



# NORTH CAROLINA REAL ESTATE COMMISSION Real Estate Bulletin

Volume 21

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Number 4

## FISHER TO LEAD NATIONAL REAL ESTATE COMMISSIONERS

Real Estate Commission Executive Director Phillip T. Fisher was elected President-Elect of the National Association of Real Estate License Law Officials (NARELLO) at the Association's Annual Conference in Quebec City, Quebec, Canada. Mr. Fisher will succeed Georgia Real Estate Commissioner Charles Clark as NARELLO President in October, 1991.



Phillip T. Fisher

A native of Kannapolis, Mr. Fisher is a graduate of the University of North Carolina at Chapel Hill. A licensed real estate broker, Mr. Fisher was engaged in the general real estate brokerage business with Fisher Real Estate, Inc. before joining the Real Estate Commission in 1975 as Administrative Assistant to the Executive Director. In 1981, he was named Executive Director.

The son of Mildred T. Fisher and the late G. Bruce Fisher, he and his wife Sandy reside in Raleigh.

NARELLO is a multi-national association of real estate licensing officials and administrators. □

## NEW COMMISSION MEMBER

Governor James G. Martin has appointed Mr. Brantley T. Poole to the North Carolina Real Estate Commission to complete the unexpired term of Mrs. June P. Mooring ending July 31, 1993.



Brantley T. Poole

A former member of the Real Estate Commission, Mr. Poole served from 1970 to 1973 and again from 1977 to 1986 and was three times elected Chairman.

Mr. Poole is owner of Poole Realty Company in Raleigh where he has been active in the real estate business for more than 30 years. He has held numerous positions in the National Association of Real Estate License Law Officials (NARELLO), the N.C. Association of REALTORS and the Raleigh Board of REALTORS, and was formerly named Realtor of the Year by the Raleigh Board. □



## COMMISSION MEMBERS IN THE NEWS



Commission Member Patricia B. Casey, CPA, CMA, CIA, has been elected Vice-Chairperson of the Real Estate Commission for a term expiring July 31, 1991. Ms. Casey has served on the Commission since 1985 and recently completed two terms of office as Treasurer of the National Association of Real Estate License Law Officials (NARELLO). She is associated with Murray, Staton & Co., a Certified Public Accounting Firm in Wilmington.



Commission Member Elmer C. Jenkins, GRI, CRB has been elected Vice-President in charge of the eight-state North Central District of NARELLO. Mr. Jenkins has been a member of the Real Estate Commission since 1987 and served as immediate Past Chairman. He is a former President of the N.C. Association of REALTORS® and is a Director of the National Association of REALTORS®. Mr. Jenkins and his wife, Norma, own and operate Jenkins REALTORS® in Blowing Rock. □

## FORUM ON MANDATORY ERRORS & OMISSIONS INSURANCE

See Page 3 For Details.

## RULES REPORT

### Rule Amendments Adopted

Following a public hearing in Raleigh on November 7, the Real Estate Commission voted to amend certain rules affecting applicants for real estate licenses, real estate brokers and salesmen, applicants for appraiser licensure and certification, licensed and certified appraisers, and appraisal courses and instructors. The rules, as amended:

1. Request applicants for real estate licenses to furnish their Social Security Numbers
2. Increase the annual renewal fee for real estate licenses to \$25 (previously \$20).
3. Permit exceptions to the appraiser precertification/certification course pre-requisite requirements only when the person has education equivalent to the pre-requisite course(s)

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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.

### NORTH CAROLINA REAL ESTATE COMMISSION

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Raleigh, North Carolina 27619-7100  
Phone 919/733-9580  
James G. Martin, Governor

### COMMISSION MEMBERS

Grace T. Steed ..... Randleman  
Chairman  
Patricia B. Casey ..... Carolina Beach  
Vice Chairman  
Gilbert L. Boger ..... Mocksville  
Patrice P. Carter ..... Charlotte  
Elmer C. Jenkins ..... Blowing Rock  
Brantley T. Poole ..... Raleigh  
J. Edward Poole ..... Spring Lake

Phillip T. Fisher  
Executive Director

Larry A. Outlaw ..... Dir. Education/Lic  
L. Ted Gayle ..... Dir. Audits/Inv.  
Mary Frances Whitley ..... Dir. Admin.  
James E. Poole, Jr ..... Dir. Appraiser  
Lic./Cert.  
Thomas R. Miller ..... Legal Counsel  
Spec. Dep. Attorney General  
Blackwell M. Brogden, Jr. .... Dep. Lgl.  
Counsel  
Miriam J. Baer ..... Asst. Lgl. Counsel  
Marilyn E. Tomei ..... Assoc. Lgl. Counsel  
Hill Zollicoffer ..... Information Off.  
Anita R. Burt ..... Cons. Prot. Officer  
Ann R. Britt ..... Exam/Lic. Officer  
Evelyn Johnston ..... Education Officer

## EXAM RESULTS

	Passed	Failed
<b>OCTOBER 1990</b>		
Brokers	88	57
Salesmen	267	187
<b>NOVEMBER 1990</b>		
Brokers	56	40
Salesmen	170	173
<b>DECEMBER 1990</b>		
Brokers	94	47
Salesmen	296	197

## BULLETIN BOARD



Cost Accountant for a manufacturing company.

S. Renee Lee has been employed by the Commission as its Accounting Technician succeeding Paula L. Lassiter who was promoted to Accountant. Ms. Lee was previously employed as Accounting Coordinator and Junior



Renee P. Weaver has been employed as Education Clerk in the Commission's Education and Licensing Division. Mrs. Weaver's previous employment included positions with the N.C. General Assembly and various Raleigh businesses.

... L. Ted Gayle, Director of Audits and Investigations, was recently honored by the National Association of Real Estate License Law Officials by being named runner-up for NARELLO's "Investigator of the Year Award." Mr. Gayle will serve as Chairman of NARELLO's Investigation and Enforcement Committee for the coming year.

... Since the last issue of the *Bulletin*, the Commission staff has been busy appearing before various real estate industry and related groups. Executive Director Phillip Fisher installed the Officers and Directors of the Fayetteville Area Board of REALTORS® and Women's Council of REALTORS®. James E. Poole, Jr., Director of Appraiser Licensing and Certification, addressed the Metrolina Chapter of the Society of Real Estate Appraisers and the N.C. Alliance of Community Financial Institutions. Special Deputy Attorney General Thomas R. Miller, the Commission's Legal Counsel, spoke to a joint meeting of Raleigh area real estate firms. Deputy Legal Counsel Blackwell M. Brogden, Jr. appeared before the Wake County Apartment Association and the Commercial Listing Service of the Raleigh Board of REALTORS® and Assistant Legal Counsel Miriam J. Baer spoke to the Brunswick Islands Board of REALTORS®. (Individuals and groups requesting a speaker from the Real Estate Commission are reminded that a "Speaker Request Form" is available from the Commission Office.)

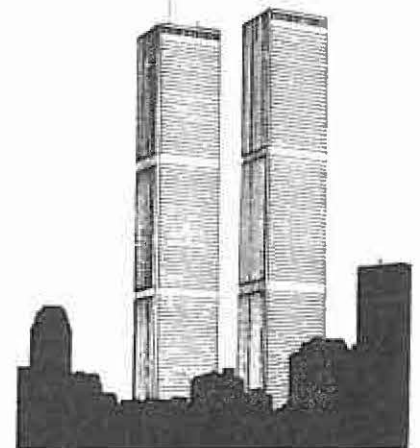


Sheryl Lynn Richards has joined the Commission staff to fill a vacancy in the position of Appraiser Clerk. A native of Libertyville, Illinois, Sheryl was employed as a Medical Transcriptionist after studies at the College of Lake County. As Appraiser

Clerk, Sheryl will provide support to the Commission's Appraiser Licensing and Certification Division.



Senior Commission Investigators (left to right) Rodolph Hill, Everett H. Jenkins, and James K. Clinard, shown here at retirement function honoring Mr. Hill, represent nearly 65 years combined service with the Real Estate Commission.



## MONTHLY TRUST ACCOUNT SHORT COURSE IN RALEIGH

### DATES

February 12, 1991    March 12    April 9

All Raleigh courses start at 1.00 p.m. and end at approximately 4.30 p.m.

To register for the course, telephone the Real Estate Commission Office (919-733-9580) at least 10 days prior to the course and ask for the Education Department. Please have your real estate license number (if any) handy! Registrations will be confirmed in writing giving registrants more detailed information concerning the location of the course.

## COMMISSION CONTINUES CONSIDERATION OF MANDATORY ERRORS & OMISSIONS INSURANCE

In the last issue of the *Real Estate Bulletin*, it was reported that the Real Estate Commission was considering whether to recommend to the N.C. General Assembly that legislation be enacted requiring real estate brokers and salesmen to obtain errors and omissions insurance as a condition for renewing their real estate licenses on active status.

The insurance would either be purchased by the licensee, or the licensee could participate in a group insurance program through a policy purchased by the Real Estate Commission (at a premium not to exceed \$100 per year). Five other states have enacted mandatory errors and omissions legislation for real estate agents. Their policies generally provide \$100,000 coverage against claims by real estate consumers alleging losses sustained because of the careless or negligent acts of real estate agents. Two major factors have prompted this legislation.

First of all, real estate licensing agencies recognize that otherwise competent and conscientious real estate agents (like other professionals) are subject to human errors, carelessness and lapses in judgment, and that the very nature of real estate transactions lends itself to misunderstandings. As a result, innocent consumers sometimes suffer substantial financial loss only to find that the real estate agents who caused their misfortunes frequently are financially unable to offer any relief or compensation. Errors and omissions insurance is designed to afford that relief to worthy consumers.

Secondly, given their increasing vulnerability to lawsuits, real estate agents themselves may avoid or at least reduce the financial ill-effects of such lawsuits if they have errors and omissions insurance coverage, but the cost of procuring this insurance has to some agents been prohibitive. Therefore, by purchasing a group policy to cover all active real estate agents in the state, it may be possible to bring the premiums for this insurance within the reach (and the "pocketbooks") of all active brokers and salesmen. But it appears that these reduced premiums can only be achieved through a "mandatory"—not "voluntary"—policy.

Recognizing that many licensees are not actively engaged in the real estate business, the licensing agencies of those states which have mandatory errors and omissions insurance have exempted from the insurance requirement those brokers and salesmen who are on inactive status; however, they must purchase the insurance before their licenses are activated. Likewise, under the plan being con-

sidered by the North Carolina Real Estate Commission, real estate agents whose licenses are on inactive license status would not be required to purchase errors and omissions insurance.

A questionnaire was included in the previous issue of the *Real Estate Bulletin* in an attempt to gather information concerning the number of licensees who are currently covered by E&O insurance, the cost for such insurance, and the agencies from which the insurance was purchased. Based upon the responses, together with data obtained from the largest provider of E&O insurance for North Carolina real estate agents, it appears that only a small percentage of agents have errors and omissions coverage. Many agents who are covered pay an up-front fee (as much as \$400) and \$25 to \$35 per closing. Others pay premiums on a "per firm" basis which decrease proportionately the larger the firm.

The questionnaire also revealed that there is mixed reaction to the prospect of mandatory errors and omissions insurance. Those who oppose it are concerned that it might increase the likelihood of lawsuits or they are philosophically opposed to further governmental intervention in their businesses. On the other hand, those licensees who favor mandatory E&O insurance, do so because they feel it will lower their current premiums or make it affordable to those agents who currently find it too expensive to purchase.

Before making a final determination on whether to seek mandatory errors and omissions insurance legislation, the Commission wants to acquire as much information as possible and to afford proponents and opponents of this issue every opportunity to voice their opinions. To accomplish this, a follow-up questionnaire is included below for you to state your position on this matter. In addition, a "Forum on Mandatory Errors and Omissions Insurance" has been scheduled for Tuesday, February 19, 1991 beginning at 2:00 p.m. at the North Raleigh Hilton and Convention Center, 3415 Wake Forest Road in Raleigh for the purpose of receiving comments from real estate licensees and other interested persons.

The Commission is sincerely interested in your thoughts on this subject and therefore encourages you to complete and return the following questionnaire and/or attend the upcoming Forum. □

## THE BROKER-IN-CHARGE DILEMMA

By  
Marilyn E. Tomel  
Associate Legal Counsel

This is required reading for Brokers-In-Charge of offices of real estate firms owned by another person or entity and offices with salesmen in managerial positions.

The Commission's Rules require that every firm and branch office have a Broker-In-Charge, and that no broker may be Broker-In-Charge of more than one office or branch office. "Office" is defined as any place where activities requiring licensure are performed. However, the rules do not require that owners of real estate firms be licensed brokers, or that they be licensed at all! Consequently, some real estate firms are either wholly or partially owned by licensed salesmen or unlicensed persons.

Problems are likely to arise whenever a Broker-In-Charge is not the "boss" at the office for which he or she is responsible, especially when the "real boss" is a licensed salesman or is not licensed at all. The following examples illustrate the type of problems that may be encountered:

### Scenario # 1

A real estate firm is owned by a licensed salesman who has retained the services of a broker to act as Broker-In-Charge of the firm's office. On the first day of work, the Broker-In-Charge asks the receptionist/bookkeeper to make sure that he gets the bank statement for the escrow account, every month so that he can balance the account and keep his records of the escrow account in proper order. Two months pass and the broker has not yet seen a bank statement. He asks the receptionist about this and is told that the salesman-owner gave instructions for all bank statements to be given directly to her, and that since the receptionist was employed by the salesman-owner, she feels obligated to follow the salesman-owner's instructions.

The Broker-In-Charge approaches the salesman-owner and asks to see the bank statements for the escrow account, but the salesman-owner responds that she is taking responsibility for balancing the escrow account checkbook. The Broker-In-Charge points out that, as Broker-In-Charge, it is his responsibility to keep the escrow account in proper order and that he is also responsible for supervising the salesman-owner. The Broker-In-Charge is reminded, however, that the salesman is the owner of the firm and that he is merely an associate.

The Broker-In-Charge is faced with a dilemma: On the one hand, he needs his rather comfortable salary to pay his bills, but on the other hand, he feels strongly about carrying out his Broker-In-Charge duties, recognizing that if the escrow records of the firm are audited by the Real Estate Commission and found not to be in order, his broker's license will be in jeopardy.

### Scenario # 2

A similar dilemma arises when a licensed salesman assumes a managerial position in a real estate firm.

For example, a licensed salesman who has been a successful producer of listings and sales for a real estate firm is named by the Broker-In-Charge to be the firm's sales manager. As sales manager, can the salesman assume responsibility for supervising other salesmen (or brokers)

### Errors and Omissions Insurance Follow-Up Questionnaire

- 1 Are you engaged in real estate sales, leasing, property management or other activities requiring a real estate license on a full-time basis? Yes ☐ No ☐
- 2 If you are not engaged in the real estate business on a full-time basis, how many hours per week do you devote to real estate activities? ☐ less than 10 ☐ 10-20 ☐ more than 20 ☐
- 3 Would you favor a requirement that real estate brokers and salesmen be covered by errors and omissions insurance if (1) the annual insurance premium did not exceed \$100 for \$100,000 coverage, (2) you could choose between your own insurance provider and a group policy through the Real Estate Commission, and (3) you would be exempted from the requirement if your license is on inactive status? Yes ☐ No ☐
- 4 Do you plan to attend the February 19 Forum on Mandatory E&O Insurance in Raleigh? Yes ☐ No ☐

Comments \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Clip and return to N.C. Real Estate Commission, P.O. Box 17100, Raleigh, NC 27619-7100,  
Attention: E&O Insurance.



## PROPER USE OF PROPER OFFER TO PURCHASE FORM

By Anita R. Burt, Consumer Protection Officer

Consumer complaints reveal that the improper and inappropriate use of pre-printed offer to purchase forms frequently causes sales transactions to go awry. In addition, failure to use a proper offer to purchase form, or the use of a form for inappropriate purposes, may result in disciplinary action by the Real Estate Commission.

The first problem arises when an agent uses an offer to purchase form which does not comply with Commission rules. Commission Rule A .0112 sets forth eighteen (18) specific provisions which **must be** included in pre-printed offer to purchase forms and several provisions which **must not be** present, including any provision concerning the payment of a commission or compensation to any broker, salesman or firm; and any provision that attempts to disclaim the liability of brokers and salesmen for their representations in connection with transactions.

A second problem arises when an otherwise acceptable offer to purchase form is used for an inappropriate purpose. Although forms which comply with all of the provisions of Rule A .0112 are usually appropriate for "straight-forward" transactions in which the prospective buyer intends to purchase an existing property, they would not be appropriate for use in all real estate transactions. It is for this reason that the instruction sheet for the "standard offer to purchase form" (i.e., 1987 Standard Form # 2 jointly approved by the North Carolina Bar Association and the North Carolina Association of REALTORS, Inc.) states that

*"This form may be used in a variety of real estate sales transactions, but it was developed primarily for use in the sale of existing single-family residential*

*properties. Do not use this form as a substitute for an option contract, lease-option, lease-option agreement, lease-purchase agreement, or installment land (land sales) contract. Also, if a sale involves the construction (or completion of construction) of a new single-family dwelling, have an attorney draft an appropriate contract."*

Licensees who are members of the North Carolina Association of REALTORS have several "special-purpose" pre-printed addenda available for their use, including addenda which may be attached to the Standard Form # 2 in transactions involving new construction and the sale of property which is contingent upon the buyer selling his presently-owned property; however, these addenda should not be attached to other contract forms, nor should any alterations be made to these addenda.

Real estate brokers and salesmen are, of course, only authorized to fill in the blanks of pre-printed forms. In those situations where pre-printed forms and addenda do not address all of the terms and conditions of the real estate transaction, a licensed attorney should be consulted to prepare any special provisions.

In summary, before proposing the use of a pre-printed offer or contract form, the agent should determine whether the prospective purchaser's objective is consistent with the purpose of the form. And if the agent is uncertain as to the appropriateness of a pre-printed form for any particular transaction, or the buyer wishes to have special provisions included in his or her offer, the agent should refer the prospective purchaser to his or her own attorney for assistance in drafting an appropriate offer. □

## DILEMMA

(Continued from Page 3)

in the office? No. Although the Broker-In-Charge may delegate certain functions to the sales manager (such as training the firm's sales associates in sales techniques and directing its marketing program), the Broker-In-Charge must continue to personally and actively supervise the activities of all salesmen in the office and to perform those other duties which, under the Commission's rules, only the Broker-In-Charge may perform.

Indeed the fact that the sales manager is a licensed salesman imposes a special obligation on the Broker-In-Charge to monitor the activities of the sales manager and assure that the other salesmen associated with the firm clearly understand that they are under the supervision of the Broker-In-Charge—not the sales manager.

### Caveat

Brokers-In-Charge must constantly be mindful of their duties under the Real Estate License Law and the Commission's Rules, especially if they are the Broker-In-Charge of an office which is owned by a salesman or an unlicensed person or where a salesman is in a managerial position. Even if the salesman is experienced or the unlicensed person is knowledgeable in real estate matters, the Broker-In-Charge should not assume that they are competent to take care of those aspects of the firm's operations for which the Broker-In-Charge is legally responsible.

Whenever Brokers-In-Charge see a "red flag" warning of danger ahead (such as access being denied to the trust account records) or they are placed in a position where it is impossible to carry out their statutory duties, they should discontinue their association with the firm and immediately notify the Commission. By doing so, they may be avoiding an unwanted "association" with the Commission's legal and investigative staff. □

## APPRAISERREPORT

### Parker Named to Appraisal Committee



Mrs. Mary Ann Parker has been appointed by the Real Estate Commission to the Real Estate Appraisal Committee to fill the unexpired term of F. Bruce Sauter. A State-Certified Residential Real Estate Appraiser, Mrs. Parker is an independent fee appraiser in Greensboro

and is also a licensed real estate broker.

The Commission commended Mr. Sauter for his valuable contribution to the state's appraisal program during his tenure on the Appraisal Committee.

### Appraisal Committee Elects Officers

Jack A. Underdown has been elected Chairman of the Real Estate Appraisal Committee for a term expiring June 30, 1991. Mr. Underdown is owner of Jack A. Underdown, Inc. in Elkin and is a lecturer on real estate appraising at Appalachian State University.

Robert L. Byrd, Jr., Mount Pleasant, was elected Vice-Chairman of the Committee. Mr. Byrd is President of Piedmont Real Estate Ser-

vices, Inc. and has appraised real estate for Duke Power Company for more than 23 years.

### Appraisal Program

#### Receives National Acclaim

The N.C. Real Estate Commission and Appraisal Committee are the recipients of the National Association of Real Estate License Law Officials' 1990 Education Award for outstanding achievement in the development of appraiser precertification education programs.



(Left to right) Commission Director of Education and Licensing Larry A. Outlaw, Appraisal Committee Member Tom J. Keith, Committee Chairman Jack A. Underdown, Commission Director of Appraiser Licensing and Certification James E. Poole, Jr., Committee Vice-Chairman Robert L. Byrd, Jr., and Committee Member John P. Robinson, Jr.

A plaque commemorating the award was ac-

cepted by Commission Education and Licensing Director Larry A. Outlaw at the Association's Annual Conference.

### Appraisal Update

To stay abreast of actions and proposed actions from Washington affecting North Carolina's appraiser licensing and certification program, members of the Appraisal Committee and Commission staff have attended and participated in various meetings during recent months.

Appraisal Committee Vice-Chairman Robert E. Byrd was a panel member on a program presented at a "Seminar for State Real Estate Appraiser Boards" in Washington, D.C. The Seminar was sponsored by The Appraisal Foundation and attended by Appraisal Director James E. Poole, Jr. and Education and Licensing Director Larry A. Outlaw. Mr. Outlaw also attended a meeting of The Appraisal Foundation member organizations in Washington, and Mr. Byrd, Mr. Outlaw, and Mr. Poole attended a meeting of the Foundation's Appraiser Qualifications Board.

Directives from Washington to the states regarding appraiser qualification requirements and related matters continue to be vague and oftentimes conflicting. However, the Commission and Committee staff are making every effort to obtain the most current and reliable information available and to attempt to influence actions in a manner which might best serve the interests of both appraisal consumers and practitioners. □

# 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.*

**DAVID F. BARTLEY** (Raleigh) - By Consent, the Commission reprimanded Mr. Bartley effective December 4, 1990 for altering and using a pre-printed offer to purchase and contract form for a purpose for which it was not intended.

**WILLIAM E. BAUGHN, JR.** (Thomasville) - By Consent, the Commission reprimanded Mr. Baughn effective October 16, 1990 for failing to adequately supervise a salesman in the listing and advertising of property and the preparation and submission of an offer to purchase. Mr. Baughn neither admitted nor denied any misconduct.

**BOWSER-CALABASH PROPERTY MANAGEMENT, INC.** (Calabash) - By Consent, the Commission revoked the corporate real estate license of Bowser-Calabash Property Management, Inc. effective November 15, 1990 for violating the terms of its probation from a previous Commission Order wherein the Commission had found that the corporation had failed to deposit and maintain trust funds in a North Carolina bank, had failed to maintain adequate records regarding the funds of others, and had commingled client funds with its own funds.

**WILLIAM H. BOWSER** (Calabash) - By Consent, the Commission revoked Mr. Bowser's broker's license effective November 15, 1990 for violating the terms of his probation from a previous Commission Order wherein the Commission had found that Mr. Bowser had failed to deposit and maintain trust funds in a North Carolina bank, had failed to maintain adequate records regarding the funds of others, and had commingled client funds with his own funds.

**CENTRACK, INC.** (Fayetteville) - By Consent, the Commission suspended the corporate real estate license of Centrack, Inc. for eighteen months effective December 6, 1990. The Commission then suspended its Order and placed the corporation on probation for one year. The Commission found that the corporation had contracted to pay a commission to an unlicensed person for performing acts for which a real estate license was required. The Commission also found that Centrack, Inc. had deposited and maintained funds into an interest-bearing trust account without the written authorization of the persons for whom the funds were being held.

**ROBERTA A. DUBIN** (Durham) - By Consent, the Commission reprimanded Ms. Dubin effective January 11, 1991 for erroneously reporting the square foot heated area of a property by inadvertently combining heated and unheated areas. Ms. Dubin subsequently discovered and corrected the error.

**JENNIFER J. FROST** (Duck) - By Consent, the Commission suspended Ms. Frost's broker's license for ninety days effective November 8, 1990. The Commission then suspended its Order and placed Ms. Frost on probation for one year on condition that she complete the Commission's Trust Account Course. The Commission found that Ms. Frost had failed to properly maintain trust account records in that she had deposited trust funds in an interest-bearing trust account without the written authorization of the persons for whom the funds were being held and had failed to maintain ledger cards on sales transactions and running balances on ledger cards

for rental transactions. The Commission also found that she had allowed interest to accumulate in her rental trust account without promptly disbursing it.

**HERMAN H. FRYAR, JR.** (Rocky Mount) - By Consent, the Commission revoked Mr. Fryar's broker's license effective November 7, 1990 but agreed to issue a salesman's license to him on September 7, 1991. The Commission found that Mr. Fryar, as principal broker of a corporation and Broker-In-Charge of its office, had used funds from the corporation's rental trust account to pay expenses on real estate owned by him. The Commission also found that Mr. Fryar had failed to maintain trust funds in a trust or escrow account and to properly maintain records pertaining to said account.

**GLORIA K. GETTLE** (Raleigh) - By Consent, the Commission reprimanded Ms. Gettle effective December 4, 1990 for altering and using a pre-printed offer to purchase and contract form for a purpose for which it was not intended.

**HANNE M. HANCOCK** (Raleigh) - By Consent, the Commission suspended Ms. Hancock's salesman's license for eighteen months effective November 7, 1990. The Commission found that Ms. Hancock had received funds which were to be used for the purchase of investment real estate and spent these funds on her personal use. The commission noted that Ms. Hancock subsequently reimbursed her employer for these funds.

**INVESTMENT REAL ESTATE, INC.** (Raleigh) - By Consent, the Commission reprimanded Investment Real Estate, Inc., a corporate real estate broker, effective November 26, 1990 for failing to adequately maintain its trust account and to reconcile its trust account records. Investment Real Estate Inc. discovered irregularities in the property management accounts maintained by a licensed broker associated with the firm and, upon engaging an accounting firm to analyze the books and records of the company, determined that there were shortages in security deposits and trust account balances. The Commission noted that Investment Real Estate, Inc. replaced the shortage in the trust account with its own funds and promptly reported this shortage to the Commission. The real estate licensee in charge of the funds was subsequently convicted of embezzlement.

**SHARI K. LEAVEN** (Asheville) - By Consent, the Commission accepted the voluntary surrender of Ms. Leaven's salesman's license for a period of three years effective October 1, 1990 and dismissed without prejudice certain charges against her.

**DIANE K. MANCE** (Boone) - By Consent, the Commission suspended Ms. Mance's broker's license for eighteen months effective December 14, 1990. Sixty days of the suspension are to be active and one year on probation on condition that she complete the Commission's Trust Account Course. The Commission found that Ms. Mance had maintained rent receipts and security deposits in an interest-bearing account without written authorization from the persons for whom the funds were being held; had failed to designate the account used for rent receipts and security deposits as a trust or escrow account; had failed to maintain owner ledger cards; and had failed to reconcile bank statement balances to the running balances in her accounts for both sales and rental transactions. The Commission also found that Ms. Mance had not disbursed funds collected from a property owner for insurance premiums and owners association dues, and had failed to maintain security deposits in a trust account, and failed to properly itemize

tenant damages and account for tenant security deposits.

**CAROLYN J. MORRIS** (Thomasville) - By Consent, the Commission suspended Ms. Morris' broker's license for sixty days effective December 5, 1990. The Commission then suspended its Order and placed Ms. Morris on probation. The Commission found that Ms. Morris had failed to insert a proper legal description in an offer to purchase which she had prepared. Ms. Morris neither admitted nor denied any misconduct.

**DAVID B. MORRIS** (Thomasville) - By Consent, the Commission suspended Mr. Morris' salesman's license for sixty days effective November 1, 1990. The Commission then suspended its Order. The Commission found that Mr. Morris had failed to insert a proper legal description in an offer to purchase which he had prepared. Mr. Morris neither admitted nor denied any misconduct.

**WILLIAM R. MURDAUGH** (Charlotte) - By Consent, the Commission reprimanded Mr. Murdaugh effective November 26, 1990 for inadvertently representing on offer to purchase forms that they were the Standard Form #2 jointly approved and copyrighted by the North Carolina Bar Association and the North Carolina Association of REALTORS® when, in fact, that representation was not correct.

**MICHAEL NUNEZ** (Charlotte) - By Consent, the Commission reprimanded Mr. Nunez effective November 14, 1990 for acting as a real estate salesman after his real estate license was expired.

**PIEDMONT MARKETING, INC.** (Watauga County) - By Consent, the Commission revoked the corporate real estate broker's license of Piedmont Marketing, Inc. effective September 1, 1990 for employing and utilizing unlicensed persons as "takeover specialists" in the sale of time shares. The corporation neither admitted nor denied any misconduct.

**LARRY L. PHILLIPS** (Hendersonville) - By Consent, the Commission suspended Mr. Phillips' broker's license for three months effective August 15, 1990. The Commission then suspended its Order and placed Mr. Phillips on probation for one year. The Commission found that Mr. Phillips, as selling agent, had entered into an agreement with the purchaser to receive a sales bonus from the purchaser without disclosing the agreement to the listing agent. The Commission also found that he had included in the purchaser's offer to purchase a provision regarding the payment of a commission and had deposited earnest money in an interest-bearing account without the knowledge or consent of the seller or the listing firm.

**HUEY M. ROWE-ANDERSON** (Charlotte) - By consent, the Commission suspended Dr. Rowe-Anderson's broker's license for six months effective December 1, 1990. The Commission then suspended its Order and placed Dr. Rowe-Anderson on probation for one year. The Commission found that Dr. Rowe-Anderson had failed to maintain separate ledger sheets for each sales transaction and a journal showing a running balance for all transactions. The Commission also found that he had failed to deliver an accurate closing statement to the buyer and seller at the closing of a transaction.

**OLIVER L. SPAINHOUR, JR.** (Wrightsville Beach) - The Commission revoked Mr. Spainhour's broker's license effective December 17, 1990. The Commission found that Mr. Spainhour, as Broker-In-Charge, had failed to properly maintain his rental trust account and trust account records by commingling his per-



## DISCIPLINARY ACTION

(Continued from page 5)

sonal funds with the funds that he held for others. The Commission also found that he had failed to deposit and maintain funds from rental transactions in a trust account and to maintain owner ledgers in the required form.

**VINCENT S. STRUBLE (Raleigh)** - By Consent, the Commission reprimanded Mr. Struble for failing to adequately maintain and supervise his firm's trust accounts and to reconcile its trust account records. Mr. Struble discovered irregularities in the property management accounts maintained by a licensed broker associated with his firm and, upon engaging an accounting firm to analyze the books and records of his company, Mr. Struble determined that there were shortages in security deposits and trust account balances. The Commission noted that he replaced the shortage in the trust account with his own funds and promptly reported this shortage to the Commission. The real estate licensee in charge of the funds was convicted of embezzlement.

**SUNDANCE ASSOCIATES, LTD. (Dare County)** - By Consent, the Commission fined Sundance Associates, Ltd., developer of the time share project Sea Scape Quarters \$5,500 effective November 14, 1990. The Commission found that Sundance Associates, Ltd. had sold time shares in a project without a proper registration.

**JOE A. VALLS, JR. (Fayetteville)** - By Consent, the Commission suspended Mr. Valls' broker's license for eighteen months effective December 6, 1990. The Commission then suspended its Order and placed Mr. Valls on probation for one year on condition that he complete the Commission's Trust Account Course. The Commission found that Mr. Valls had contracted to pay a commission to an unlicensed person for performing acts for which a real estate license was required. The Commission also found that Mr. Valls had maintained and deposited funds into an interest-bearing trust account without the written authorization of the persons for whom the funds were being held.

**PEGGY E. WALL (Zebulon)** - By Consent, the Commission reprimanded Ms. Wall effective November 15, 1990 for failing to inform a purchaser that the building company employed to evaluate structural damage in a home that the purchaser had offered to purchase, was owned by the real estate firm that had listed the property for sale.

**MARY LOUISE S. WHITLEY (Albemarle)** - The Commission suspended Ms. Whitley's broker's license for two years effective January 1, 1991. One year of the suspension is to be active and one year on probation. The Commission found that Ms. Whitley had concealed and had advised buyers and sellers to conceal a transaction from a lender in order to avoid the effect of a "due on sale" clause in the seller's deed of trust. The Commission also found that Ms. Whitley had prepared contracts and a closing statement to further conceal the transaction. Ms. Whitley appealed the decision of the Commission to the Superior Court for Stanly County which affirmed the Commission's decision.

**WILLOW VALLEY ASSOCIATION, LTD. (Watauga County)** - By Consent, the Commission fined Willow Valley Association, Ltd., developer of the time share project Willow Valley (formerly Frontier Village) \$2,000 effective September 17, 1990 for employing and utilizing four unlicensed persons as "takeover specialists" at its time share project. The developer neither admitted nor denied any misconduct.

**JERRY S. WRIGHT (Dare County)** - By Consent, the Commission suspended Mr. Wright's broker's license for one year effective January 1, 1991. The Commission then suspended its Order and placed Mr. Wright on probation for one year. The Commission found that Mr. Wright had delivered a general warranty deed to property when no payments had been made to secure a release from a prior deed of trust. Mr. Wright neither admitted nor denied any misconduct. □

## RULES REPORT

(Continued from page 1)

4. Require instructors of residential appraiser courses to have education equivalent to that required for state-certified residential appraisers, and instructors of general appraiser courses to have education equivalent to state-certified general appraisers.
5. Require applicants for appraiser licensure and certification to score at least 75 on their license/certification examination.
6. Require state-licensed/certified appraisers to display their licenses/certificates in their places of business.
7. Require state-licensed/certified appraisers who sign appraisal reports prepared by persons under their supervision to accept full responsibility for such reports.
8. Specify that appraisal reports issued in federally related transactions be in writing.
9. Require state-licensed/certified appraisers to comply with the "Appraisal Reports" rule with regard to appraisals performed by state-licensed/certified appraisers and unlicensed/uncertified assistants acting under their supervision.

These rules became effective February 1, 1991. A complete copy of the rules may be obtained without charge by writing or calling the Commission office.

### Rules Proposed

The Real Estate Commission, pursuant to authority vested in it by the General Statutes of North Carolina, proposes to amend certain rules contained in Title 21, Chapter 58 of the North Carolina Administrative Code, to be effective July 1, 1991.

With regard to course sponsors seeking approval of courses for appraiser continuing education credit, the rules generally establish minimum standards for appraisal continuing education courses, including setting the application fee for course approval; establishing the criteria for course approval with regard to subject matter, instructors, minimum course length (3 1/2 hours) and operational requirements; specifying the form and manner for verifying students' satisfactory completion of courses; setting forth the grounds for withdrawal or denial of course approval; and establishing requirements for maintaining course records and effecting changes in approved courses.

Regarding state-licensed and state-certified real estate appraisers seeking continuing education credit for courses which they have completed, the rules generally:

1. Require appraisers to complete ten (10) classroom hours of continuing education by the second June 30 following licensure or certification, and each June 30 thereafter.
2. Describe the subject matter of courses which are acceptable for continuing education purposes.
3. Require that at least 3 1/2 hours of the 10 classroom hour requirement cover topics related to "Appraisal Law" (e.g., N.C. Real Estate Appraiser Act and rules, Uniform Standards of Professional Appraisal Practice, etc.).
4. Provide that instruction in acceptable subjects be at least 3 1/2 classroom hours in duration.
5. Prescribe attendance requirements and requirements for reporting continuing education courses taken.
6. Prohibit the "carry-over" of excess continuing education credits to subsequent years.
7. Set forth the procedure and fee (\$50 per course) for seeking approval of equivalent courses and education activities and the criteria for determining the equivalency.
8. Describe the conditions under which the completion of certain pre-licensing/precertification appraisal courses may be accepted for continuing education credit.
9. Describe the procedure and conditions under which licensees and certificate holders may be granted additional time to complete their continuing education.

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 3, 1991 at the Real Estate Commission Office, 1313 Navaho Drive, Raleigh, North Carolina. Written comments not presented at the hearing should be delivered by the hearing date to the North Carolina Real Estate Commission Office, P.O. Box 17100, Raleigh, North Carolina 27619-7100.

This the 1st day of February, 1991. □



### ON THE INSIDE...

The Broker-In-Charge Dilemma  
Proper Use of Proper Offer to Purchase Form  
Appraisereport  
Rules Adopted and New Rules Proposed  
Errors and Omissions Insurance  
And More

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