PROPOSED RULES

(Continued from page 1)

- (8) any other documents necessary and sufficient to verify and explain record entries.

All receipts and disbursements of trust monies by a real estate broker shall be reported in such a manner as to create a clear audit trail from deposit tickets, cancelled checks, check stubs, journals and transaction or owner ledgers to bank statements which shall be reconciled to such records on a monthly basis."

Drafting Legal Instruments and Offers and Sales Contracts

"A .0111 DRAFTING LEGAL INSTRUMENTS

A real estate broker or salesman acting as an agent in a real estate transaction shall not draft offers, sales contracts, options, leases, promissory notes, deeds, deeds of trust or other legal instruments for others; however, a broker or salesman may complete preprinted offer, sales contract and lease forms in real estate transactions when authorized or directed to do so by the parties.

A .0112 OFFERS AND SALES CONTRACTS

- (a) A broker or salesman acting as an agent in a real estate transaction shall not use a preprinted offer or sales contract form unless the form adequately describes or specifically requires the entry of the following information:
 - (1) the names of the buyer and seller;
 - (2) a legal description of the real property sufficient to identify and distinguish it from all other property;
 - (3) an itemization of any personal property to be included in the transaction;
 - (4) the purchase price and manner of payment;
 - (5) any portion of the purchase price that is to be paid by a promissory note, including the amount, interest rate, payment terms, whether or not the note is to be secured, and other material terms;
 - (6) any portion of the purchase price that is to be paid by the assumption of an existing loan, including the amount of such loan, costs to be paid by buyer or seller, the interest rate and number of discount points, and a condition that the buyer must be able to qualify for the assumption of the loan, and must make every reasonable effort to qualify for the assumption of the loan;

- (7) the amount of earnest money, if any, method of payment, the name of the broker or firm that will serve as escrow agent, an acknowledgement of earnest money receipt by the escrow agent, and the criteria for determining disposition of earnest money, including disputed earnest money, consistent with Commission Rule A .0107;
- (8) any loan that must be obtained by the buyer as a condition of the contract, including the amount and type of loan, interest rate and number of discount points, loan term, loan commitment date, and who shall pay loan closing costs, and a condition that the buyer shall make every reasonable effort to obtain the loan;
- (9) the buyer's intended use of the property and a condition that such use must be legally permissible;
- (10) the amount and purpose of any special assessment to which the property is subject and the responsibility of the parties for any unpaid charges;
- (11) the date(s) for closing and transfer of possession;
- (12) the signatures of the buyer and seller;
- (13) the date(s) of offer and acceptance;
- (14) a provision that title to the property must be delivered at closing by general warranty deed and must be fee simple marketable title, free of all encumbrances except ad valorem taxes for the current year, utility easements, and any other encumbrances specifically approved by the buyer, or a provision otherwise describing the estate to be conveyed, any encumbrances, and the form of

- conveyance;
 - (15) the items to be prorated or adjusted at closing;
 - (16) who shall pay closing expenses;
 - (17) the buyer's right to inspect the property prior to closing and who shall pay for repairs and/or improvements, if any; and
 - (18) a provision that the property shall at closing be in substantially the same condition as on the date of the offer (reasonable wear and tear excepted), or a description of the required property condition at closing.
- (b) A broker or salesman acting as an agent in a real estate transaction shall not use a preprinted offer or sales contract form containing the provisions or terms listed below, and shall not insert or cause such provisions or terms to be inserted into any such preprinted form at the time of completion:
 - (1) any provision concerning the payment of a commission or compensation, including the forfeiture of earnest money, to any broker, salesman or firm; or
 - (2) any provision that attempts to disclaim the liability of a broker or salesman for their representations in connection with the transaction."

Public Comment

Any person interested in the Commission's proposals may present oral or written comments at a public rulemaking hearing to be held at 9:00 a.m. on April 14, 1988 at the North Raleigh Hilton, 3415 Wake Forest Road, Raleigh, North Carolina. Written comments not presented at the hearing should be delivered by the hearing date to the Real Estate Commission Office, 1313 Navaho Drive, P.O. Box 17100, Raleigh, North Carolina 27619. Copies of the proposed rules will be available at the hearing or can be obtained by mail from the Commission Office.

This the 1st day of March, 1988. □

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