



NORTH CAROLINA REAL ESTATE COMMISSION Real Estate Bulletin

Volume 19

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Number 1

NEW RULES ADOPTED

COMMISSION ADOPTS CONTRACT RULES AND UPDATES TRUST ACCOUNT RULES

After conducting a public hearing on April 14, the North Carolina Real Estate Commission, pursuant to authority vested in it by the General Statutes of North Carolina, voted to adopt new rules concerning contract drafting and contract forms, and to amend other rules dealing with trust account recordkeeping and time sharing. The new rules and amendments will go into effect on July 1, 1988, subject to final review of the Administrative Rules Review Commission.



The Real Estate Commission's Legal Counsel, Assistant Attorney General Thomas R. Miller, explains the proposed new rules and amendments at an April 14 rulemaking hearing in Raleigh.

Notice of the proposed new rules and amendments was published in the last issue of the Real Estate Bulletin. In response, the Commission received many oral and written comments from licensees concerning the proposed rulemaking action. As a result of the comments received, certain changes were made to the proposed rules prior to their adoption by the Commission.



Following the rulemaking hearing, Commission Vice-Chairman J. Edward Poole confers with James L. Bichsel, Executive Vice-President of the North Carolina Association of REALTORS, Inc.

RULE A .0111

DRAFTING LEGAL INSTRUMENTS

As adopted, Rule A .0111 makes it clear that brokers and salesmen may not draft offers, sales contracts, leases, notes, deeds, deeds of trust and other documents which secure the legal rights of others. Licensees have always been prohibited from the unauthorized practice of law by Section 93A-6(a)(11) of the Real Estate License Law. Of course, licensees may continue to assist their clients and customers in filling in the blanks of form offers to purchase, sales contracts and leases. In response to industry comment, the Commission added language to the rule expressly permitting brokers and salesmen to make notes and correspondence such as "letters of intent" regarding negotiations of a transaction, so long as such writings do not themselves constitute binding contracts. The Commission also approved a suggestion that the rule expressly authorize licensees to use computer and word processing equipment to complete form contracts. However, such equipment may not be used to draft original legal documents.

RULE A .0112

OFFERS AND SALES CONTRACTS

Rule A .0112 will govern the offer to purchase and contract forms employed by real estate brokers and salesmen. To meet the minimum standards set by the rule, such forms will be required to contain provisions or blanks calling for the entry of certain information about the transaction. In response to concerns expressed by a number of brokers, the Commission revised the rule prior to adoption to clarify that although the incomplete form must contain certain provisions, the buyers and sellers who use the form are free to alter, amend or delete the form's provisions as they see fit.

The recently revised Offer to Purchase and Contract form (Standard Form No. 2/1987) jointly approved by the North Carolina Bar Association and the North Carolina Association of REALTORS, Inc., more than satisfies the requirements of the rule.

Brokers and salesmen should be aware that Rule A .0112 also prohibits the insertion into offer to purchase and contract forms of any

provision relating to the payment of compensation to any broker or salesman or real estate firm, or which attempts to disclaim a licensee's responsibility for his representations in a real estate transaction.

RULE A .0107(e)

HANDLING AND ACCOUNTING OF FUNDS

The Commission voted to amend Rule A .0107(e) to substantially stiffen the requirements for trust account bookkeeping. As amended, the rule will require brokers to record on deposit tickets information identifying the property, parties and transactions for which funds are being deposited. When the ticket itself cannot accommodate the entry of this information, the broker must record it on a separate work-sheet for each deposit ticket. Tickets and work-sheets must be retained for a period of three years.

Under the amendments adopted by the Commission, a broker is required to create and maintain a separate ledger for each sales transaction and if a broker is in the property management business, for each owner for whom the broker acts as manager. The ledger sheet must show the parties, property and transaction and the amounts and purposes of deposits and disbursements. The broker must keep a running balance of the funds on deposit for each sales transaction and for each owner of property managed by the broker.

The rule will also require brokers to maintain a journal or check stubs for their trust account and a running balance for the account.

Most of the new requirements were once only strong recommendations in the Trust Account Guidelines. Rule A .0107(e) as amended will now make the recommended accounting practices mandatory.

OTHER AMENDMENTS

Rule A .0301 was amended to permit license application forms to include general inquiries into an applicant's education, experience and fitness for licensure.

Rule A .0506(a) was amended to clarify

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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 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.

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EXAM RESULTS

	Passed	Failed
FEBRUARY 1988		
Brokers	124	109
Salesmen	494	352
MARCH 1988		
Brokers	159	112
Salesmen	579	318
APRIL 1988		
Brokers	147	112
Salesmen	489	348

REAL ESTATE INSTRUCTOR WORKSHOP

The Real Estate Commission, in conjunction with the North Carolina Real Estate Educators Association (NCREEA), sponsored the Annual Real Estate Instructor Workshop in Raleigh on April 11 and 12.



Sharon Montague of the Asheville Professional School of Real Estate discusses the special problems associated with teaching adults.

More than 150 instructors, members of NCREEA, and others interested in real estate education participated in the Workshop sessions which featured experts in a variety of education-related topics, including:

- "The State Fair Housing Act" - Daniel Addison, Assistant Director and Legal Counsel, North Carolina Human Relations Council
- "Changes in VA Loan Program" - John Koivisto, Loan Guaranty Officer, Veterans Administration (North Carolina)
- "Teaching Sales Contract Completion" - Thomas Miller, Assistant Attorney General and Legal Counsel, NC Real Estate Commission
- "Teaching Brokerage Operations Using a Project Participation Approach" - Richard Dupree, Instructor, Fonville-Morisey Center for Real Estate Studies
- "Humor in Teaching Real Estate" - Herb

Porter, Owner/Director, Century 21 Real Estate Academy

- "Instructional Basics Seminar" - Sharon Montague, Owner/Director, Asheville Professional School of Real Estate; George Bell, Author and Instructor, Howard Perry & Walston Real Estate School; and Bert Chole, Co-owner/Director, Cascade Real Estate Academy, presented a practical seminar on adult learning and teaching methods.

The keynote speaker, Julie Garton, of Coral Gables, Florida, conducted a practical two-hour session focused on "Overcoming Classroom Problems," that was the highlight of the workshop.



Evelyn Johnston, Education Coordinator, updates the workshop participants on the Commission's education requirements.

The Education Department staff presented updates on a variety of areas. Larry Outlaw, Director of Education and Licensing, presented the Commission's outlook on mandatory continuing education and appraiser certification. Evelyn Johnston, Education Coordinator, discussed school performance and instructor certification. And Miriam Baer, Examination Coordinator, reviewed the Commission's in-house examination program as well as problem topics and planned changes in the licensing examination. □

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 monthly in Raleigh at the McKimmon Center beginning at 1:00 p.m.
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:

☐ July 12

☐ August 16

☐ September 20

Name: Phone:

Address: City Zip

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

APPRAISER REGULATION UPDATE

It was reported in the last issue of the "Real Estate Bulletin" that the Real Estate Commission was considering recommending legislation to the North Carolina General Assembly to regulate persons who appraise real estate in our State. Since announcing these plans in February, the Commission has met and discussed the issue of appraiser regulation with representatives of various appraisal and banking organizations and with state and federal governmental agencies involved in appraisal-related activities. The Commission has also consulted real estate licensing officials in other states, and Commission Vice-Chairman J. Edward Poole has met with Representative Doug Barnard who has introduced in Congress the "Real Estate Appraisal Reform Act of 1987" (H.R. 3675).



Real Estate Commission Chairman Gilbert L. Boger addresses a March 17 meeting in Raleigh concerning the proposed legislation.



In attendance were appraisal and banking industry representatives and governmental administrators in Raleigh.

In addition, as previously announced in the "Bulletin," the Commission held a Forum in Raleigh on April 14 to afford interested persons an opportunity to comment on the issue of appraiser regulation. An overflow crowd of approximately 200 persons attended, giving the Commission members much valuable insight into the concerns of persons and organizations

which would be most affected by any governmental regulation of the real estate appraisal industry.

Following is an excerpt of the opening remarks of Commission Executive Director Phillip T. Fisher at the Forum, outlining the Commission's efforts to date in examining the many aspects of this complex issue and summarizing the basic concerns of the Commission and others with regard to the proper approach which should be taken to regulate the conduct of real estate appraisers, should it be determined that any regulation is warranted.



Approximately 200 persons attended a Forum on appraiser regulation conducted by the Commission on April 14.

"The Commission has for some time discussed and considered whether a need exists for regulating, in some form or fashion, the real estate appraisal industry. Then, in November of last year, when Georgia Congressman Doug Barnard introduced in Congress his 'Real Estate Appraisal Reform' bill, the Real Estate Commission accelerated its consideration of this issue; it being the position of the Commission that regulation of this activity might be a more proper role for state government rather than at the federal level.

"First, the Commission staff drafted a bill calling for the 'voluntary certification' of real estate appraisers. However, after much discussion and debate, the Commission determined that a 'voluntary' plan of regulation would simply not afford consumers adequate protection. For example, under 'voluntary certification,' if someone certified by the State as an appraiser were to render an appraisal

in a blatantly improper or incompetent manner, the Commission could merely remove the appraiser's right to refer to himself or herself as 'certified;' the appraiser could then simply remove the word 'certified' from his business cards and advertisements and continue to perform appraisals. Consequently, the Commission sent us back to the drawing board to draft a bill which would require all real estate appraisers to be licensed by the Commission and would empower the Commission to remove from the business, anyone who violates the Appraiser Licensing Act or the Commission's Rules.

"On February 18, staff presented and the Commission tentatively approved a proposed bill calling for the licensure of appraisers. Notice of the Commission's decision to consider the licensing of real estate appraisers was given in the last issue of the Commission's newsletter, the 'Real Estate Bulletin,' which was distributed to all persons holding North Carolina real estate broker or salesman licenses. As a result, 325 persons requested and were sent copies of the proposed bill. In addition, copies were sent to all known real estate appraisal organizations, associations, institutes and societies.

"Many comments [more than 80 letters] were received. The Commission also consulted with various appraisal organizations, and the North Carolina Association of REALTORS, the N.C. Banker's Association, the North Carolina League of Savings Institutions, the Mortgage Bankers Association of the Carolinas, the North Carolina Department of Revenue, the North Carolina Housing Finance Agency, the Veterans Administration and the Department of Housing and Urban Development. The purpose of this consultation was to obtain as much input as possible from persons who would be most affected by any regulation of the appraisal business.

"Two schools of thought quickly emerged. On the one hand, certain groups advocated a program of 'voluntary certification' of appraisers because they feared that the General Assembly, in its deliberation of a licensing bill, would very likely require that all persons currently engaged in appraising be 'grandfathered in;' that is, they would be allowed to obtain licenses without having to meet any education or experience requirements or pass a written examination. On the other hand, many persons who are currently engaged in the appraisal business supported the licensing approach for that very reason; that is, they felt that persons already in the business should be 'grandfathered in.' And therein lies the rub.

"The Commission, still resolved that

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REAL ESTATE APPRAISER MAILING LIST

As part of our continuing study of the possible regulation of real estate appraisers, the Real Estate Commission is attempting to compile a mailing list of North Carolina real estate appraisers.

Instructions

If you perform real estate appraisals for others (other than opinions of value for purposes of listing real estate for sale or lease), and you are paid a fee or salary for your appraisal services:

1. Enter your real estate license number in the space provided.
2. Enter your name and mailing address (if different from the name/address shown on your "Bulletin" mailing label).
3. Cut along the dotted line and return to the Commission office.

REAL ESTATE BROKER OR SALESMAN LICENSE NUMBER: _____

NAME _____

COMPANY
NAME: _____

MAILING
ADDRESS: _____

(Street Address, or P.O. Box) (City) (State) (Zip)

MAIL TO: N.C. Real Estate Commission, P.O. Box 17100, Raleigh, N.C. 27619-7100

CALCULATING SQUARE FOOTAGE

The Real Estate Commission continues to receive many complaints against real estate brokers and salesmen who have made errors in measuring the square footage of buildings and structures being sold.

Misrepresentation of the actual square footage of property, whether intentional or negligent, is a violation of the Real Estate License Law which may result in discipline by the Real Estate Commission. In addition, such misrepresentation may subject the agent to civil liability if he or she is sued by the adversely affected party.

Consider the following scenario: The owner of a single-family house tells a listing agent with ABC Realty that his house contains 1800 square feet. Although the listing agent believes from his "walk-through" inspection that the owner's representation of square footage is accurate, he does not personally measure the house and calculate the square footage himself. Rather, he simply records "1800 square feet" on the listing form and places the listing in the local MLS.

The house is subsequently sold by a sales agent of XYZ Realty who, based on the MLS property data sheet, tells the buyer that the house contains 1800 square feet. When the buyer moves into his house after closing, he discovers that the house is only 1700 square feet—100 square feet less than what was represented to him. The upset buyer then calls the selling agent, the listing agent, and perhaps ultimately the Real Estate Commission and his lawyer.

Here, the listing agent, by failing to verify the square footage, is guilty of making a negligent misrepresentation. His failure to verify is not excused by the fact that he viewed the house and believed the listed information to be accurate, nor by the fact that the discrepancy was not a particularly large one. The listing agent has a duty to either personally measure the house or use other reliable means to accurately determine the square footage. Reliable sources include either up-to-date blueprints or a current appraiser's report. The property owner is not a reliable source.

The liability of the selling agent under the Real Estate License Law depends upon whether he acted reasonably in relying on the listed data. In other words, would a reasonably prudent agent have suspected that the square footage was incorrect and checked to verify the size of the house? If so, then the selling agent may also have been guilty of negligent misrepresentation. No conclusive determination can be made based on the brief facts provided in the above example. Although other factors would have to be considered, it is doubtful that the selling agent could have reasonably been expected to detect an error of 100 square feet without actually measuring the house. Generally, the larger the discrepancy, the greater the likelihood of the selling agent being held accountable for not personally verifying the square footage.

Suppose the listing agent had measured the house and determined the square footage himself but had made a mistake, or had written down the wrong information on the property data sheet. An agent may also be guilty of

negligent misrepresentation when the agent makes a mistake in compiling or communicating information about a property. The test in this situation is whether a reasonably prudent agent would have made the mistake. If not, then the agent will be held accountable for his mistake and will be guilty of misrepresentation.

Heated Living Area

In order to properly determine the square footage of a home, the real estate agent must first determine the "heated living area" of the home. The "heated living area" of the home consists of only those portions of the home in which the occupants actually live and which are heated by the home's primary heating system (for example, the living room, den, kitchen, dining room, study, bedrooms, bathrooms, closets, pantry, foyer, utility room, and hallways). It includes the areas occupied by any stairwells, but excludes any floor space which has a ceiling of less than five feet. "Heated living area" does not include a garage, carport, attic, unfinished basement, outside storage room, porch, balcony, or deck, whether or not any of these features are attached.

When completing the property data sheet or otherwise communicating the square footage of a house, include only the square footage of the heated living area, as outlined above. The square footage of other features (such as the garage or attic) can be noted separately in the detail section or the remarks section of the property data sheet.

The Measurement Process

In order to accurately calculate the square footage area of a house, one should use the exterior measurements of the heated living area whenever possible. If the house has a basic square or rectangular shape and has either one story or two stories with the second story being the same size and shape as the first, then the measurement process is a matter of simple multiplication. But if the house is irregularly shaped, calculating the square footage becomes more difficult.

For example, when a house has more than one floor or level and the levels are different sizes, you must first calculate the area of the ground floor using exterior measurements. Then, if the second floor cannot be easily measured from the outside, you must measure the second floor from the inside, and add five (5) inches to the length and width measurements for the thickness of each outside wall and inside wall. Finally, multiply the length of the second floor by the width to determine its area, then add it to the first floor area to obtain the total square footage of the house. For a split-level house with three levels, it may be necessary to measure all three levels from the outside in the manner just described for measuring a second floor.

Many houses are not built in a standard square or rectangular shape. If a house is L-shaped, the house can be "divided" by the agent into two rectangular boxes before computing their areas. And if the perimeter of the house contains a number of offsets and projec-

tions, the agent may find it easier to simply (1) extend the outside measurements of the structure transforming it into a rectangle or square, (2) calculate the total area of the rectangle or square, and (3) deduct the empty space from the total area.

When measuring the square footage of a condominium or townhouse unit, the thickness of outside walls and party (shared) walls should be included, even if the unit owner does not legally own these walls. This is done so that the square footage reported for condominium and townhouse units will be comparable to that reported for detached houses. When measuring such units, it may be necessary to measure from the inside for all floors, adding in wall thickness for outside walls, inside walls, and party walls, as appropriate.

Recommendations

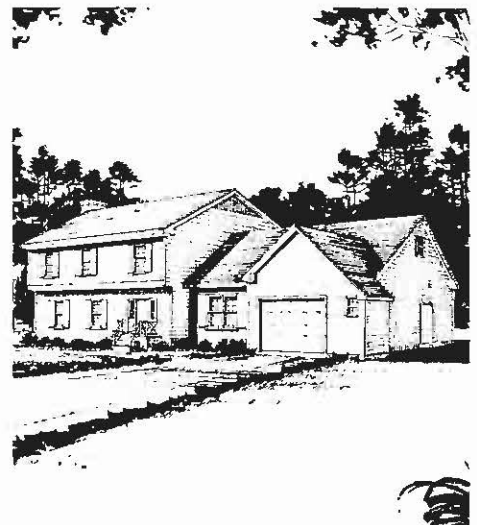
Square footage is an important consideration to most home buyers. They use it as a tool to compare one home to another, often equating the size of the house to its value. It is, therefore, very important that agents take great care in measuring and reporting square footage, keeping the following points in mind:

Listing Agents-

1. Don't rely on the seller's statements to determine square footage - to be safe, measure it yourself!
2. Take your time, double-check your computations, and proof-read both the listing sheet and the MLS sheet for accuracy.

Selling Agents-

1. When quoting figures from an MLS sheet or from some other source which you have not personally verified, identify the source of such information to the prospective buyer to afford him or her the opportunity to verify it.
2. Do not assume that the listed square footage is correct. Either measure the property yourself or otherwise satisfy yourself that the reported square footage has been accurately determined. □



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.

"A" QUALITY REALTY OF THE PIEDMONT TRIAD, INC. (Greensboro) - By Consent, the Commission reprimanded the corporation due to the negligent failure of one of its employees to deliver a copy of a home inspection report to the purchasers.

BEACH HARBOUR ENTERPRISES (Carolina Beach) - By Consent, the Commission revoked the time share registration certificate of Beach Harbour Enterprises effective March 1, 1988. The Commission found that Beach Harbour had engaged in a course of mismanagement, misrepresentation, false promises in advertising, and improper conduct in the administration of time share project sales operations, rental operations and the management of a homeowners' association.

KELLY H. BENNETT (Greensboro) - By Consent, the Commission suspended Mr. Bennett's broker's license for six months effective February 11, 1988. The Commission then suspended its Order and placed Mr. Bennett on probation for one year. The Commission found that Mr. Bennett had assisted a buyer and seller in adjusting certain amounts paid by the seller without notifying the lender and the closing attorney and that he had failed to prepare a new closing statement reflecting the adjustments.

CARRIAGE MANOR CORPORATION (Bunn) - By Consent, the Commission fined Carriage Manor Corporation, developer of the time share project Carriage Manor, \$3,000 effective March 8, 1988. The Commission found that Carriage Manor Corporation had failed to comply with the Time Share Act and the Commission's rules requiring the transfer of down payment monies on time share purchases to an independent escrow account when a purchaser does not rescind his purchase contract within the ten-day rescission period. The Commission noted, however, that no member of the public had suffered any harm due to Carriage Manor's actions.

CATHERINE D. COLLINS (Cullowhee) - By Consent, the Commission suspended Ms. Collins' broker's license for six months effective April 8, 1988. The Commission found that Ms. Collins had failed to make trust account records available to the Commission.

MELANIE M. CULP (Charlotte) - By Consent, the Commission reprimanded Ms. Culp for acting as a real estate salesman without first notifying the Commission and activating her salesman's license.

KARA SUE CUSCADEN (Raleigh) - By

Consent, the Commission suspended Ms. Cuscaden's salesman's license for six months effective April 7, 1988. Sixty days of the suspension are to be active and one year on probation. The Commission found that Ms. Cuscaden had known that certain property being purchased was subject to an existing contract for conveyance of a utility easement across the property, but that she failed to inform the purchaser.

D.M. & D.F., INC. (Carolina Beach) - By Consent, the Commission revoked the corporate real estate broker's license of D.M. & D.F., Inc. effective March 1, 1988. The Commission found that the corporation had engaged in a course of mismanagement, misrepresentation, false promises in advertising, and improper conduct in the administration of time share project sales operations, rental operations and the management of a homeowners' association.

RAY S. DEBNAM (Raleigh) - By Consent, the Commission suspended Mr. Debnam's broker's license for three years effective May 9, 1988. Six months of the suspension are to be active and two years six months on probation on condition that he complete certain specified real estate education. The Commission found that Mr. Debnam had failed to refund an earnest money deposit to a purchaser in a timely manner. The Commission also found in a separate transaction, that Mr. Debnam had failed to apply in a timely manner the proceeds from the sale of property to the seller's purchase of other property as promised.

JAMES R. FRANKLIN (Dare County) - The Commission suspended Mr. Franklin's broker's license for one year effective May 1, 1988. The Commission then suspended its Order and placed Mr. Franklin on probation for one year. The Commission found that Mr. Franklin, while previously licensed as a salesman and acting as agent for a seller in a real estate transaction, had failed to disclose to his supervising broker-in-charge and to the seller, that he intended to acquire an interest in the seller's property and that he had not, in fact, received all funds from the purchaser required under the contract of sale.

CHARLES D. GALLIMORE; ACCORD MORTGAGE COMPANY, AUCTION AND REALTY (Concord) - By Consent, the Commission suspended Mr. Gallimore's broker's license and the corporate real estate broker's license of Accord Mortgage Company, Auction and Realty for two years effective April 8, 1988. The Commission found that Mr. Gallimore had commingled and failed to properly account for trust funds.

SAMUEL HAITH, JR. (Greensboro) - By Consent, the Commission suspended Mr. Haith's broker's license for six months effective February 11, 1988. The Commission then suspended its Order and placed Mr. Haith on probation for one year. The Commission found that Mr. Haith had assisted a buyer and seller in adjusting certain amounts paid by the seller without notifying the lender and the closing attorney and that he had failed to prepare a new

closing statement reflecting the adjustments.

JAMES R. HANRATTY (Carolina Beach) - By Consent, the Commission suspended Mr. Hanratty's salesman's license for two years effective March 15, 1988. Two months of the suspension are to be active and two years on probation. The Commission found that Mr. Hanratty had represented to prospective time share purchasers that they would receive a Savings Bond for attending a sales presentation when he knew that the developer of the time share project would be unable to provide such bonds.

THOMAS E. McFADDEN (Greensboro) - By Consent, the Commission reprimanded Mr. McFadden for failing as broker-in-charge of a real estate office to adequately supervise salesmen working at such office.

MALCOLM A. MINTER (Charlotte) - The Commission suspended Mr. Minter's broker's license for eighteen months effective April 1, 1988. The Commission then suspended its Order and placed Mr. Minter on probation for eighteen months. The Commission found that Mr. Minter had improperly conducted a real estate closing in that he permitted the use of unlawfully prepared legal documents, he attempted to explain to the parties their legal rights under a "contract for deed," and he failed to deliver true and accurate closing statements to the sellers and buyers.

Mr. Minter, in a separate proceeding, also consented to the imposition of a reprimand for failing to personally and actively supervise two of his salesmen.

GARY W. OWENS (Carolina Beach) - By Consent, the Commission suspended Mr. Owens' broker's license for sixty days effective February 15, 1988. The Commission found that Mr. Owens, while acting as broker-in-charge at a time share project, had failed to adequately supervise salesmen in his employ.

RUBY LEE TUCKER (Fayetteville) - The Commission revoked Ms. Tucker's salesman's license effective April 1, 1988. The Commission found that Ms. Tucker had advised a purchaser to falsely state on applications for home financing for two separate properties that the purchaser would occupy the properties as his residence. The Commission also found that Ms. Tucker did not fully disclose all of her transactions to her supervising broker-in-charge and that she had failed to remit down payment funds to a purchaser.

GENERAL WILLIAM WASHINGTON (Greensboro) - By Consent, the Commission suspended Mr. Washington's salesman's license for ninety days effective June 1, 1988. The Commission then suspended its Order and placed Mr. Washington on probation for one year. The Commission found that Mr. Washington had negligently failed to deliver a copy of a home inspection report to the purchasers.

RICHARD E. WATSON (Greensboro) - The Commission revoked Mr. Watson's broker's

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APPRAISER REGULATION

(Continued from page 3)

licensing afforded a greater measure of consumer protection, attempted to balance those opposing interests and concerns with regard to the 'grandfather' question and to somehow satisfy the likely concerns of the General Assembly by including a limited or qualified grandfather provision in its bill, wherein the license examination requirement would only be waived for persons who have had a certain amount of experience in real estate appraising.

"In addition to the major issue of 'grandfathering,' we have also received comments and suggestions concerning other provisions of the February draft of the bill. In response to these comments, the February 18 draft was revised on March 22 and a copy of the 2nd draft together with a summary of the changes was sent to the persons who had received the earlier draft and to various other persons and organizations.

"That brings us to today and to the fundamental questions which remain before the Commission; namely, whether there exists a demonstrated, compelling need to regulate the real estate appraisal business in North Carolina, and, if so, what would be the most effective form of regulation from the standpoint of protecting consumers of real estate appraisal services?"

Since the Forum, the Commission has met and considered the comments and viewpoints expressed by the many Forum participants and by persons who had submitted written comments. Despite the many sincere and understandable concerns expressed by persons who have advocated a "no grandfathering" voluntary certification program of regulation, the Commission continues to support the concept of mandatory licensing as a more effective means of enforcing a meaningful regulatory program for real estate appraisers. The Commission also recently approved several technical changes in the licensing bill which is currently under development.

However, recognizing that many obstacles must be overcome in the passage of any proposed regulatory legislation (including the necessity of demonstrating to the General Assembly in a convincing manner that there exists a clear need for such legislation), the Commission determined that the issue of appraiser regulation should be taken under advisement at this time pending further study.

Your further comments concerning the issue of regulation of real estate appraisers should be addressed to the North Carolina Real Estate Commission, P.O. Box 17100, Raleigh, North Carolina 27619-7100. In addition, copies of the most recent (May 4, 1988) draft of the appraiser licensing bill under development by the Commission are available without charge from the Commission office. And a transcript of the April 14 Forum is available for \$36.50 per copy from Pace Reporting Service, P.O. Box 252, Cary, North Carolina 27512 (Phone 919/469-0199).

□

NEW RULES ADOPTED

(Continued from page 1)

that a person licensed as a real estate salesman shall not act as a broker or act outside the supervision of his Broker-In-Charge.

Rule A .0611 was adopted to provide that licensees accused of misconduct in a notice of hearing may file a written response and that such responses and other pleadings in contested cases must be in writing or made on the record during a hearing.

Rule B .0501(c) and (d) were amended to correct a typographical error and to require a time share project broker to pay the purchaser ten day escrow monies directly to the project's independent escrow agent when the developer is unable to give purchasers lien-free title to their units within forty-five days of the contract date. Alternatively, project brokers in this situation may pay the escrow funds to the developer by check bearing a restrictive endorsement requiring deposit into the account of the independent escrow agent. □

COMMISSION OBTAINS RESTRAINING ORDER FOR UNLICENSED REAL ESTATE BROKERAGE

The Real Estate Commission has obtained a Permanent Injunction in Wake County Superior Court restraining Mario Scatliffe, Jr., from engaging in the practice of real estate brokerage. The Commission and Mr. Scatliffe entered into a Consent Order on April 13, 1988 in which Mr. Scatliffe admitted to having engaged in real estate brokerage acts without being licensed by the Real Estate Commission.

The Commission found that Mr. Scatliffe, while doing business at Prosperity Realty in Marshville, North Carolina in 1986, submitted to the Veterans Administration offers to purchase real estate on behalf of others and received a brokerage commission for such services. Mr. Scatliffe also showed two other properties to prospective purchasers and represented to others that he was a licensed real estate broker.

Under the terms of the Consent Order and Permanent Injunction, Mr. Scatliffe is permanently restrained from acting or holding himself out to be a real estate broker until such time, if ever, as he is properly licensed by the Real Estate Commission. □

DISCIPLINARY ACTION

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license effective March 2, 1988. The Commission found that Mr. Watson had falsely represented to a purchaser that the purchaser's contract had been terminated and that the purchaser's earnest money would be refunded. The Commission also found that, in an attempt to coerce the purchasers into closing the transaction, he had failed to disclose the true facts concerning the condition of the property by distorting the results of an inspection of the property, which he had arranged, by the High Point Inspection Department. In addition, the Commission found that Mr. Watson, during a hearing before the Commission on the allegations of misconduct, caused altered audio tapes of conversations between himself and the purchaser to be played in an attempt to deceive the Commission. Mr. Watson appealed the Commission's decision to the Wake County Superior Court which reversed the Commission's Order. The North Carolina Court of Appeals on December 1, 1987 reversed the judgment of the Superior Court, and the North Carolina Supreme Court on February 27, 1988 denied Mr. Watson's Petition for Certiorari. □

WHAT IS A CONSENT ORDER?

Many of the administrative actions taken by the Real Estate Commission against a licensee are in the form of "Consent Orders." A Consent Order is sometimes prepared after the Commission has alleged that a licensee has engaged in activities that constitute a violation of law.

By signing a Consent Order, the licensee agrees to the imposition of certain disciplinary sanctions, such as reprimand or the suspension or revocation of his or her license. The use of a Consent Order allows the Commission and the parties involved to resolve a disciplinary proceeding initiated by the Commission without the time and expense necessitated by a formal administrative hearing. □

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