



# NORTH CAROLINA REAL ESTATE COMMISSION

## Real Estate Bulletin

Volume 22

1991

Number 2

### APPRAISAL BOARD MEMBERS NAMED

Since July 1, decisions regarding the licensure, certification and regulation of North Carolina state-licensed and state-certified real estate appraisers have fallen under the jurisdiction of the new North Carolina Real Estate Appraisal Board.

As a result of amendments to North Carolina's Real Estate Appraisers Act, the seven-member Appraisal Board was created as an adjunct body to the Real Estate Commission responsible for making determinations concerning the issuance of real estate appraiser licenses and certificates, the disciplining of state-licensed and state-certified appraisers who violate the Appraisers Act or Commission rules, and the content of appraisal pre-licensing/pre-certification and continuing education courses.

Five members of the Appraisal Board are appointed by Governor Martin and two by the North Carolina General Assembly (one upon the recommendation of House Speaker Daniel T. Blue, Jr., and the other upon the recommendation of Senate President Pro Tempore Henson P. Barnes). They are: **William G. Brown, Sr.** (Charlotte), **Robert L. Byrd, Jr.** (Mt. Pleasant), **Henry E. Faircloth** (Salemberg), **Tom J. Keith** (Fayetteville), **Dana E. Outlaw** (New Bern), and **John P. Robinson, Jr.** (Salisbury). [One member of the Board has yet to be named as of the printing of this *Bulletin*.]

The Real Estate Commission is grateful for the excellent work performed by its Appraisal Committee in developing and implementing North Carolina's appraiser licensing and certification program (See page 2 of this *Bulletin*), and is equally confident that the new Appraisal Board will continue to serve the best interests of our State's appraisal consumers and practitioners in the future. □

### CASEY ELECTED COMMISSION CHAIRMAN



**Patricia B. Casey** has been elected Chairman of the North Carolina Real Estate Commission. Ms. Casey was first appointed to the Commission by Governor Martin in 1985 and re-appointed in 1988. She is a Certified Public Accountant, a Certified Internal Auditor and a Certified Management Accountant associated with the Wilmington public accounting firm of Murray, Staton, & Co. Ms. Casey served as Vice-Chairman of the Commission for 1990-91 and was Treasurer of the National Association of Real Estate License Law Officials.



**J. Edward Poole** has been elected Vice-Chairman of the Commission. Owner of Poole Real Estate and J. Edward Poole Appraisal Associates in Spring Lake, he is both a licensed real estate broker and a state-certified general real estate appraiser. In his third term on the Commission, Mr. Poole has twice served as Chairman and is currently a Director of the National Association of Real Estate License Law Officials. □

### NEW EXCISE (REVENUE STAMP) TAX RATE:

(Effective August 1, 1991)

**\$1.00 per \$500** (was 50¢ per \$500) calculated on the *total* consideration or value of the interest conveyed, *even if the conveyance includes the assumption of an existing lien or encumbrance*. Contact your attorney or local Register of Deeds for details.

### COMMISSION STAFF UPDATE

The Real Estate Commission is pleased to announce the addition of **Stephen L. Fussell**, **Earl H. Grubbs**, and **Kellie L. Thompson** to its staff.



**Stephen L. Fussell** has been employed by the Real Estate Commission as its Information Officer, succeeding Hill Zollicoffer who left the Commission to relocate his residence to another state. Stephen is a graduate of the University of North Carolina-Chapel Hill with additional studies at North Carolina State University. A licensed real estate broker, Stephen was associated with a Raleigh real estate firm prior to his employment with the Commission.



**Earl H. Grubbs** has been employed by the Commission as its first Appraiser Education and Examination Officer. Recently retired from the U.S. Army at the rank of Lieutenant Colonel, Earl received a Bachelors Degree in Education from Clemson University and a Masters Degree from the Florida Institute of Technology. A real estate licensee in both North Carolina and Pennsylvania, Earl will assume primary responsibility for administering the real estate appraiser education and examination programs.



**Kellie L. Thompson** is the Commission's new Receptionist, succeeding Betty Amos who relocated her residence to another state. A graduate of Hardbarger Junior College, Kellie has previously held Secretarial, Receptionist, and Retail Sales positions with various Raleigh firms. □

## 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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Phone 919/733-9580  
James G. Martin, Governor

### COMMISSION MEMBERS

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

Phillip T. Fisher  
Executive Director

### Administration

Mary Frances Whitley ..... Director  
Paula L. Lassiter ..... Financial Officer

### Appraiser Licensing & Certification

James E. Poole, Jr. ..... Director  
Earl H. Grubbs ..... Appraiser Ed./Exam Officer

### Audits & Investigations

L. Ted Gayle ..... Director

### Education & Licensing

Larry A. Outlaw ..... Director  
Ann R. Britt ..... Exam./Lic. Officer  
Evelyn Johnston ..... Education Officer

### Legal

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  
Anita R. Burt ..... Cons. Prot. Officer  
Stephen L. Fussell ..... Information  
Officer

## EXAM RESULTS

	Passed	Failed
APRIL, 1991		
Brokers	105	56
Salesmen	263	147
MAY, 1991		
Brokers	74	55
Salesmen	165	165
JUNE, 1991		
Brokers	108	63
Salesmen	427	205

## BULLETIN BOARD

The Real Estate Commission honored the members of its Real Estate Appraisal Committee at a luncheon in appreciation of their valuable contributions to the development and implementation of the state's appraiser licensing and certification program.



Left to right: Commission Member Brantley T. Poole, former Appraisal Committee Member E. Bruce Sauter, Commission Member Gilbert L. Boger, Committee Vice-Chairman Robert L. Byrd, Commission Member Elmer C. Jenkins, Commission Chairperson Grace T. Steed, Committee Chairman Jack A. Underdown, Commission Vice-Chairperson Patricia B. Casey, Committee Member Tom J. Keith, Commission Member J. Edward Poole, Committee Member John P. Robinson, Jr. and Committee Member Mary Ann Parker.

The Committee members' terms expired on June 30 with the creation of a Real Estate Appraisal Board appointed by Governor Martin and the General Assembly.

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The Real Estate Commission congratulated Director of Administration Mary Frances Whitley on receiving her Bachelors Degree from Barton College. Since the last issue of the *Bulletin*, members of the Commission staff have appeared before numerous real estate and related organizations. Phillip T. Fisher, the Commission's Executive Director, addressed the Asheville Board of REALTORS® ... Director of Education and Licensing Larry A. Outlaw presided over the Annual Conference of the [National] Real Estate Educators Association for which he served as 1990-91 President, and conducted a workshop on

(Continued on page 4)

## TRUST ACCOUNT CARAVAN

Once again this year, the Commission took its "Trust Account Short Course" on the road. L. Ted Gayle, the Commission's Director of Audits and Investigations and developer of the course, conducted sessions in Asheville, Charlotte, Winston-Salem, Fayetteville, Wilmington and New Bern during the period May 14-23.

Ted reports that 280 real estate agents and trust account bookkeepers attended the half-day course which includes "hands-on" training in preparing trust account ledgers, journals and related records.

The Commission commended Ted on the continued success of this program, and encourages all brokers-in-charge to take this course either during the "annual caravan" or at one of the classes offered each month in Raleigh (See Registration Information below). □

## MONTHLY TRUST ACCOUNT SHORT COURSE IN RALEIGH

### DATES

August 13	November 5
September 10	December 10
October 8	

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.

# EDUCATION AND LICENSING NEWS

## EDUCATION Publications

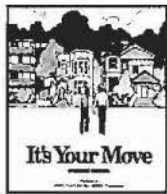


*How much security deposit can I be charged? Can my landlord charge me a "pet fee"? What happens to my security deposit while I'm a tenant? These are some of the questions which are*

frequently asked by tenants and answered in the Commission's new publication "Questions and Answers on: Tenant Security Deposits."

Although designed primarily for use by residential tenants, this pamphlet also addresses many of the problem areas encountered by real estate agents in handling tenant security deposits.

Copies of the pamphlet can be obtained without charge from the Commission Office with additional supplies available for your distribution to your tenants and landlords. Please use the Order Form on this page of the *Bulletin* for requesting copies of "Questions and Answers on: Tenant Security Deposits" and the Commission's other informative publication "A Buyer's Guide to Vacation Real Estate in North Carolina."



North Carolina's high school students will once again receive from the Real Estate Commission an informative booklet explaining in simple terms the process of

buying, selling, and renting real estate. For the twelfth year, "It's Your Move" Student Manuals and Teachers' Guides will be printed and delivered free-of-charge to North Carolina secondary schools for their use in economics, consumer education and related courses. To date, more than 300,000 copies have been furnished to "tomorrow's real estate consumers".

### Scholarships Awarded

The North Carolina Real Estate Educational Foundation has named this year's recipients of two scholarships sponsored by the Real Estate Commission.

**Ann M. Doyle** of Southern Pines was awarded the 1991 "Joe Schweidler Memorial Scholarship" in recognition of having received the highest scholastic average in Series 200 of the REALTORS® Institute during 1990.

And **Pauline E. Hagle** of Fayetteville was named recipient of the "Blanton Little Memorial Scholastic Achievement Award" for outstanding scholastic achievement at the REALTORS® Institute during 1990.

The scholarships are given annually in honor and memory of Mr. Schweidler and Mr. Little who served as Executive

Directors of the Real Estate Commission. The Commission congratulates Ms. Doyle and Ms. Hagle for their singular accomplishments.

### Commission Hosts 1991 Real Estate Educators Conference

The Real Estate Commission was pleased to sponsor again this year in cooperation with the North Carolina Real Estate Educators Association a conference for North Carolina real estate educators.

Eighty-five real estate and appraisal educators and instructors attended the day and a half meeting which included a workshop for appraisal course instructors, programs for new and veteran instructors, and presentations by noted real estate educators and authors.

Participating in the conference were the Commission's Director of Education and Licensing **Larry A. Outlaw**, Education Officer **Evelyn Johnston**, Examination and Licensing Officer **Ann Britt**, and Associate Legal Counsel **Marilyn E. Tomei**, with Education Secretary **Penny Childress**, Education Clerk **Renee Weaver**, and License Specialist **Faye Hewett** assisting with the arrangements.

## LICENSING

### North Carolina Enters Reciprocal Licensing Arrangement With Georgia

The North Carolina and Georgia Real Estate Commissions have entered into a reciprocal licensing arrangement whereby qualified real estate brokers and salesmen may obtain nonresident real estate licenses from the other state without completing additional education or experience, or passing another real estate licensing examination.

Under the terms of the arrangement which became effective July 1, a resident

North Carolina broker or salesman who is licensed in good standing can qualify for a nonresident Georgia license by completing and filing with the Georgia Real Estate Commission an application form and related materials and paying the required license fee. If you are a salesman, you must also demonstrate that you will be supervised by a broker who holds a (resident or nonresident) Georgia broker's license. And if you intend to operate in Georgia as a corporation or partnership, the corporation or partnership must obtain a Georgia real estate license.

If you fail to renew or otherwise lose your North Carolina license, your nonresident Georgia license would also become invalid. Likewise, if you relocate your residence to a state *other than Georgia*, your Georgia license would be canceled. However, if after obtaining your nonresident Georgia real estate license, you become a legal resident of that state, you can convert your license to resident status without further real estate education, experience or examination.

For further information regarding obtaining a nonresident Georgia real estate license under this reciprocal arrangement, contact the Georgia Real Estate Commission, Suite 500 - Sussex Place, 148 International Blvd., NE, Atlanta, Georgia 30303-1734 (Phone 404/656-3016).

### Military Personnel Given Special Consideration in License Renewal

The North Carolina General Assembly has enacted legislation sponsored by **Senator Alexander P. Sands** (D-Rockingham) to benefit certain military personnel who held occupational licenses which expired during the Persian Gulf War. This is how it works:

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## PUBLICATIONS ORDER FORM

Publication	No. Copies Requested
"Questions and Answers on: Tenant Security Deposits" (Free Brochure) Also available in bulk to property managers to distribute to tenants and landlords. (For orders of more than 100 copies, call the Commission Office 919/733-9580 ext. 26.)	_____
"A Buyer's Guide to Vacation Real Estate in N.C." (Free 28-page Booklet) Also available in bulk to coastal and western N.C. real estate firms to distribute to clients and customers. (For orders of more than 50 copies, call the Commission Office 919/733-9580 ext. 26.)	_____

Firm Name \_\_\_\_\_ Phone \_\_\_\_\_  
Street Address (No P.O. Box) \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Send to N.C. Real Estate Commission, P.O. Box 17100, Raleigh, NC 27619-7100.



## LICENSING NEWS

(Continued from page 3)

If you were deployed or stationed outside North Carolina after August 6, 1990 as a result of "Operation Desert Shield" or "Operation Desert Storm" and your real estate or other occupational license expired while you were out of state, you will be given up to 90 days from your return to North Carolina to renew your license. Your license will remain valid until the expiration of this 90-day period, and when you renew, your fee will be reduced based upon the length of time you were outside North Carolina.

For example, if in response to hostilities in the Persian Gulf, you were on (or called to) active duty and sent to Saudi Arabia or any other station outside North Carolina and you returned to North Carolina on August 1, you would have until November 1 (90 days following the June 30 expiration of your license) to renew your real estate license without penalty. Although your license would have normally expired on June 30, it will remain in effect until November 1, and if you renew your license by this date, your renewal fee will be reduced by 1/12 since you were deployed out of state for one month (July) during the period for which you are renewing.

If you (or someone you know) is affected by this new law, please feel free to contact the Records Section of the Real Estate Commission for additional information.

### License Exams Made More Secure

At the request of the Real Estate Commission, the N.C. General Assembly enacted legislation to further protect the security of licensing examinations. As a result, the Commission and other occupational licensing boards will be better assured that examination questions and other confidential information will not be compromised and that persons who steal, buy, sell, etc. examination questions and related materials will be subject to appropriate criminal penalties.

The Commission wishes to especially thank **Senator J. K. Sherron** (D-Wake) and **Representative John C. "Pete" Hasty** (D-Robeson) for their valuable assistance in the passage of this legislation. □

### BROKERS-IN-CHARGE

Have you checked to see that your salesmen have renewed their real estate licenses?

## ANSWERLINE

### "As Is" Provisions in Real Estate Contracts

by Marilyn E. Tomei, Associate Legal Counsel

**Q.** A seller wants me to list his property for sale in "as is" condition, but I am aware of defects in the property. What should I do?

**A.** You must inform prospective purchasers of the defect(s). The N.C. Real Estate License Law imposes a duty on you as a licensee to reveal all material facts about a property which you know or should know. You may not remain silent if you are aware of a defective condition of the property, or you are aware of the facts which would lead a reasonable agent to believe that there may be defects in the property. You have a duty to disclose these facts to prospective buyers regardless of whether your seller wants to sell the property "as is." If your seller demands that you keep defects to yourself, do not take the listing!

Although the North Carolina Appellate courts have not ruled on the effect of "as is" clauses in real estate contracts, court decisions from other states have generally held that "as is" provisions do not protect sellers (or agents) from liability for making false representations about real estate or from fraudulent activities in connection with real estate sales.

For example, in a case from Florida, the court ruled in favor of a purchaser when it determined that the seller, with the cooperation of his agent, arranged with a termite inspector to issue a "clean" report after receiving a report from another inspector who observed evidence of active termite infestation. Although the seller and his agent argued that the "as is" provision in the sales contract immunized them from liability, the court found fraud in the suppression of the first termite report and thus found in favor of the purchaser.

And in a case from New Mexico where a listing agent listed in the MLS that a condominium was in "all top shape" when, in fact, it had major structural defects, the court held that the "as is" provision in the sales contract would not insulate the agent from liability for his false statement that the condo was in "all top shape".

**CAVEAT:** If you offer for sale real estate which you know (or reasonably should know) is defective, you must disclose the defects to prospective purchasers even though the property is being sold in "as is" condition. And if your seller demands that you keep defects to yourself, do not take the listing!

### Bulletin Board

(Continued from page 2)

the implementation of appraiser education and experience requirements for the Louisiana Real Estate Appraisal Subcommittee... Director of Appraiser Licensing and Certification **James E. Poole, Jr.** spoke to the Cape Fear Regional Appraisers Group...the Commission's Legal Counsel, Special Deputy Attorney General **Thomas R. Miller**, appeared before the Multiple Listing Service of Randolph County...Assistant Legal Counsel **Miriam J. Baer** spoke to the Wilmington Board and Cabarrus County Association of REALTORS® and a meeting of Raleigh-area

real estate agents...Associate Legal Counsel **Marilyn E. Tomei** addressed the Pinehurst-Southern Pines Board of REALTORS® ...Consumer Protection Officer **Anita R. Burt** participated in a seminar on legal liabilities of real estate agents...and former Information Officer **Hill Zollicoffer** spoke to the Avery-Watauga and Rocky Mount Boards 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.) □

### License Renewal Report

Renewal Applications Sent		Renewed by June 30 Deadline
Brokers & Salesmen	79,397	64,397 (82%)
Corporations	3,726	2,988 (81%)

The Commission wishes to thank those many thousands of licensees who renewed their licenses by the deadline and to caution those licensees who have not renewed that you may not engage in any activity for which a license is required until your license has been properly renewed.

# PERSISTENT PROBLEMS IN THE PREPARATION OF PURCHASE CONTRACTS

By Miriam J. Baer  
Assistant Legal Counsel

Have you ever been in the middle of a dispute between a buyer and seller over the terms of their purchase contract? Although some disputes between buyer and seller are unavoidable, many of the questions that arise over the meaning of the purchase contract are the result of improper use or preparation of the contract form, and insufficient understanding of its terms. Therefore, it is important for every real estate agent involved in residential sales to understand the Offer to Purchase and Contract form, and to make sure that the buyers and sellers also understand its terms.

## Choosing the Right Form

Commission Rule A.0112 requires real estate licensees to use an offer to purchase form which contains the eighteen (18) separate provisions listed in the Rule. These include the names of the buyers and sellers, a legal description of the real property, a detailed description of any personal property being sold, details of the financial terms of the transaction, the criteria for determining the disposition of earnest money (including disputed deposits) and numerous other terms. Use of any form which does not include all the provisions required by Rule A.0112 can be the basis for disciplinary action.

The Commission strongly encourages its licensees to use the "Offer to Purchase and Contract" (Standard Form No. 2) jointly approved by the N.C. Association of REALTORS® and the N.C. Bar Association. This form includes all the required provisions and should not be confused with the "No. 2 Digest Publishing Company" form, which does not. An added benefit to Standard Form No. 2 is that it is accompanied by "Guidelines" which provide detailed instructions on its use. The Guidelines give step by step instructions on how to complete Standard Form No. 2 and are useful both as a teaching tool for new agents and as a review for more experienced real estate professionals.

Standard Form No. 2 is designed primarily for existing single family residential properties, but it can also be adapted to situations involving new construction by attaching a "New Construction Addendum" (Standard Form No. 2-A-3). This addendum should be referenced in Paragraph 6 of the Offer to Purchase and Contract by stating, "See attached New Construction Addendum."

Do not use Standard Form No. 2 as a substitute for any other type of contract - it is not an option form or a lease form, or an installment sale form. There are many forms available for these and other types of transactions. For more information on where to obtain standard real estate forms, contact the North Carolina Association of REALTORS®, the N.C. Bar Association, or your own attorney. Many printing companies also sell the forms in large quantities.

In specialized transactions where standard forms are not available, direct the parties to their own attorneys rather than attempting to modify the Offer to Purchase form or drafting a contract yourself. Agents who draft legal documents for clients or customers may be charged by the Commission and/or the State Bar with the unauthorized practice of law.

## Completing the Offer to Purchase Form

When completing offer to purchase forms,

1. Type or print clearly so that the contract is completely legible.
2. Fill in all the blank spaces. Write "N/A" or "none" in those spaces which are not applicable. This will prevent anyone from filling in blank sections later and thereby changing the meaning or terms of the contract.
3. Avoid jargon or abbreviations such as MLS abbreviations from property data sheets. They may be meaningless to one or both parties.
4. Initial and date all changes. This creates a chronological record of the negotiations between the parties including their offers and any counter-offers.
5. Transcribe the latest counter-offer onto a "clean" contract form when numerous changes on the form make it difficult to read. Preserve the original form for your records.
6. Review the whole contract with the parties, including the Standard Provisions.

## Persistent Problems

In the course of reviewing consumer complaints, the legal staff has noted a variety of ongoing mistakes that are commonly made in the preparation of Standard Form No. 2. A detailed discussion of these typical errors may be found in *Real Estate Bulletin*, Vol. 20, No. 3. The following five problems are among the most persistent and egregious.

### "Owner of Record"

Many agents improperly use the phrase "owner of record" when drafting the buyer's initial offer, because they do not know the identity of the property owner. Failure to include the actual name(s) of the seller(s) can result in the failure of the contract for lack of proper identification of the parties. Therefore, agents should always include the full names of the sellers on the offer to purchase form. The name(s) of the seller(s) can be easily obtained from the listing company with one telephone call.

### Real Property Description

Standard Form No. 2 includes a space for both a street address and a legal description. Be sure to fill in the legal description even though it may seem superfluous. Disputes can arise over the boundaries of the property to be conveyed when only a street address is included on the contract. The legal description need not be a full metes and bounds. Reference to a recorded plat or map (e.g. "lot 12, block 1, Greenacre subdivision, Book 2744, pg 190, Wake County Register of Deeds") or to the book and page number of the seller's recorded deed to the property is sufficient.

Note in the Guidelines the "caution" that a reference to a tax map alone is generally not an adequate legal description.

### Personal Property Description

Mistakes are also commonly made in the personal property section of the contract where you are to describe any personal property that remains with the property. The Guidelines provide some examples of typical personal property items which should be specifically noted if they are to be sold with the house, including curtains, free-standing fireplace tools and window air conditioners.

You should also note on the contract any fixture or item of real property that is NOT to be sold; e.g. ceiling fans, built-in appliances, towel racks and TV antennae. The best place to list them is in Paragraph 6 ("Other Provisions and Conditions").

When describing personal property and fixtures, be specific! By writing "18 cubic foot deluxe Frigidaire refrigerator/freezer", an unscrupulous seller would be prevented from removing his "deluxe" Frigidaire and leaving a 6 cubic foot "student" model in its place.

### "Right of First Refusal" Clauses

The phrase "72 hour right of first refusal" sometimes is included in the offer to purchase form when a buyer must sell his house before purchasing the seller's property. Use of this phrase is improper because it is not a sufficient expression of the parties' intentions, nor is it a legally correct usage of the phrase. Such language does not address such crucial issues as when the 72 hours begin, the obligation of the buyer during that time period, the status of the second offer during that same period, etc.

When a buyer must sell his own house before being obligated to purchase the seller's, the agent should instead include in Paragraph 6 the phrase, "See attached Contingent Sale Addendum" (Standard Form No. 2-A-2), and he should fill out and attach that addendum to the purchase contract. The addendum allows the seller to keep the property on the market while the buyer tries to sell his own property, and sets out the procedure to be followed should the seller receive another offer before the buyer has sold his own property.

### Commission Provisions in Purchase Contracts

Many agents continue to place provisions in the purchase contract relating to the payment of their commissions. Commission Rule A.0112(b), which has been in effect since 1988, prohibits agents from including a commission or other compensation provision in standard form purchase contracts. Agents who feel that they need additional protection with respect to the payment of their commissions should formalize their agreements with the necessary parties in a separate document. As with the preparation of any specialized legal document, the services of an attorney for assistance in drafting may be required.

### Proper Completion

Although the proper completion of Standard Form No. 2 may take a little extra time and effort at the outset of the transaction, it can save significant time, effort, and perhaps expense later. When a contract clearly sets forth the obligations of the parties and avoids confusing the improper language, smooth transactions are generally the rule, rather than the exception.



# 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.*

**LOUISE S. ALLEN (Troy)** - By Consent, the Commission revoked Ms. Allen's broker's license effective April 15, 1991. The Commission found that Ms. Allen had issued a check from her trust account which was returned unpaid due to insufficient funds, and that she was unable to produce complete and accurate records pertaining to her trust account when directed to do so by the Commission's representative.

**JAMES M. ALLRED (Sanford)** - By Consent, the Commission suspended Mr. Allred's salesman's license for five years effective June 1, 1991. Two years of the suspension are to be active and the remaining period stayed for a probationary term of three years on condition that he complete the Commission's Trust Account, Law, and Brokerage Operations courses. The Commission found that Mr. Allred had failed to deposit and maintain rents in a trust account and had failed to make his records of his handling and accounting of trust funds available for inspection by the Commission's representatives.

**JOSEPH ASKEW (Kinston)** - By Consent, the Commission suspended Mr. Askew's broker's license for one year effective June 1, 1991. The Commission then stayed its Order and placed Mr. Askew on probation for one year. The Commission found that Mr. Askew had made a false representation on his application for a North Carolina Auctioneer's license. Mr. Askew neither admitted nor denied any misconduct.

**THURSTON M. BEADLE (Raleigh)** - By Consent, the Commission revoked Mr. Beadle's broker's license effective March 6, 1991. The Commission found that Mr. Beadle had failed to account for funds received in a real estate transaction and had failed to produce records relating to such funds for inspection by the Commission's representatives.

**KITTY P. BECK (Raleigh)** - By Consent, the Commission revoked Ms. Beck's broker's license effective May 24, 1991. The Commission then granted a real estate salesman's license to her. The Commission found that Ms. Beck had pled guilty to the criminal offense of bank fraud.

**BECK REALTY COMPANY, INC. (Raleigh)** - By Consent, the Commission revoked the corporate real estate license of Beck Realty, Inc. effective May 24, 1991. The Commission found that the broker-in-charge and principal broker of this corporation had pled guilty to the

criminal offense of bank fraud.

**LESLIE D. BRANT (Carteret County)** - By Consent, the Commission suspended Mr. Brant's broker's license for one year effective June 1, 1991. The Commission then stayed its Order and placed Mr. Brant on probation for one year on condition that he complete the Commission's Trust Account Course. The Commission found that Mr. Brant had failed to maintain adequate ledgers, journal entries, deposit records and a running balance for funds received in a real estate transaction.

**JOAN L. BURROUGHS (Wadesboro)** - By Consent, the Commission suspended Ms. Burroughs' broker's license for two years effective July 1, 1991. At least six months of the suspension are to be active and the remaining period stayed for a probationary term of two years. The Commission found that Ms. Burroughs, as broker-in-charge of the real estate firm, used listing contracts and offer to purchase forms which did not comply with Commission rules. The Commission also found that she failed to maintain complete ledger cards for real estate transactions, failed to perform monthly reconciliations of ledgers, bank statements and journals, used an interest-bearing trust account without written authorization from the parties, and accumulated an overage of funds in her trust account, the ownership of which could not be identified by her records.

**BURROUGHS REALTY CORPORATION (Wadesboro)** - By Consent, the Commission suspended the corporate real estate license of Burroughs Realty Corporation for two years effective July 1, 1991. Six months of the suspension are to be active and the remaining period stayed for a probationary term of two years. The Commission found that the corporation had used listing contracts and offer to purchase forms which did not comply with Commission rules. The Commission also found that the corporation failed to maintain complete ledger cards for real estate transactions, failed to perform monthly reconciliations of ledgers, bank statements and journals, used an interest-bearing trust account without written authorization from the parties, and accumulated an overage of funds in its trust account, the ownership of which could not be identified by its records.

**WILLIAM H. CARTER (Charlotte)** - By Consent, the Commission reprimanded Mr. Carter effective May 1, 1991 for failing to inform a lender of his purchase of property which was subject to a "due on sale" clause. Mr. Carter neither admitted nor denied any misconduct.

**W.H. CARTER & COMPANY, INC. (Charlotte)** - By Consent, the Commission suspended the corporate real estate license of W.H. Carter & Company, Inc. for thirty days effective May 1, 1991. The

Commission then stayed its Order. The Commission found that the broker-in-charge and principal broker of the corporation had failed to notify a lender of his purchase of real estate which was subject to a "due on sale" clause. The corporation neither admitted nor denied any misconduct.

**MARY D. COKER (Sapphire Valley)** - By Consent, the Commission suspended Ms. Coker's broker's license for sixty days effective March 15, 1991. The Commission then stayed its Order for a probationary period of one year. The Commission found that Ms. Coker had allowed the closing of a real estate transaction on property encumbered by a deed of trust containing a "due on sale" clause without the knowledge or consent of the lender.

**FRANCES S. COOPER (Morehead City)** - By Consent, the Commission reprimanded Ms. Cooper effective July 1, 1991 for representing the heating system for a property as a heat pump when, in fact, the property was serviced by heat strips and a separate air conditioner. The Commission noted that Ms. Cooper reimbursed the buyers the cost of purchasing and installing a heat pump.

**JAMES C. COX (Chadbourn)** - By Consent, the Commission suspended Mr. Cox's broker's license for sixty days effective December 1, 1989. The Commission then stayed its Order and placed Mr. Cox on probation for one year. The Commission found that Mr. Cox had, as broker-in-charge of a real estate office, permitted the use of an offer to purchase form which did not comply with Commission rules.

**WILLIAM M. ECHOLS, JR. (Wilmington)** - By Consent, the Commission revoked Mr. Echols' broker's license effective August 1, 1991. The Commission found that Mr. Echols failed to maintain ledgers, running balances and other records relating to trust accounts used in connection with his property management activities. Mr. Echols neither admitted nor denied any misconduct.

**ECHOLS PROPERTY MANAGEMENT CORPORATION (Wilmington)** - By Consent, the Commission revoked the corporate real estate license of Echols Property Management Corporation effective August 1, 1991. The Commission found that the corporation had failed to maintain ledgers, running balances and other records relating to trust accounts used in connection with its property management activities. The corporation neither admitted nor denied any misconduct.

**PHILIP L. FLYNN (Fayetteville)** - By Consent, the Commission reprimanded Mr. Flynn effective June 15, 1991 for depositing rents collected on client properties with funds received from his personal rental properties. The Commission also found that he had failed to maintain individual transaction ledgers on proper-

ties which he managed and had used lease agreements which did not identify the bank in which tenant security deposits would be held.

**GEORGE GOODWIN, JR.** (Atlantic Beach) - By Consent, the Commission revoked Mr. Goodwin's broker's license effective October 1, 1991. The Commission found that Mr. Goodwin, while managing condominium units, had charged homeowners amounts in excess of the actual cost of equipment and services that he had procured on their behalf, and that he had failed to disclose the receipt of rents collected on behalf of homeowners. The Commission also found that he had failed to properly designate a trust account, had failed to reconcile bank statements, had failed to keep adequate trust account records, and had converted trust funds to his own use. Mr. Goodwin neither admitted nor denied any misconduct.

**ROBERT B. GUNTER** (Durham) - By Consent, the Commission suspended Mr. Gunter's broker's license for eighteen months effective May 15, 1991. Ninety days of the suspension are to be active and the remaining period stayed for a probationary term of fifteen months. The Commission found that Mr. Gunter had, as listing agent, failed to reveal to a seller that the offerors in an offer to purchase which he presented to the seller were his cousins and that he might potentially become involved in the development of the property. The Commission also found that he had deposited an earnest money deposit on the transaction into an interest-bearing trust account without any written authorization from the parties. Mr. Gunter neither admitted nor denied any misconduct.

**VERNON C. GUTHRIE, JR.** (Morehead City) - By Consent, the Commission suspended Mr. Guthrie's broker's license effective July 1, 1991. Thirty days of the suspension are to be active and the remaining period stayed for a probationary term of six months. The Commission found that Mr. Guthrie, in a transaction in which he was a purchaser of real estate, had disbursed a disputed earnest money deposit without the authorization of the seller. The Commission noted that Mr. Guthrie subsequently paid the earnest monthly deposit to the seller.

**ALEXANDER D. GUY, II** (Jacksonville) - By Consent, the Commission revoked Mr. Guy's broker's license effective May 1, 1991. The Commission then approved the issuance of a salesman's license to Mr. Guy no sooner than May 1, 1993. The Commission found that Mr. Guy had been convicted of a criminal offense involving moral turpitude which could reasonably affect his performance in the real estate business; namely, obtaining property by false pretenses.

**MARTI A. HAMPTON** (Raleigh) - By Consent, the Commission suspended Ms. Hampton's broker's license for six months effective July 1, 1991. Thirty

days of the suspension are to be active and the remaining period stayed for a probationary term of six months. The Commission found that Ms. Hampton, while licensed as a salesman, had engaged in property management activities without the knowledge of the supervising broker-in-charge.

**ERIC L. HOSKINS** (Greensboro) - By Consent, the Commission reprimanded Mr. Hoskins effective April 15, 1991 for failing to inform a purchaser prior to closing that a lot being purchased by the purchaser was not connected to city water and sewer. In a subsequent action, the Commission suspended Mr. Hoskins' broker's license for ninety days effective April 15, 1991 and required him to complete Commission-approved Brokerage Operations and Trust Account courses. In this case, the Commission found that Mr. Hoskins had failed to maintain and retain trust account records sufficient to verify the adequacy and proper use of the account and had failed to reconcile bank statements with the trust account journal.

**AMY V. HUDSON** (Chadbourn) - By Consent, the Commission suspended Ms. Hudson's salesman's license for sixty days effective December 1, 1989. The Commission then stayed its Order and placed Ms. Hudson on probation for one year. The Commission found that Ms. Hudson had used an offer to purchase form which did not comply with Commission rules.

**VIRGINIA S. JOINES** (Chapel Hill) - By Consent, the Commission reprimanded Ms. Joines effective April 8, 1991 for failing to disclose to a purchaser that the chimney on the property being purchased was separating from the house.

**JUNE M. KINNEY** (Lexington) - By Consent, the Commission reprimanded Ms. Kinney effective May 10, 1991 for failing as a broker-in-charge to properly supervise a salesman who did not communicate to a seller in a timely manner a buyer's request for a refund of his earnest money deposit.

**KINNEY REALTY, INC.** (Lexington) - By Consent, the Commission reprimanded the corporate real estate licensee Kinney Realty, Inc. effective May 10, 1991 for failing to communicate to a seller in a timely manner a buyer's request for a refund of his earnest money deposit.

**C. WAYNE KINSER** (Asheville) - By Consent, the Commission reprimanded Mr. Kinser effective July 15, 1991 for allowing, as a principal broker and broker-in-charge of a corporate real estate broker, unlicensed employees to solicit and obtain listings for the sale of time shares.

**ROBERT F. KNOWLES** (Raleigh) - By Consent, the Commission revoked Mr. Knowles' broker's license effective June 15, 1991. The Commission found that Mr. Knowles had failed to deposit and maintain a lease deposit in his trust account.

**RONNIE T. LOFTIS** (Lexington) - By Consent, the Commission reprimanded Mr. Loftis effective May 10, 1991 for failing to communicate to a seller in a timely manner a buyer's request for a refund of his earnest money deposit.

**GILBERT MacLEAN** (Burlington) - By Consent, the Commission suspended Mr. MacLean's broker's license for five years effective May 1, 1991. The Commission found that Mr. MacLean had caused purchase contracts to be submitted to a lender which did not accurately recite the sales price and earnest money deposits for the properties in an attempt to obtain for the purchasers loans in excess of the lender's customary loan-to-value policy. Mr. MacLean neither admitted nor denied any misconduct.

**JOYCE M. MADDALON** (Charlotte) - The Commission suspended Ms. Maddalon's broker's license for ninety days effective July 1, 1991. The Commission then stayed its Order. The Commission found that Ms. Maddalon had, as broker-in-charge, failed to maintain proper trust account records and had failed to maintain trust funds on deposit in her trust account, allowing them to be converted by another person. The Commission noted that Ms. Maddalon had restored to her trust account the funds in question.

**MADDALON UNLIMITED, INC.** (Charlotte) - The Commission revoked the corporate real estate license of Maddalon Unlimited, Inc. effective July 1, 1991. The Commission found that the corporation had failed to maintain proper trust account records, failed to maintain trust funds on deposit, and converted trust funds to the benefit of its shareholders.

**MICHAEL M. MARTIN** (Fayetteville) - By Consent, the Commission suspended Mr. Martin's salesman's license for eighteen months effective May 15, 1991. The Commission then stayed its Order and placed Mr. Martin on probation for one year. The Commission found that Mr. Martin had failed to deliver to the buyers a counter-offer made by a seller in a real estate transaction and failed to provide the lender with the purchaser's completed loan application, including a fully executed purchase contract.

**ALLEN W. MAY** (Calabash) - By Consent, the Commission revoked Mr. May's broker's license effective June 17, 1991. The Commission found that Mr. May had sold real estate by land sales contract without disclosing to the purchasers that the real estate was being used as collateral on loans, and had delivered general warranty deeds to real estate without noting that the property was encumbered. Mr. May neither admitted nor denied any misconduct.

**SEDBERRY B. NORTON** (Burlington) - By Consent, the Commission suspended Mr. Norton's broker's license for one year effective August 1, 1991. Six months of the suspension are to be active and the remaining period stayed for a proba-



tionary term of six months. The Commission found that Mr. Norton, while acting as selling agent in a transaction, failed to disclose to the sellers his intent to acquire rights in sales contracts and options from potential purchasers which he had procured.

MARION M. PEACE (Henderson) - By Consent, the Commission reprimanded Ms. Peace effective July 24, 1991 for informing a buyer and a surveyor that an easement across a lot being sold had been closed when, in fact, she did not have an adequate legal or factual basis to make the statement.

JANICE M. ROSENBERG (Raleigh) By Consent, the Commission suspended Ms. Rosenberg's salesman's license for six months effective July 1, 1991. Thirty days of the suspension are to be active and the remaining period stayed for a probationary term of six months. The Commission found that Ms. Rosenberg had, as a salesman, received compensation directly from parties other than her supervising broker-in-charge.

FREDERICK K. RUFFIN (Durham) - By Consent, the Commission revoked Mr. Ruffin's broker's license effective May 15, 1991. The Commission found that Mr. Ruffin, while managing real estate for others, had accepted rent subsidy payments from a Housing Authority after the tenant had vacated the property. The Commission also found that he had failed to deposit rents in a trust account, failed to maintain ledger sheets for the property which he managed, and failed to maintain a running balance on trust funds. Mr. Ruffin neither admitted nor denied any misconduct.

RUFFIN REALTY & INSURANCE, INC. (Durham) - By Consent, the Commission revoked the corporate real estate license of Ruffin Realty & Insurance, Inc. effective May 15, 1991. The Commission found that the corporation had failed to deposit rents in a trust account, failed to maintain ledger sheets for the property which it managed, and failed to maintain a running balance on trust funds. The corporation neither admitted nor denied any misconduct.

SEA SCAPE ASSOCIATES, LTD. (Kitty Hawk) - By Consent, the commission fined Sea Scape Associates, Ltd., co-developer of the time share project Sea Scape Beach and Golf Villas, \$2,000 effective May 14, 1991. The Commission found that the co-developer had conducted sales of its own time shares without first filing with the Commission a sworn designation of the broker who would supervise the sales operation at a branch office.

THEODORE STEVENS (Greensboro) - By Consent, the Commission suspended Mr. Steven's broker's license for thirty days effective June 12, 1991. The Commission found that Mr. Stevens, as broker-in-charge of a real estate office, failed to maintain and retain records sufficient to verify the adequacy and proper use of his trust account, including failure to reconcile bank statements and to record all deposits and withdrawals in the journal.

EFFIE A. THOMPSON (Greensboro) - By Consent, the Commission reprimanded Ms. Thompson effective April 15, 1991 for failing to inform the selling agent and/or purchaser prior to closing that the property being purchased was not connected to city water and sewer.

THOR-STONE, INC. (Raleigh) - By Consent, the Commission revoked the corporate real estate license of Thor-Stone, Inc. effective March 6, 1991. The Commission found that the corporation had failed to account for funds received from a purchaser in a real estate transaction and failed to produce records related to such funds to the Commission's representatives.

UNLIMITED REALTY OF CHARLOTTE, INC. (Charlotte) - The Commission revoked the corporate real estate license of Unlimited Realty of Charlotte, Inc. effective July 1, 1991. The Commission found that the corporation had failed to maintain proper trust account records, failed to maintain trust funds on deposit, and converted trust funds to the benefit of its shareholders.

BEULAH N. VERNON (Madison) - By Consent, the Commission reprimanded Ms. Vernon effective April 8, 1991 for presenting an offer to a seller without disclosing that the prospective purchaser was her employee.

GOLEY KEITH WEBSTER (Burlington) - By Consent, the Commission suspended Mr. Webster's broker's license for two years effective March 1, 1991. Six months of the suspension are to be active and the remaining period stayed for a probationary term of one year. The Commission found that Mr. Webster had caused purchase contracts to be submitted to a lender which did not accurately recite the sales price and earnest money deposits for the properties in an attempt to obtain for the purchasers loans in excess of the lender's customary loan to value policy. Mr. Webster neither admitted nor denied any misconduct.

JOSEPH R. WEST (Fayetteville) - By Consent, the Commission reprimanded Mr. West effective May 15, 1991 for failure, as a broker-in-charge, to supervise the activities of a salesman associated with his office.

WILLIAM S. WIGHTMAN, SR. (Waynesville) - By Consent, the Commission accepted the voluntary permanent surrender of Mr. Wightman's broker's license effective August 1, 1991, and dismissed without prejudice certain charges against him alleging that he had misrepresented to purchasers the availability of water to subdivision lots and had sold lots without a HUD registration when one was required. Mr. Wightman neither admitted nor denied any misconduct.

GLADYS F. WOODMAN (Southport) - By Consent, the Commission revoked Ms. Woodman's broker's license effective May 15, 1991. The Commission found that Ms. Woodman had failed to maintain proper trust account records sufficient to establish a clear audit trail, failed to account for and remit trust funds in her possession, and converted trust funds to her own use. Ms. Woodman neither admitted nor denied any misconduct.

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