



NORTH CAROLINA REAL ESTATE COMMISSION

Real Estate Bulletin

Volume 22

1991

Number 3

NEW COMMISSION MEMBERS

Governor James G. Martin has appointed Charles F. Biesecker of Lexington and William A. Smith, Jr., of Cary to the North Carolina Real Estate Commission for three-year terms expiring July 31, 1994, to succeed Elmer C. Jenkins and Patricia B. Casey, whose terms recently expired.



Charles F. Biesecker

A native of Davidson County, Mr. Biesecker is a former Winston-Salem police officer and commercial jet pilot.

Mr. Biesecker is both a developer and a licensed general contractor, and has been a real estate broker since 1971. He and his wife Amelia, also a broker, own and operate Piedmont Realty. They have two children.

Serving during the Korean War with

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William A. Smith, Jr.

Mr. Smith is an attorney. He was born in Washington D.C. and received his bachelor's degree at the Citadel and his J.D. degree at the University of Maryland School of Law.

Mr. Smith was decorated in the Korean and Vietnam Wars.

In 1970, Mr. Smith joined the Wake County Court System as an Assistant Solicitor in the District and Superior

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FISHER LEADS NATION'S REAL ESTATE COMMISSIONERS

North Carolina Real Estate Commission Executive Director **Phillip T. Fisher** was recently installed as President of the National Association of Real Estate License Law Officials (NARELLO) at the Association's October conference in Anchorage, Alaska. NARELLO is a multi-national organization of real estate licensing officials and administrators.



Phillip T. Fisher

Mr. Fisher is a graduate of the University of North Carolina at Chapel Hill. Prior to joining the Real Estate Commission in 1975, he was engaged in the real estate brokerage business in Kannapolis. He has served as Executive Director of the Commission since 1981.

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

BOGER REAPPOINTED TO COMMISSION



Commission Vice-Chairman **Gilbert L. Boger** has been reappointed by Governor Martin to the Real Estate Commission for a three-year term expiring July

31, 1994. Owner of Boger Real Estate and Boger Builders in Mocksville, Mr. Boger is a member of the Davie County Board of REALTORS® and the National Association of Master Appraisers.

Mr. Boger is a former State Senator and member of the N.C. House of Representatives, and has previously served as Chairman of the Real Estate Commission. □

POOLE HEADS NARELLO DISTRICT



Real Estate Commission Chairman **J. Edward Poole** has been elected Vice-President for the North Central District of the National Association of Real Estate License Law

Officials (NARELLO). As Vice-President, he will head the eight-state district extending from North Carolina through Pennsylvania.

Owner of Poole Real Estate and J. Edward Poole Appraisal Associates in Spring Lake, Mr. Poole is serving his third term on the Commission and is designated as the Commission's real estate appraiser member. □

COMMISSION ELECTS OFFICERS

At its November meeting, the Real Estate Commission elected J. Edward Poole as Chairman and Gilbert L. Boger as Vice-Chairman of the Commission.

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

1313 Navaho Drive
P.O. Box 17100
Raleigh, North Carolina 27619-7100
Phone 919/733-9580
James G. Martin, Governor

COMMISSION MEMBERS

J. Edward Poole Spring Lake
Chairman
Gilbert L. Boger Mocksville
Vice-Chairman
Charles F. Biesecker Lexington
Patrice P. Lewis Charlotte
Brantley T. Poole Raleigh
William A. Smith, Jr. Cary
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
July, 1991		
Brokers	96	53
Salesmen	343	206
August, 1991		
Brokers	68	44
Salesmen	224	136
September, 1991		
Brokers	66	66
Salesmen	308	249

COMMISSION STAFF UPDATE

The Real Estate Commission announces several changes due to promotions, transfers and the addition of two new employees to the staff.



Carrie D. Worthington has been promoted to the newly created position of Publications Coordinator. A graduate of the University of North Carolina - Wilmington, Car-

rie joined the Commission staff as Receptionist in 1979 and later transferred to the Records Section. In her new position, she will assist in writing and editing the Commission's publications, and will be responsible for the production and business affairs of the publications program. **Brenda H. Badger** will assume Carrie's responsibilities as Records Specialist and will continue to offer support to Senior Records Specialist **Naomi J. Cottle** in updating and maintaining licensee records and files.



Denise S. Manning has been employed as an Education Specialist in the Commission's Education and Licensing Division, and to assist the Appraisal Division. She at-

tended both Campbell University and North Carolina State University, and previously held positions with a private financial planning/investment firm and with the North Carolina Department of Human Resources. Denise succeeds **Renee P. Weaver** who transferred to the Records Section as an Assistant Records Specialist.



Teresa L. Whitaker has also joined the Commission's Records Section as an Assistant Records Specialist, filling a vacancy in the microfilm area created by the retire-

ment of Mildred Combs. A native of Aiken, South Carolina, Teresa has experience in microfilm technology and imaging gained through county government employment in South Carolina and, locally, at a bank and several other private businesses. In addition to her microfilming responsibilities, Teresa will assist in updating and maintaining licensee records.

CARTER NAMED INVESTIGATOR OF THE YEAR



Commission Investigator **Charles S. Carter** has been named Investigator of the Year by the National Association of Real Estate License Law Officials (NARELLO).

During his more than twenty-five years in law enforcement, Charles has completed over 4,000 hours of related training and has received NARELLO's Certified Real Estate Investigator designation.

He and his wife Janet reside in Sanford. □

Larry A. Outlaw, the Real Estate Commission's Director of Real Estate Education and Licensing, is currently serving as Chairman of the Course Review Task Force of the Appraiser Qualifications Board (AQB) of The Appraisal Foundation. The task force consists of seven prominent appraisal educators, practitioners and regulators and is charged with developing specific policies, procedures and criteria for the evaluation of appraisal courses by the AQB. This program will allow national and regional providers of appraisal education to obtain, on a voluntary basis, AQB approval of their courses... Commission Trust Account Auditors **Emmet R. Wood** and **Christopher B. Smith** each recently received the designation "Certified Fraud Examiner" from the National Association of Certified Fraud Examiners...Director of Appraiser Licensing and Certification **James E. Poole, Jr.**, was elected Interim Director of the [National] Association of Appraiser Regulatory Officials...Several Commission staff members have made appearances before various real estate industry and related groups since the last issue of the *Bulletin*. **James E. Poole, Jr.**, Director of Appraiser Licensing and Certification, addressed the Eastern North Carolina Chapter of the Appraisal Institute, the North Carolina Chapter of the National Association of Master Appraisers, and the Association of State Highway Transportation Officials...Appraiser Education and Examination Officer **Earl H. Grubbs** participated in an instructor workshop conducted by the North Carolina Real Estate Educators Association...Examination and Licensing Officer **Ann R. Britt** demonstrated the Commission's computerized examination program at the annual conference

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NORTH CAROLINA REAL ESTATE APPRAISAL BOARD NAMED

Since July 1, decisions regarding the licensure, certification and regulation of North Carolina's more than 2,300 state-licensed and state-certified real estate appraisers have been made by the new North Carolina Real Estate Appraisal Board.

The seven-member Appraisal Board makes all determinations concerning the competency and character of applicants for appraiser licenses and certificates. The Board also considers complaints made against state-licensed and state-certified appraisers, including determinations as to whether a hearing should be held. If the Board orders a hearing, it will conduct the hearing and render decisions as to what, if any, disciplinary sanctions are to be imposed against the appraiser for violations of the Appraiser Act and/or rules. The Board's other duties and responsibilities include approving the content of appraisal pre-licensing/pre-certification and continuing education courses and performing related functions.



Left to right, Chief Justice Exum, Mr. Faircloth, Vice-Chairman Byrd, Mr. Brown, Chairman Keith, Mr. Robinson, and Mr. Outlaw.

Membership on the Appraisal Board is by appointment of the Governor and the General Assembly. The members of the Appraisal Board who have thus far been appointed are **William G. Brown, Sr., Robert L. Byrd, Jr., Henry E. Faircloth, Tom J. Keith, Dana E. Outlaw and John P. Robinson, Jr.** A ceremony was conducted in the offices of the Real Estate Commission at which The Honorable James G. Exum, Jr., Chief Justice of the North Carolina Supreme Court, administered the oath of office to the new members.

The N.C. Real Estate Commission will provide administrative and technical support to the Board. Therefore, all correspondence and communications should be directed to the N.C. Real Estate Appraisal Board at the Real Estate Commission's office, P.O. Box 17100, 1313 Navaho Drive, Raleigh, NC 27619-7100 (Phone 919/733-9580, Attention: Appraisal Division). □

MONTHLY TRUST ACCOUNT SHORT COURSE IN RALEIGH

DATES

December 10
January 14
February 11
March 10

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 Division. 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. □

BIESECKER

(Continued from page 1)

active duty in both the United States Air Force and United States Marine Corps. Mr. Biesecker is a member of several Veterans' groups.

He has served as Chairman and Finance Chairman of the Lexington City Schools. A Mason and a Shriner, Mr. Biesecker was founder of the Davidson County Homebuilders' Association, of which he is still a member, and is a member and Past-President of the Lexington Board of REALTORS®. □

SMITH

(Continued from page 1)

Courts, a position he held until 1972 when he entered private practice.

Active in numerous civic and political organizations, including the Cary Chamber of Commerce, Mr. Smith is a Past-Chairman of the Wake County Republican Party. His professional affiliations include membership in the Wake County Bar Association, Wake County Real Property Lawyers Association, and the N.C. Bar Association and its Real Property and Probate Sections.

Mr. Smith and his wife, the former Jean Pettit, have two grown daughters. □

COMMISSION STAFF UPDATE

(Continued from page 2)

of the Council on Licensure, Enforcement and Regulation (CLEAR). Dr. Britt's demonstration explored all aspects of the in-house examination program which, since its implementation in 1983, has received wide acclaim...Special Deputy Attorney General **Thomas R. Miller**, the Commission's Legal Counsel, gave a speech entitled, "The Top Ten Complaints," at the North Carolina Association of REALTORS® Convention in Asheville...Deputy Legal Counsel **Blackwell M. Brogden, Jr.**, appeared before the Burke County Board of REALTORS® and discussed agency disclosure, contract law and related topics...**Miriam J. Baer**, Assistant Legal Counsel, addressed the Union County Board of REALTORS®, participated in the Region Seven Regional REALTOR® Rally, spoke in Durham at the Sales and Marketing Council of the Homebuilders Association and addressed the Pamlico County Board of REALTORS®...and **Anita R. Burt**, Consumer Protection Officer, appeared before the Elizabeth City Board of REALTORS® to discuss North Carolina's Real Estate License Laws and Commission Rules. (Individuals and groups requesting a speaker from the Real Estate Commission are reminded that a "Speaker Request Form" is available from the Commission Office.) □

PROPER USE OF FOR SALE SIGNS

by Miriam J. Baer
Assistant Legal Counsel

"For Sale" signs are important tools in marketing property and are used in most real estate transactions. As a result, it is especially important that real estate licensees know how to use "For Sale" signs properly and legally. The following guidelines may assist licensees in the proper use of "For Sale" signs.

Blind Ads

Because the Real Estate Commission Rules prohibit blind ads, a "For Sale" sign used by a broker or salesman to assist in the sale of property for others must disclose the fact that the property is being offered for sale through a real estate licensee. Commission Rule A.0105 states that

a broker or salesman shall not advertise the sale...of real estate, for another or others, in a manner indicating the offer to sell...is being made by the broker or salesman's principal. Every such advertisement shall clearly indicate that it is the advertisement of a broker or brokerage firm and shall not be confined to the publication of only a post office box number, telephone number or street address.

In other words, this rule prohibits real estate salesmen and brokers from advertising property in such a way that it appears that the property is being offered for sale directly by the property owner. Instead, any real estate ad, including "For Sale" signs, must clearly reflect the licensee's involvement in the sale.

In addition, when property is offered for sale by a licensed **salesman**, the sign must state the brokerage firm with which the salesman is associated. A sign which reads, "For Sale, ABC Realty, Contact John Doe, salesman, at 555-1111" satisfies the requirements of the rule.

Owner's Permission

Real estate licensees must obtain permission from property owners before placing any signs on their property. Normally, the property owner will, in the listing contract, either grant or deny permission to place a sign on the property. If the property has not been listed for sale, licensees must be especially careful to obtain the owner's permission before placing a sign on the property. If permission is not granted, either in the listing contract or by a separate agreement, no sign is allowed.

Property Not For Sale

Clearly, a real estate licensee should never place a sign on property which indicates that it is for sale when it is not. Licensees sometimes place "For Sale" signs on property hoping to find an interested purchaser, and then introduce the purchaser to the owner in the hope that the owner will agree to sell the property. This conduct, however, is deemed both a misrepresentation and improper conduct under the Real Estate License Law.

Similarly, a licensee may not place **directional signs** (signs which use arrows or other means of indicating the location of the property which is for sale) or other signs on property without the permission of the owner of such property.

State law also prohibits placement of private signs on a right-of-way, median or other property belonging to the state highway system. In addition, licensees should first obtain permission from their local government before placing signs on city street right-of-ways, even if the local government does not prohibit signs on its property. Furthermore, local governments may have ordinances which limit the placement of "For Sale" signs anywhere other than on the owners' property, or which otherwise limit the size or placement of signs.

"SOLD" Riders

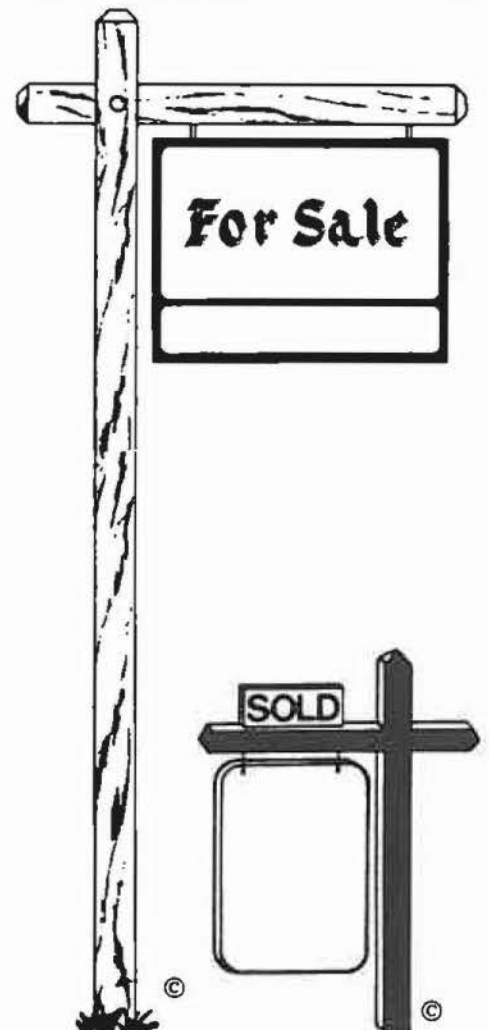
Many licensees customarily place a "SOLD" rider on their "For Sale" signs at the time they secure a purchase contract signed by both the buyer and seller. Courts in other states have ruled that the word "sold" may be a misrepresentation because it implies that the transaction has been completed, when in fact, only a contract exists. Although the North Carolina courts have not addressed this issue, the Real Estate Commission recommends that licensees use riders which state "Under Contract," "Sale Pending," or "Contract Pending" instead of "Sold" riders. This will avoid any accusation of misleading or deceiving the public. Once the transaction has been closed, a "Sold" rider may then be placed on the "For Sale" sign.

Property Already Sold

Some licensees have been known to place "For Sale" signs on property when that property has already been sold. This occurs primarily in the area of new con-

struction, where a residential property is being built pursuant to a contract with a known purchaser. In these cases, the property is not actually for sale at all; it is either sold, or a contract is pending. The sign is used to lure would-be purchasers to the property, and then to convince them to hire the builder or to buy another one of the builder's properties. In such circumstances, the use of a "For Sale" sign is misleading and constitutes a misrepresentation in violation of the Real Estate License Law. Licensees should instead use a "For Sale" sign with a "Contract Pending" or "SOLD" rider on it, depending upon whether the property is under contract or the transaction has already closed.

Careful attention to the above guidelines before, during and after any real estate transaction will help ensure the proper use of "For Sale" signs in compliance with the License Law and Commission Rules. □



“MONEY LAUNDERING” AND REAL ESTATE TRANSACTIONS

**By Frank D. Whitney
Assistant United States Attorney
for the
Western District of North Carolina**

“BUT THE LOAN OFFICER SAID TO DO IT THAT WAY!”

**by Blackwell M. Brogden, Jr.
Deputy Legal Counsel**

On September 14, a Charlotte real estate broker pleaded guilty in United States District Court to two felony counts of mishandling large amounts of cash in violation of federal currency transaction reporting requirements, and forfeited \$180,000 to the United States. The cash was proceeds of cocaine trafficking and illegal gambling.

This conviction illustrates the shift in the “war on drugs” from the streets and into the business and finance community, where in the Money Laundering Control Act of 1986, Congress criminalized the handling of “dirty money” as well as the distribution of drugs. The intent of the Act is to prevent drug traffickers from laundering their ill-gotten gains into legitimate assets so that they are unable to spend their illegal profits; thus, the profit incentive of drug trafficking is diminished or even eliminated.

There are two domestic money laundering sections in the United States Code. Under Section 1956 of Title 18, persons are subject to a twenty-year prison sentence if they know that property (currency, securities, real estate, etc.) is the proceeds of unlawful activity and the property is, in fact, the proceeds of certain “specified unlawful activities” (fraud, Control Substance Act crimes, racketeering, gambling, etc.), and they either (1) promote the conduct of a specified unlawful activity; (2) engage or attempt to engage in tax evasion or tax fraud; (3) conceal the nature, location, source, ownership, or control of the property; or (4) avoid the applicable transaction reporting requirements.

And under Section 1957 of Title 18, persons may face a maximum ten-year prison sentence if they merely spend or attempt to spend in a “monetary transaction” more than \$10,000 in currency or other monetary instrument (personal checks, investment securities, etc.) knowing that the property is “criminally derived”; i.e., was obtained from a criminal offense.

In addition to the two money laundering crimes previously described, real estate agents should also be aware that Congress has enacted “currency reporting requirements” requiring that the IRS

be notified where \$10,000 or more in currency is used in a transaction. It was these crimes to which the Charlotte real estate broker pleaded guilty. Presently, two forms of federal domestic reporting requirements exist: The *CTR* which is filed by a bank or similar depository institution when \$10,000 in cash is deposited in the bank; and *Form 8300* which must be filed by a trade or business (including real estate agencies and closing attorneys) when \$10,000 or more in cash is transferred or exchanged in a transaction or a series of related transactions. [NOTE: There is also a proposal pending before the IRS which would extend the reporting requirements to include transactions involving cashiers checks and money orders.]

As the Charlotte verdict illustrates, real estate brokers and salespersons must be cautious as to the source of funds used to purchase houses. If they do not, they may risk not only losing their real estate licenses but also serving time in a federal institution without chance of parole. □

When I was an Assistant District Attorney, I prosecuted a number of criminals who relied upon what we sometimes referred to as the “some other dude” defense. That is, they blamed someone else for the crime that they had, in fact, committed. Ironically, as an attorney for the Real Estate Commission, I hear that same feeble excuse used by real estate agents accused of loan fraud who say, “But the loan officer said to do it that way.”

In the “slow” real estate market that agents now find themselves, it is perhaps especially tempting for them to try to “make deals work” by encouraging purchasers to make false or misleading statements in their sales contracts and loan applications concerning the amount of their earnest money deposits and down payments. The agents then compound the misrepresentation by falsely stating that they are holding these amounts of earnest money and down payments in their trust accounts, or they conceal the fact that they have themselves temporarily “loaned” funds to the purchaser.

Real estate agents should be aware that it is a federal crime for anyone to make a false statement to acquire credit under a loan program which is either federally-insured or funded or from a federally-related institution. Likewise, although North Carolina does not have a specific

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PUBLICATIONS ORDER FORM

Publication	No. Copies Requested
“Questions and Answers on: Tenant Security Deposits” (Free Brochure) <i>Also available in bulk to property managers to distribute to tenants and landlords. (Orders of more than 100 copies require special consideration.)</i>	_____
“A Buyer’s Guide to Vacation Real Estate in N.C.” (Free 28-page Booklet) <i>Also available in bulk to coastal and western N.C. real estate firms to distribute to clients and customers. (Orders of more than 50 copies require special consideration.)</i>	_____

Firm Name _____ Phone _____
 Street Address (NOT P.O. BOX) _____ City _____ State _____ Zip _____

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

LOAN ASSUMPTION AND BROKER LIABILITY

By Blackwell M. Brogden, Jr.
Deputy Legal Counsel

Since real estate being offered for sale is often encumbered by a lien (usually in the form of a deed of trust or mortgage securing a loan), it is important for real estate agents to be aware of the responsibilities and liabilities of the parties in transactions where these encumbrances will not be paid off at closing.

The Real Estate Commission has discovered two major areas of concern with regard to these transactions: (1) Misunderstandings by the parties over the meaning of terms used in such purchases; and (2) concealment from lien holders of the true facts of the transactions by the parties and the real estate agents.

"Assumption" vs. "Subject To"

According to the North Carolina Court of Appeals, "...the difference between a sale of real property with an **assumption** (emphasis added) of the in-

debtedness and a sale **subject to** (emphasis added) an indebtedness is well enough known in this state..." While this may be true of experienced homebuyers and other people with special real estate knowledge, the precise legal meaning of these terms may escape the average consumer.

The term "assumption," as defined by *Black's Law Dictionary*, is used when a buyer incurs personal liability for an existing deed of trust; as contrasted to the term "taking subject to" when the buyer incurs no liability to repay the loan. **But whether the loan is "assumed" by the purchaser, or the property is taken "subject to" an existing loan, the seller continues to remain personally liable to repay the loan unless and until released by the lender** (usually by a separate "release of liability" document). And if the seller previously assumed the loan

from someone else, he may also remain liable to the previous owner.

The agent should be aware of these consequences and not contribute to any misunderstanding between the parties by the improper use or application of these terms. In fact, when the use of existing financing is being considered, the agent would be well-advised to recommend that the seller consult his or her attorney for a complete assessment of the risks involved in such transactions.

Agent Disclosures

Because of constantly changing interest rates and the need to know the financial standing and ability of their borrowers, the current trend among lenders is to regulate assumption and transfer rights by inserting "due on sale" clauses in their deeds of trust. In doing so, they limit the ability of borrowers to transfer their property without their consent.

However, the Commission has discovered an alarming number of incidents of real estate brokers and salesmen counseling, procuring or assisting sellers and purchasers in arranging a transfer of property in violation of these due on sale clauses. Licensees should be aware that to conceal material facts from the lender or to assist others in such actions will not only subject them to disciplinary action by the Commission but also civil liability. □

UNCLAIMED PROPERTY

by L. Ted Gayle
Director of Audits & Investigations

What do you as a real estate agent do when you have "unclaimed property" - a term used to describe the monies that are left in an escrow account for the account of a party or parties you cannot locate? Perhaps the situation occurred because tenants moved out and left no forwarding address for you to send their security deposit refund, or the recipient of a trust account check never cashed it. Maybe a potential buyer gave you an earnest money deposit on one of your listings and was never heard from again, leaving you or your real estate company with the money in the escrow account. Sometimes these funds are of unexplained origin, but they all constitute "unclaimed property," and must be properly disbursed.

You or your real estate company should never transfer these unclaimed deposits and uncashed trust checks from the escrow account to another business or personal account. This would constitute a violation of both the Real Estate License Law which prohibits paying trust monies to the wrong parties, and the North Carolina Escheat Laws, which impose substantial fines for violation. Because the rightful claimants are unavailable, these funds must be remit-

ted to the State of North Carolina.

Although the general rule is that **all "unclaimed property" must be remitted to the State no later than five years after the determination is made that the owner can't be located**, remittance may be made earlier if the real estate company has made every possible attempt to locate the owner, including sending correspondence to the person's last known address.

The real estate company is relieved of any liability for having remitted unclaimed property to the State. If someone wishes to claim it, the claim must be made to the State, and rightful ownership must be established.

Escheat laws also apply to accounts other than escrow accounts. To learn more about your responsibilities regarding "unclaimed property" and the Escheat Law, including how to remit funds and where to obtain the proper forms, contact:

Department of State Treasurer
Escheat and Unclaimed
Property Program
325 North Salisbury Street
Raleigh, North Carolina 27602
(919) 733-6876 □

LOAN OFFICER

(Continued from page 5)

statute aimed solely at loan applications, misrepresenting facts in order to obtain credit usually constitutes the criminal offense of "obtaining property by false pretenses." These offenses are felonies which will likely result in imprisonment and even loss of citizenship.

Furthermore, the making of false statements to lenders as well as any other misrepresentation and/or omission of material facts is strictly prohibited under the North Carolina Real Estate License Law and can result in disciplinary action by the Real Estate Commission.

Licensees are reminded to exercise common sense and sound judgment when assisting purchasers in arranging financing for their real estate transactions. Don't put your license or your freedom in jeopardy!

"But the loan officer said to do it that way" is not a valid excuse. □

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.

SHARLENE F. ALLEN (Greensboro) - By Consent, the Commission suspended Ms. Allen's broker's license for eighteen months effective March 7, 1991. Six months of the suspension are to be active and the remaining period stayed for a probationary term of twelve months on condition that she complete the Commission's Trust Account Course. The Commission found that Ms. Allen, while providing property management services, had failed to account for or remit monies coming into her possession which belonged to a property owner. The Commission noted that Ms. Allen had restored to her trust account the funds in question.

BETTY CLAYTON (Asheville) - By Consent, the Commission reprimanded Ms. Clayton effective August 12, 1991 for failing to actively and personally supervise a licensed salesman during a three-month vacation when her only contact with the salesman was by telephone.

W. RUSSELL GAY (Raleigh) - The Commission suspended Mr. Gay's broker's license for one year effective September 1, 1991. The Commission then stayed its Order and placed Mr. Gay on probation for one year. The Commission found that Mr. Gay had engaged in improper conduct and had endangered the public interest by failing to ensure that a licensee associated with his firm properly disclosed all known material facts to all parties in a real estate transaction.

JEAN P. GESCHIEDLER (Murphy) - By Consent, the Commission suspended Ms. Gescheidler's broker's license for six months effective August 15, 1991. Two months of the suspension are to be active and the remaining period stayed for a probationary term of four months. The Commission found that Ms. Gescheidler had made a negligent misrepresentation in stating that a well was located on a specific lot when, in fact, it was located on an adjacent lot. Ms. Gescheidler also incorrectly identified the corner of the lot being sold.

RONALD E. HARLEY (Aiken, SC) - The Commission revoked Mr. Harley's broker's license effective August 1, 1991. The Commission found that Mr. Harley had engaged in improper and dishonest conduct by commingling, converting,

and misapplying the funds of others received in real estate transactions in South Carolina which resulted in the revocation of his South Carolina real estate broker's license.

JERRY A. HIESTER (Cary) - By Consent, the Commission suspended Mr. Hiester's broker's license for twelve months effective October 5, 1991. One month of the suspension is to be active and the remaining period stayed for a probationary term of eleven months. The Commission found that Mr. Hiester had prepared an offer to purchase and contract which did not comply with Commission rules and had prepared an addendum which constituted the drafting of a legal instrument and, therefore, the unauthorized practice of law.

WILLIAM P. JONES (Charlotte) - By Consent, the Commission suspended Mr. Jones' salesman's license for one month effective September 1, 1991. The Commission found that Mr. Jones had misrepresented the boundary line of a lot offered for sale. Mr. Jones neither admitted nor denied any misconduct.

JOSEPH D. KAZNOWSKI (Cary) - By Consent, the Commission reprimanded Mr. Kaznowski effective September 5, 1991 for acting as a broker after his real estate license had expired.

BRENDA D. MCELREATH (Asheville) - By Consent, the Commission reprimanded Ms. McElreath effective August 12, 1991 for acting as a real estate salesman without being actively and personally supervised by her broker-in-charge during the broker's three-month vacation when her broker-in-charge was available only by telephone.

OLGA R. MILLER (Wilmington) - By Consent, the Commission suspended Ms. Miller's broker's license for one year effective September 1, 1991. The Commission found that Ms. Miller, as broker-in-charge, had failed to actively and personally supervise a salesman who delivered condominium down payments to an unlicensed partner in the real estate firm. The partner spent the funds required to be deposited into a trust account and could not return these funds to purchasers who were entitled to same.

C. MILLER PROPERTIES, INC. (Hickory) - By Consent, the Commission suspended the corporate real estate broker's license of C. Miller Properties, Inc. for one year effective August 7, 1991. The Commission then stayed its Order and placed the corporation on probation for one year. The Commission found that the corporation had failed to maintain a separate escrow or trust account for rents received on properties that it

managed for others; had commingled rent receipts; and had failed to maintain ledgers and running balances, and to make monthly reconciliations. The Commission noted that the corporation had brought its accounting procedures into compliance with the license law and rules and that no money had been lost.

ROBERT C. MILLER (Hickory) - By Consent, the Commission suspended Mr. Miller's broker's license for two years effective September 1, 1991. Eight 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. Miller, as principal broker and broker-in-charge of a real estate corporation, had failed to maintain a separate escrow or trust account for rents collected on properties that it managed for others; had allowed the corporation to commingle rent receipts; and had failed to maintain ledgers and running balances, and to make monthly reconciliations. The Commission also found that Mr. Miller, in a transaction on his own account, had paid brokerage fees to an unlicensed person.

JOSEPH G. MONGOVIS (Asheville) - The Commission suspended Mr. Mongovis' broker's license for ninety days effective October 1, 1991. The Commission then stayed its Order and placed Mr. Mongovis on probation for one year. The Commission found that Mr. Mongovis, in selling his own property, had negligently misrepresented the location of boundary lines and corners of a lot offered for sale.

ROBERT S. NEAL (Chapel Hill) - By Consent, the Commission suspended Mr. Neal's broker's license for six months effective September 1, 1991. Thirty days of the suspension were made active and the remaining period stayed for a probationary term of two years on condition that he complete the Commission's Trust Account Course. The Commission found that Mr. Neal had not properly maintained trust account records at the office where he was broker-in-charge; had placed client trust funds in an interest-bearing account without proper written authority; had maintained no transaction ledgers; and had not maintained a running balance of trust funds or reconciled his record of trust funds with bank statements.

JOHN C. OATFIELD (Raleigh) - The Commission suspended Mr. Oatfield's broker's license for six months effective September 1, 1991. The Commission then suspended its Order and placed Mr. Oatfield on probation for six months.

(Continued on page 8)

ANSWERLINE

"LET'S HAVE A RAFFLE"

by Stephen L. Fussell
Information Officer

- Q. As the listing agent for a residential property, I have tried to attract a buyer by utilizing every marketing tool available, including MLS entry, newspaper and magazine ads, open houses, circulation of flyers to all agents in the area, and an office tour. Nothing has worked. My client, the seller, has suggested that we have a raffle where his property would be appraised, raffle tickets would be sold, the winning ticket-holder would receive the property, and the seller would receive the proceeds equal to the appraised value. Is this legal? Would it make a difference if we were to give any excess proceeds to a local charity?
- A. **No. Under North Carolina Law [G.S. 14-309.15(d)] "No real property may be offered as a prize in a raffle." The raffle would still be unlawful even if you were to give some or all of the proceeds to charity.** ☐

CORRECTION

In the last issue of the Bulletin, the article concerning the new reciprocal licensing agreement between North Carolina and Georgia listed an incorrect telephone number for the Georgia Real Estate Commission. The correct number is 404/656-3916.



Happy Holidays!



ON THE INSIDE...

New Commission Members
Appraisal Board Named
Proper Use of For Sale Signs
"Money Laundering"
Loan Assumption and
Broker Liability
Unclaimed Property
... And More

DISCIPLINARY ACTION

(Continued from page 7)

The Commission found that Mr. Oatfield had failed to disclose the contents of an inspection report to buyers and had advised the buyers that all necessary repairs had been made when, in fact, additional repairs were necessary.

MARGARET B. SCOTT (Nags Head) - By Consent, the Commission suspended Ms. Scott's broker's license for thirty days effective October 15, 1991. The Commission then suspended its Order and placed Ms. Scott on probation for thirty days. The Commission found that Ms. Scott had included a commission provision in an offer to purchase and contract, and that she had subsequently involved the buyers and sellers in a dispute with another broker over a payment of a brokerage commission.

DEBORAH A. SHABAZZ (Greensboro) - By Consent, the Commission suspended Ms. Shabazz's broker's license for eighteen months effective August 15, 1991. Six months of the suspension are to be active and the remaining period stayed for a probationary term of twelve months. The Commission found that Ms. Shabazz had negligently misrepresented the identity of the seller in a real estate transaction, and had failed to deposit the funds of others into a trust or escrow account.

JANICE L. STEVENS (Wilmington) - By Consent, the Commission suspended Ms. Stevens' salesman's license for one year effective September 15, 1991. Sixty days of the suspension are to be active and the remaining period stayed for a probationary term of one year. The Commission found that Ms. Stevens, while under the supervision of a broker-in-charge, had allowed her real estate activities to be supervised by an unlicensed person. In a separate transaction, the Commis-

sion found that Ms. Stevens, while licensed as a real estate salesman, had received a real estate commission from a person other than her broker-in-charge.

KENNETH W. TEAGUE (Graham) - By Consent, the Commission suspended Mr. Teague's broker's license for thirty days effective October 15, 1991. The Commission then suspended its Order and placed Mr. Teague on probation for one year on condition that he complete the Commission's Trust Account Course. The Commission found that Mr. Teague had failed to maintain running balances for his escrow account; had failed to maintain separate transaction ledgers; and had used a contract form in conjunction with the auction sale of real estate which did not comply with Commission rules.

ROBERT F. WALKER (Carolina Beach) - By Consent, the Commission suspended Mr. Walker's broker's license for one year effective January 1, 1992. Two months of the suspension are to be active and the remaining period stayed for a probationary term of ten months. The Commission found that Mr. Walker, as a partner in a construction firm, had entered into a contract to construct a residence when neither he nor his firm had the required contractor's license.

JAMES D. WAGONER (Sneads Ferry) - By Consent, the Commission revoked Mr. Wagoner's broker's license effective August 15, 1991. The Commission found that Mr. Wagoner had failed to maintain adequate and accurate trust account and other records relating to his property management activities and trust account, and had represented to an owner for whom he managed property that he had received a tenant security deposit when, in fact, he had not. ☐

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