



NORTH CAROLINA REAL ESTATE COMMISSION **Real Estate Bulletin**

Volume 26

Fall 1995

Number 3

Governor appoints two new members to Real Estate Commission

**Billie J. Mercer and Sang J. Hamilton, Sr., succeed
J. Edward Poole and James K. Polk.**

Governor James B. Hunt, Jr., recently appointed two members to the North Carolina Real Estate Commission for terms expiring July 31, 1998. The Honorable Sarah Parker, Associate Justice of the North Carolina Supreme Court, administered the Oath of Office to the new members in separate ceremonies at the Commission's office in Raleigh.



The swearing-in ceremony for **Billie J. Mercer** was held on September 6.

Mrs. Mercer graduated from UNC-Wilmington with a BA in history. She taught in the North Carolina public school system from 1975 - 1978.

She is also a former real estate instructor, having taught "Principles of Real Estate" and "Brokerage Operations" courses, after being licensed as a real estate broker in 1979.

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The swearing-in ceremony for **Sang J. Hamilton, Sr.**, was held on October 4.

A public member of the Commission, Mr. Hamilton graduated from Roanoke-Chowan Community College where he was certified in police science.

Since 1966, he has been employed at Newport News Shipbuilding in Newport News, Virginia. He is a product planner in the Construction Production Planning/Control Department.

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Commission elects officers

**Terms commenced August 1
for Commission's new
Chairman and Vice-Chairman.**

At its July meeting, the Real Estate Commission elected Raymond A. "Buddy" Bass, Jr., to be its Chairman and John D. Bridgeman to be Vice-Chairman for 1995 - 1996.



**Raymond A. Bass, Jr.
Chairman**



**John D. Bridgeman
Vice-Chairman**

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REAL ESTATE BULLETIN

Published quarterly as a service to real estate licensees to promote a better understanding of the Real Estate License Law and Rules, 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 B. Hunt, Jr., Governor

COMMISSION MEMBERS

Raymond A. Bass, Jr. Fayetteville
Chairman
John D. Bridgeman Gastonia
Vice-Chairman
Sang J. Hamilton, Sr. Winton
Mona S. Hill Pinehurst
Billie J. Mercer Wilson
Wanda J. Proffitt Burnsville
J. Kemp Sherron, III Raleigh

Phillip T. Fisher
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Blackwell M. Brogden, Jr. Chief Dep. Lgl.
Counsel
Miriam J. Baer Dep. Lgl. Counsel
Marilyn E. Tomei Asst. Lgl. Counsel
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Rebecca A. Sabel Information Officer

Editor - in - Chief

Phillip T. Fisher

Editor

Carrie D. Worthington

EXAM RESULTS

	Passed	Failed
June 1995		
Brokers	116	87
Salesmen	471	351
July 1995		
Brokers	68	55
Salesmen	302	274
August 1995		
Brokers	66	39
Salesmen	281	224

Commission Staff Update

The following Commission staff members have made appearances before various real estate industry and related groups since the last issue of the *Bulletin*. Special Deputy Attorney General **Thomas R. Miller** discussed real estate agency and related topics when he addressed the Chapel Hill Board of REALTORS®...Chief Deputy Legal Counsel **Blackwell M. Brogden, Jr.**, and Auditor/Investigator **Emmet R. Wood** addressed the Property Management Division of the

North Carolina Association of REALTORS® at a meeting in Greensboro. Their presentation included a discussion of property management trust accounts and other property management issues...Assistant Legal Counsel **Marilyn E. Tomei**, at a meeting of the Asheville Board of REALTORS®, delivered a speech entitled, "Hot Topics in Agency."...Consumer Protection Officer **Stephen L. Fussell** was at the Monthly Property Management Meeting of the Fayetteville

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REGISTRATION FORM

for

BASIC TRUST ACCOUNT PROCEDURES COURSE

MONTHLY - RALEIGH

Course will comply with Commission Rule Section 58 A.1705 Attendance and Participation Requirements for Continuing Education. **Four (4) hours continuing education elective credit will be awarded for completion of the course.** The course will begin at 1:00 P. M. and end at 5:00 P. M.

The course is intended for brokers and trust account bookkeepers. Salesmen will be admitted on a space available basis. Each session is limited to 40 participants, scheduled according to date received.

Complete this form (make copies for additional persons) and mail with a check for \$35 tuition fee to be received by the Commission no later than 7 working days prior to date of preferred session. **Walk-ins will be accepted on a space available basis only.**

- ☐ December 12
☐ February 13
☐ April 8

- ☐ January 9
☐ March 12
☐ May 14

Name _____ Phone _____
(Daytime)

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

- ☐ Broker (Lic. No. _____) Mail to: **N. C. REAL ESTATE COMMISSION**
Attention: Wanda Johnson
☐ Salesman (Lic. No. _____) P. O. Box 17100
Raleigh, NC 27619-7100
☐ Bookkeeper

Enclose \$35 tuition fee

Commission News:

(continued from page 1)

New Members

Mercer

Mrs. Mercer lives in Wilson, where she is a broker/partner at Wilson's Choice, Inc.

An active REALTOR®, Mrs. Mercer is a Certified Residential Specialist and a Graduate of the REALTORS® Institute.

Mrs. Mercer served two terms as treasurer of the Wilson Board of REALTORS® and was president of that organization in 1993. She is also a past-president of the Wilson Multiple Listing Service.

Mrs. Mercer is a past-director of the Wilson Chamber of Commerce. She serves on the advisory board of Branch Banking & Trust Company in Wilson.

She is married to C.H. Mercer. □

Hamilton

Mr. Hamilton is a former member of the Auxiliary Police of Ahoskie. He served on the Election Laws Review Commission and State Professional Educational Committee. He is on the Usher Board at New Bethany Baptist Church in Harrellsville.

A member of the Eastern N.C. Civic Group and life-member of the NAACP, Mr. Hamilton is assistant treasurer of C.S. Brown Cultural Arts Center and treasurer of Twelve Sportsmen's Club. He is secretary of Tri-County Credit Union and president of Newport News Shipyard Commuters Club.

Mr. Hamilton has been recognized as one of the Outstanding Young Men of America and has received the Governor's Award for Involvement in Education. He was named "Citizen of the Week" in Hertford County in 1991.

Newport News Shipyard presented him with awards for productivity cost improvement programs and with its Patent-Invention Award.

Mr. Hamilton and his wife Shirley have two sons - Sang, Jr., and Deon - and two daughters - Shaneé and Janeé. □

New Officers

Bass

Chairman Bass is a native of Halifax and a graduate of East Carolina University in Greenville where he played football. He served in the U.S. Military during the Korean War.

Mr. Bass entered the real estate business in 1965. A broker residing in Fayetteville, he is part-owner and president of Dickens-Bass Realty & Construction Company, Inc., and president of Bass Construction Company of Fayetteville, Inc.

Mr. Bass has served on numerous committees in the Fayetteville Association of REALTORS®, having been an active REALTOR® there for 30 years. He is also a member of both the North Carolina and National Association of REALTORS®.

In addition to membership in the Homebuilders Association at the local, state and national levels, Mr. Bass is a member of both the Carolina and Cape Fear Aero Clubs as well as the Aircraft Owners and Pilots Association.

Mr. Bass and his wife Joan have three children - Greg, Lisa, and Susan.

Mr. Bass was appointed to the Commission by Governor Hunt in 1993. His three-year term will expire July 31, 1996. □

Bridgeman

Vice-Chairman Bridgeman began his real estate career as a mortgage loan officer at a bank in Gastonia.

In 1970, he opened Bridgeman Real Estate Company. The name changed to Coldwell Banker, Bridgeman & Associates, upon its affiliation with a national real estate company in 1987. It was incorporated in 1990.

Mr. Bridgeman is president of the corporation. It has offices in Gastonia and Belmont and divisions for both residential and commercial/industrial sales.

Mr. Bridgeman pioneered Gaston County's first PUD (Planned Unit Development), which has commercial, office park and residential areas.

A former president of the Gaston Board of REALTORS®, he served three terms on Gastonia's City Council. He now serves on the boards of numerous civic and trade organizations that include the Homebuilders Association, United Way and the Chamber of Commerce.

Mr. Bridgeman and his wife Nan have two daughters - Dana and Amy - and two sons - Rob and Alex.

Having been appointed to the Commission by Governor Hunt in 1993, his three-year term will expire July 31, 1996. □



Staff Update

(continued from page 2)

Association of REALTORS® to explain "Processing Property Management Complaints." Steve attended a meeting of the Greenville-Pitt County Board of REALTORS®, where he answered questions concerning agency agreements and disclosure and explained the Commission's new agency disclosure rules. He also discussed the new agency disclosure

procedures, forms and related issues at a meeting of the Wilson Board of REALTORS®.

△ △ △ △ △ △ △

(Individuals and groups requesting a speaker from the Real Estate Commission are reminded that a "Speaker Request Form" is available from the Commission Office.) □

Property Managers, Homeowners' Association Managers

To be included in the North Carolina Real Estate Commission's Property Management/Homeowners' Association Management Roster, please check the appropriate block, complete the form and return it to the Commission office.

Thank you.

Property Management

Long-term rentals ☐

Short-term rentals ☐

Homeowners' Associations ☐

Name _____ License Number _____

Company Name/Address _____

Appraisal Board names Mel Black to its staff

A. Melton Black, Jr., the Commission's Education and Examination Officer, has been appointed by the North Carolina Appraisal Board as its new Executive Director. Mr. Black succeeds James E. "Jim" Poole, Jr.

Mr. Poole, who served as Director of the Commission's Appraiser Licensing and Certification Division prior to the Appraisal Board's separation from the Commission, has stepped down from his position due to health reasons.

The Commission extends congratulations and best wishes to Mr. Black. ☐


ARELLO honors former Commission Member

At its annual conference this summer in Boston, Ma., the Association of Real Estate License Law Officials (ARELLO) presented its "Fair Housing Appreciation Award" to former Commission Member J. Edward Poole for his service to the Fair Housing Committee as a charter member.

Mr. Poole, of Spring Lake, first served on the Commission from 1975 to 1978. In 1986, he was reappointed to the Commission by Governor Martin, who subsequently reappointed Mr. Poole to two more consecutive terms which expired in August of 1995.

Mr. Poole is owner of Poole Real Estate and J. Edward Poole Appraisal Associates of Spring Lake.



ARELLO Fair Housing Committee Chairperson Joan Montgomery (left) and ARELLO President Charles Heitbrink (right) congratulate Mr. Poole. 

REAL ESTATE COMMISSION PUBLICATIONS ORDER FORM

Publication	Send 1 Free Copy <input checked="" type="checkbox"/>	No. Copies Requested	Price Per Copy	Subtotal
<i>Res. Property Disclosure Statement & Guidelines</i>	<input type="checkbox"/>	(May be duplicated for additional copies.)		
<i>Questions and Answers on: Tenant Security Deposits</i>	<input type="checkbox"/>	_____	x \$.25 =	_____
<i>Questions and Answers on: Fair Housing</i>	<input type="checkbox"/>	_____	x \$.25 =	_____
<i>Questions & Answers on: Condos and Townhouses</i>	<input type="checkbox"/>	_____	x \$.25 =	_____
<i>Questions and Answers on: Who Agents Represent</i>	<input type="checkbox"/>	_____	x \$.25 =	_____
Total (Includes Postage/Shipping)				= _____
				()

Name _____ Phone Number (Including Area Code) _____

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

Instructions

1. You may request a free copy of each publication by returning this Order Form or calling the Commission office (919) 733-9580, ext.3.
2. The Commission will furnish only one copy of the *Residential Property Disclosure Statement & Guidelines*. It may be duplicated if additional copies are needed.
3. To order multiple copies of the publications, return the completed Order Form with your check made payable to the N.C. Real Estate Commission. (Please do not send cash.)
4. Send to N.C Real Estate Commission, P.O. Box 17100, Raleigh, N.C. 27619-7100. Attention: Publications.
5. Please allow two weeks for delivery.
6. Space has been provided on the *Questions & Answers* brochures if you wish to add your company name.

Agency Law Update: "First substantial contact"

By: Miriam J. Baer, Deputy Legal Counsel

Following implementation of the agency disclosure rule on July 1, the Commission has received numerous inquiries about its practical application. An important provision of the rule requires that when you are working directly with a **buyer**, but are representing the **seller** (either as a seller's agent or subagent) you must disclose to the buyer that you are the seller's agent. To make this disclosure, you must furnish the buyer with the Commission's *Disclosure to Buyer from Seller's Agent or Subagent* form at the "first substantial contact" with the buyer. But what does "first substantial contact" mean and when does it occur?

To understand when a **substantial** contact occurs, it is helpful to understand the purpose of the rule: to notify a prospective buyer that you represent the seller **before** the buyer reveals to you any personal information that he does not want the seller to know. Thus, when you are a seller's agent, you must give the *Disclosure* form to the buyer prior to showing any property to the buyer or even before you solicit information from the buyer regarding the buyer's housing needs and desires or the buyer's financial resources.

"First substantial contact" is a flexible standard. Typically, it will occur when you and a prospective buyer discuss in any detail the buyer's interest in purchasing property. It usually occurs no later than the first time you and the buyer meet in person to discuss his real estate needs. In this case, you may simply give the buyer the form for him to immediately sign.

What should you do if the "first substantial contact" occurs during a telephone conversation? If the first contact is by telephone, you should avoid soliciting any personal or confidential information from the buyer until you have had the opportunity to present the *Disclosure* form for the buyer's signature. You may deliver the *Disclosure* form to the buyer for

his signature in person or by mail or fax, as long as both sides of the form are presented.

Even before you have a signed *Disclosure* form, you can give the buyer information about yourself, your firm, and available properties; for example, the services your firm offers, or a particular property's square footage, number of rooms, heating and cooling systems, and even its price.

Once you have disclosed that you represent the seller and the buyer has signed the form, you may obtain any information the buyer is willing to give. In fact, the buyer may want to divulge such information as his employment status, income and other financial resources in order to demon-

strate that he is able to complete the transaction.

As a seller's agent or subagent, common sense and discretion are the keys when analyzing "first substantial contact." Provide the buyer the *Disclosure* form as early as possible--always before you obtain any confidential information.

[Note: The Real Estate Commission is considering amending its agency disclosure rule to allow oral disclosure when your "first substantial contact" with a prospective buyer is by telephone; you would then be required to immediately follow up the conversation by sending the *Disclosure* form to the buyer for his signature. (See page 8, no. 1.) A decision on the rule change is expected early next year.]

New publication addresses agency disclosure

Questions and Answers on:
Who Real Estate Agents
Represent



To assist real estate consumers in understanding agency representation in real estate transactions, the Commission is offering a new brochure, *Questions and Answers on: Who Real Estate Agents Represent*. It addresses many consumer concerns about this timely topic.

Who Real Estate Agents Represent is the fourth in the Commission's popular "Q & A" series, which focuses on issues concerning condominiums and townhouses, tenant security deposits and Fair Housing. Like the others in the series, this latest publication is formatted in easy-to-read pamphlet style, and is as interesting as it is informative.

The brochure is available at the Commission office. [Please see "Publications Order Form" on page 4. Starting on page 6, the brochure is reprinted in its entirety.] ■

Questions and Answers on: Who Real Estate Agents Represent

When buying or selling real property, you may find it helpful to obtain the assistance of a real estate agent. Real estate agents (brokers and salesmen) are licensed and regulated by the North Carolina Real Estate Commission.

In today's real estate market, agents can work with you in many ways. You may choose to work with one who will represent only you. Or one who will represent only the other party in the transaction. Or an agent who will represent both you and the other party(ies).

If you choose to have an agent represent you, the agent must promote your best interests. Your agent must also be loyal to you and follow your lawful instructions; exercise reasonable skill, care and diligence; account for all funds he handles for you; and disclose any information to you which could influence your decision in the transaction.

Before a real estate agent can **represent** you, the agent must have you sign a written "agency agreement"—typically a "listing contract," "buyer agency contract," or "dual agency contract." Real estate agents must disclose to buyers and sellers whom they represent.

This booklet is designed to introduce you to the various agency relationships you may encounter in real estate transactions, and to answer some of your agency questions.

For the Seller

Q: As a seller, who represents me?

A: The real estate firm with whom you list your property for sale and its agents represent you. In addition, you may authorize the listing firm to allow agents with other firms (subagents) to show your property and represent you.

Q: As a seller, what should my agent do for me?

A: Among other things, your agent should provide you with an analysis of your property and market it. The agent should also search for a qualified buyer, help negotiate the best price and terms possible for you, and present and review with you all written offers. The agent must inform you of all material facts that could influence your decision to sell and promote your best interests.



Q: How is a seller's agent compensated?

A: The seller typically pays the listing firm a brokerage fee or sales commission as agreed upon in the listing contract. The commission is usually a percentage of the selling price. The firm then pays a portion of its commission to the individual agents involved in the sale (including seller's subagents associated with other firms). In addition, the listing agent may sometimes (with the seller's permission) pay part of the commission to the buyer's agent.

Q: As a seller, how will I know whether the agent working with the buyer is his agent or mine?

A: An agent working for a buyer must tell you or your agent that he is a buyer's agent at his initial contact with you. And if his principal (the buyer) makes an offer to purchase your property, he must state again in the offer or in some other written statement that he represents the buyer.

For the Buyer

Q: As a buyer, who represents me?

A: An agent may agree in writing to represent you as your "buyer's agent." If you are instead working with an agent of the seller, then no one represents you in the transaction. However, the seller's agent must still be fair and honest to you and report to you any material facts about the property itself (leaky basement, broken furnace, etc.), or that relate directly to the property (pending zoning changes or the planned widening of an adjacent street), or that relate directly to the seller's ability to complete the transaction (a pending foreclosure, etc.).

Q: As a buyer, what should my agent do for me?

A: Your agent should assist you in determining what price you can afford and help you locate property that suits your needs. The buyer's agent should also provide you with all relevant information about the property, help arrange for inspections and financing, assist you in bargaining for the lowest price and best terms possible, and promote your best interests.

Q: As a buyer, if I contact an agent by telephone, will that agent automatically represent me?

A: No. Consequently, you should avoid disclosing any personal, financial or other confidential information during an initial telephone call to a real estate agent. Real estate brokers and salesmen, on the other hand, can provide you with information about themselves or available properties even before any agency (or non-agency) relationship is established.

Whether talking by telephone or in person, **you and the agent should agree at your first substantial contact whether the agent will represent you.**

Continued

If the agent will be representing you, he will ask you to sign a buyer agency agreement. If not, he will ask you to sign a "Disclosure to Buyer from Seller's Agent or Subagent" form advising you that he represents the seller—not you.

Q: If I go to an "open house," what kind of agency relationship will be created with the agent on duty there?

A: Generally none. Open houses are typically conducted by agents of the seller. Therefore, before you begin any serious discussions with the person(s) on duty about purchasing the house, he should ask you to sign a "Disclosure to Buyer from Seller's Agent or Subagent" form advising you that he represents the seller.

Q: As a buyer, if I choose not to have an agent represent me, what can the seller's agent do for me?

A: The seller's agent can provide you with information about properties and the areas where they're located. He can also assist you in obtaining financing and inspections, provide information about closing procedures, and other things. However, you should always remember that he represents the seller—not you! Therefore, **you should never disclose any private or financial information to the agent that you would not want the seller to know.**

Q: How are buyer's agents compensated?

A: A buyer's agent can be compensated in different ways, depending upon the method agreed upon in the buyer agency contract. As a buyer, you can pay the agent out of your own pocket, or the agent could agree to seek a portion of the listing agent's commission. Often, the buyer's agent will agree to seek compensation from the listing agent and seller first, but require payment from you if they refuse. The buyer's agent may also require a non-refundable retainer fee. As a buyer, you should read the buyer agency agreement carefully to determine what financial obligation, if any, you have to the agent.

For Buyers and Sellers

Q: Can an agent represent a buyer and seller at the same time?

A: Yes. An agent or firm may become a "dual agent" and represent both the buyer and the seller in the same transaction. However, the buyer and the seller must consent to this arrangement in either a "Dual Agency Addendum" at the time they enter into the listing or buyer agency agreement, or in a separate dual agency agreement.

Q: When will dual agency occur?

A: Dual agency most often occurs when a buyer who is being represented by a real estate firm becomes interested in a property listed with the firm.

Q: As a buyer, if I work with a seller's agent in finding property and then decide to buy something listed by his firm, will the firm and its agents be dual agents?

A: No. Since the agent and his firm were not representing you before, they won't begin representing you simply because you choose to buy one of their listings. Rather, the firm and its agents will continue to represent only the seller.

Q: How can a dual agent be loyal to both buyer and seller?

A: In practical terms, it may be difficult for one agent or firm to advance the interests of both the buyer and the seller in the same transaction. After all, the seller wants the *highest* price and best terms possible, while the buyer wants the *lowest* price and best terms possible. Nevertheless, the dual agent must be fair to both sides and treat each as if he were his only client. The dual agent must disclose to each party any information he learns from the other, with one exception:

A dual agent will not reveal to a buyer the lowest price the seller will accept, or to a seller, the maximum price a buyer is willing to pay. Since the agent's loyalty is divided between parties with conflicting interests, it is especially important that any dual agency agreement be in writing and specifically describe the rights and duties of the parties.

For Your Information

Q: How long does an agency relationship last?

A: An agency relationship lasts for the time period specified in the agency contract or until the client's purpose is accomplished (i.e., the sale or purchase of a property), whichever occurs first.

Q: Once an agency relationship terminates, will my former agent still keep my confidences?

A: Not necessarily. An agent should never disclose personal information without good reason. However, should your former agent later represent another party in a transaction with you, he will have a duty to disclose to his new client any information that could make a difference to that client or influence his decision to buy or sell. For example, if an agent who formerly represented you is now working with a buyer who is interested in purchasing your property, the agent must disclose to the buyer material facts he knows about you that would help the buyer in the transaction.

Q: Can I use more than one agent at the same time?

A: Maybe. It will depend on the type of agreement you sign with your listing agent or buyer's agent. If you sign an "exclusive" listing or buyer agency contract, you should avoid contracting with another agent. If you want to contract with more than one agent, you should contact an attorney first for advice.

Q: Can an agent stop representing me in the middle of a transaction and start representing the other side?

A: Not without your permission.

Q: Are the laws and rules governing agency agreements and disclosure the same for residential and commercial property?

A: Yes. They apply equally to agents involved in residential and commercial real estate transactions. •

N.C. REALTORS® successful in passing Property Disclosure Law

At the request of the North Carolina Association of REALTORS®, Inc., legislation has been passed by the North Carolina General Assembly requiring owners of residential real estate to furnish purchasers a *Residential Property Disclosure Statement* regarding the condition of their property. The law (N.C.G.S. 47E) goes into effect January 1, 1996 and applies to sales whether or not the owner is assisted by a real estate broker or salesman. Owners must either identify and describe the condition of various components of their property (water supply, plumbing, heating, environmental problems, etc.); or state that they are not aware of any problems; or elect to make "no representations" about the condition of their property.

Although authorized by the law to charge for the form, the Real Estate Commission will furnish single copies of the *Residential Property Disclosure Statement* free to real estate licensees and the public upon request. Licensees and consumers may duplicate the form if additional copies are needed. Also, to assist owners in understanding and completing the *Statement*, the Commission has developed *Guidelines*

which appear on the reverse side of the form and summarize some of the most important provisions of the new law.

When acting as the agent of an owner, real estate brokers and salesmen must inform owners of their rights and obligations under the new law. If an agent has informed the owner that the owner must give the form to prospective purchasers and the owner willfully refuses to do so, the agent will not be held responsible to the purchaser.

Agents must retain in their files for a period of three years a copy of each *Statement* given to prospective purchasers [Commission Rule A.0108]. Furthermore, regardless of the owner's representations in the disclosure statement, the agent must continue to disclose to prospective purchasers any material facts about the property which the agent knows or should reasonably know.

Brokers and salesmen are encouraged to make copies of the *Statement* and *Guidelines* from pages 11 and 12 of this *Bulletin* and furnish them to real estate sellers. Sellers with questions concerning the new law should be referred to their private attorneys. □

Commission proposes to adopt and amend rules

The Real Estate Commission, pursuant to authority vested in it by N.C. General Statutes, proposes to adopt and amend the following rules contained in Title 21, Chapter 58 of the N.C. Administrative Code. Anyone interested in the Commission's proposals may present comments at a public rulemaking hearing to be held at 2:00 p.m. on January 3, 1996, at the Commission's Raleigh office at 1313 Navaho Drive. Written comments not presented at the hearing should be delivered by the hearing date to the N.C. Real Estate Commission, P.O. Box 17100, Raleigh, NC 27619-7100.

Although nearly all of the changes make either technical corrections to or relax existing rules, the Commission, sensitive to concerns expressed by Governor Hunt and the Legislature, reserves the right to withdraw submission of any or all of the proposed rule changes prior to the scheduled rule-making hearing. Therefore, interested persons should call the Commission office (919/733-9580) by December 15 for information concerning the hearing.

Real Estate Brokers and Salesmen

1. Amend Rule A.0104 to permit a seller's agent or subagent to orally disclose to prospective purchasers his agency relationship if his "first substantial contact" with the purchaser is by telephone, electronic or means other than an in-person meeting. The agent would then be required to immediately, but in no event later than three days thereafter, mail or transmit to the purchaser for his signature a copy of the "Disclosure to Buyer from Seller's Agent or Subagent" form.
2. Amend Rule A.0104 to address agency disclosure requirements when a real estate broker sells his client's property at auction.
3. Amend Rule A.0107 to require a broker to deposit in his trust account monies received in connection with his management of a property owners' association.

Disciplinary action

Penalties for violations of the Real Estate License Law and Commission Rules 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.

DIANE M. ANCTIL (Raleigh) - By Consent, the Commission reprimanded Ms. Anctil effective September 1, 1995. The Commission found that Ms. Anctil, a notary public, had falsely stated that a deed had been signed in her presence.

ASHTON PROPERTIES, INC. (Raleigh) - By Consent, the Commission revoked the corporate real estate broker license of Ashton Properties, Inc. effective September 1, 1995. The Commis-

sion found that Ashton Properties, Inc., acting by and through its president, had contracted to build a house, and had failed to apply the buyers' \$40,000 partial payment to the contract price but instead had used a portion of the payment toward the president's own business obligations unrelated to the buyers' transaction.

SELINA I. BAGGETT (SHUE) (Greenville) - By Consent, the Commission reprimanded Ms. Baggett (Shue) effective June 7, 1995. The Commission found that Ms. Baggett (Shue), a real estate salesman on inactive status between December 1993 and December 1994, had acted in a capacity for which an active license was required.

(continued on page 13)

(continued on page 9)

Rules

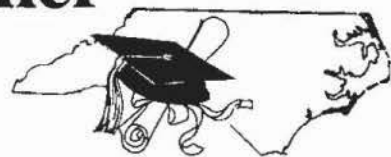
(continued from page 8)

4. Adopt a new rule (A.0113) to require licensees to notify the Commission when they have been convicted of certain criminal offenses.
 5. Amend Rule A.0302 to require a license applicant to provide updated information or file a new application form when necessary to assure that application information is current.
 6. Amend Rule A.0401(b) to limit a license applicant to one request to reschedule an examination per application without having a legitimate reason to be excused and to limit applicants to three excused absences per application.
 7. Amend Rule A.0402 to limit to one year the amount of time license examination results will remain valid for application purposes.
 8. Amend Rule A.0502 to require the licensing of business entities (corporations, partnerships, limited liability companies, etc.) other than sole proprietorships in order to engage in the real estate brokerage business.
 9. Amend Rule A.0503(b) to delete the now obsolete phrase "Beginning in 1995,..."
 10. Amend Rule A.0504(d) and A.0506(b) to delete the requirement that the form for requesting license activation include a list of recently-completed continuing education courses.
 11. Amend Rule A.0505(a) to delete the now obsolete reference to the beginning date of July 1, 1995.
 12. Amend Rule A.0505(b) to clarify that applicants for reinstatement of a license expired for more than 12 months must also demonstrate that they possess the requisite moral character in addition to the current knowledge, skills and competence required by the current rule.
 13. Amend Rule A.0505 by adding new paragraphs (c), (d) and (e) prescribing requirements and procedures for the reinstatement of licenses that have been revoked, surrendered or suspended.
 14. Amend Rule A.0506(a) to clarify that a salesman may have only one broker-in-charge at a time.
 15. Amend Rule A.0506(b) to clarify that a broker-in-charge and salesman are equally responsible for notifying the Commission when the broker activates a salesman.
 16. Adopt a new rule (A.0510) providing that when a person holding a salesman license is issued a broker license, the salesman license shall be automatically canceled.
 17. Adopt a new rule (A.0610) concerning applications to quash subpoenas issued by the Commission.
 18. Amend Rule A.1702(a) to delete the now obsolete reference to the beginning date of July 1, 1995.
 19. Amend Rule A.1708(a) to provide that requests for equivalent continuing education credit must be received by June 10 rather than 60 days prior to the license expiration date.
 20. Amend Rule A.1708(a), (c), (d) and (f) to permit licensees to use equivalent continuing education credit for an unapproved course or educational activity completed in a previous license period to make up a continuing education deficiency for such previous license period and to better explain how equivalent credits will be awarded when the licensee has a continuing education deficiency.
 21. Amend Rule A.1711(a) regarding continuing education for *nonresident* licensees by changing the processing fee from \$20 per course to \$20 per request.
 22. Amend Rule A.1711(a) and (c) to clarify the options for satisfying the continuing education requirement; to provide an additional option providing that, at the time of license renewal, a *nonresident* licensee may certify that he holds a real estate license on *active* status in a state other than North Carolina; and to clarify that nonresident licensees may earn a maximum of 8 hours of equivalent continuing education credit for an unapproved course or educational activity.
- ### Prelicensing Education
1. Amend Rule C.0104(b) to provide for the approval of colleges, universities, community and technical colleges, and trade schools to expire on December 31 of each odd-numbered year.
 2. Amend Rule C.0305(b) by adding a provision to require that, whenever a school proposes to conduct a course that will meet for a total of more than 6 hours on any 2 consecutive days, the school must first obtain approval from the Commission of a plan for conducting such course that will assure sufficient time is available for the required instruction to be provided by a combination of classroom instruction and out-of-class textbook reading and other assignments.
 3. Amend Rule C.0306 to require that instructors make appropriate out-of-class reading assignments in the approved text and any other prescribed instructional materials.
 4. Amend Rule C.0307(a)(1), (3) and (4) to require instructors who are required to have a North Carolina real estate license to have a current continuing education record rather than a license "in good standing".
 5. Amend Rule C.0307 to define a standard of instructor conduct and performance and to require approved schools to submit videotapes of instructors upon request of the Commission.
 6. Adopt a new rule (C.0311) to address the use or nonuse of a variety of instructional delivery methods in prelicensing courses.
 7. Adopt a new rule (C.0312) permitting approved schools to deviate from certain Commission rules when necessary to accommodate persons with disabilities when attending prelicensing courses.

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Continuing Education Corner

Commission begins publishing CE informational newsletter



Continuing Education Schedule

The Commission has introduced a new publication, the *Continuing Education Schedule* newsletter. This publication is designed as a "user-friendly" continuing education (CE) reference source for licensees. It features current CE course schedules and other information concerning the Continuing Education Program, including the schedule of CE courses which was formerly published in the *Real Estate Bulletin*.

The Commission plans to publish three editions per year - to be mailed to active licensees at their business addresses. The first edition was recently mailed, and brokers-in-charge were requested to post it on their office bulletin boards.

If you are inactive but would like to be put on a mailing list to receive copies, please address your request to the Continuing Education Section, N.C. Real Estate Commission, P.O. Box 17100, Raleigh, NC 27619. □

Rules

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Continuing Education

1. Amend Rule E.0203(e) to reflect that DREI stands for *Distinguished Real Estate Instructor*.
2. Amend Rule E.0204 to delete the now obsolete reference to dates.
3. Amend Rule E.0302 to provide that no continuing education credit will be awarded to licensees taking an approved elective course that is conducted in North Carolina between June 11 and June 30 of any year. This would replace the current provision which prohibits sponsors of approved elective courses from conducting such courses between June 11 and June 30. Also, the rule would provide that any sponsor which conducts an approved elective course in North Carolina between June 11 and June 30 must advise students no later than the beginning of the course that the Real Estate Commission will not award continuing education credit for such course.

In addition, sponsors conducting any special advertising or promotion of a particular course to be held between June 11 and June 30 would be prohibited from stating that the course is approved for continuing education credit by the North Carolina Real Estate Commission.

4. Amend Rule E.0303 to delete the block-out period for submission of applications for original approval of elective courses.
5. Amend Rule E.0304 and adopt a new rule (E.0310) on instructional delivery methods to permit interactive computer-based programs to be used as a primary method of course delivery in continuing education elective courses.
6. Amend Rule E.0406(a) to refer to required course completion reports generally rather than by specific name.

7. Amend Rule E.0406(b) to state that sponsors must provide licensees an opportunity to complete evaluations of continuing education courses *upon the request of the Commission*. Currently sponsors are required to have licensees complete such evaluations for each class session.
8. Amend Rule E.0406(d) to provide that when a licensee fails to comply with student participation standards, the sponsor shall not provide the licensee with a course completion certificate nor report that the licensee has completed the course, and the sponsor shall report the licensee's noncompliance in writing to the Commission.
9. Amend Rule E.0406 by adding a new paragraph (e) to exempt "national professional trade organizations" conducting approved continuing education courses out

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RESIDENTIAL PROPERTY DISCLOSURE STATEMENT

Notice to Seller and Purchaser

The North Carolina Residential Property Disclosure Act requires the owner of residential real property consisting of 1-4 units, whenever the property is to be sold, exchanged, optioned, or purchased pursuant to a lease with option to purchase, to furnish to the purchaser a RESIDENTIAL PROPERTY DISCLOSURE STATEMENT disclosing certain conditions of the property. Certain transfers of residential property are excluded from this requirement by G.S. 47E-2, including transfers of residential property made pursuant to a lease with an option to purchase where the lessee occupies or intends to occupy the dwelling.

Property Address/Description: _____

The undersigned owner(s) of the real property described above disclose the following present conditions of the real property of which the owner(s) has actual knowledge with regard to:

1. Any abnormality or malfunctioning of the **water supply or sanitary sewage disposal system**:
☐ Yes ☐ None Known ☐ No Representations
If Yes, please describe _____
2. Any damage to or abnormality of the **roof, chimneys, floors, foundation, basement, or load-bearing walls, or any leak in the roof or basement**:
☐ Yes ☐ None Known ☐ No Representations
If Yes, please describe _____
3. Any abnormality or malfunctioning of the **plumbing, electrical, heating, or cooling systems**:
☐ Yes ☐ None Known ☐ No Representations
If Yes, please describe _____
4. Present infestation of **wood-destroying insects** or organisms or past infestation the damage for which has not been repaired:
☐ Yes ☐ None Known ☐ No Representations
If Yes, please describe _____
5. The real property's violation of **zoning laws, restrictive covenants or building codes**; any **encroachment** of the real property from or to adjacent real property; or **notice from any governmental agency** affecting this real property:
☐ Yes ☐ None Known ☐ No Representations
If Yes, please describe _____
6. Presence of **lead-based paint, asbestos, radon gas, methane gas, underground storage tank, hazardous material or toxic material** (whether buried or covered):
☐ Yes ☐ None Known ☐ No Representations
If Yes, please describe _____

The purchaser and owner may wish to obtain professional advice about, or inspections of, the real property. The owner has a duty to disclose any material inaccuracy in this statement or any material change in the real property which is discovered between the date of this statement and the closing of the transaction. The owner(s) acknowledge having examined this statement before signing below:

Owner _____ Date _____ Owner _____ Date _____

The purchaser(s) acknowledge receipt of a copy of this disclosure statement and further acknowledge that they have examined it before signing below:

Purchaser _____ Date _____ Purchaser _____ Date _____

NORTH CAROLINA RESIDENTIAL PROPERTY DISCLOSURE ACT GUIDELINES

*For the complete text of the Residential Property Disclosure Act, see
North Carolina General Statutes Chapter 47E*

The Residential Property Disclosure Act ("Act") requires owners of residential real estate to furnish purchasers a *Residential Property Disclosure Statement* ("Statement"), **whether or not the owner is assisted by a licensed real estate broker or salesman.** The form on the reverse side of this sheet meets the requirements of the Act.

The Act covers the transfer of residential property—from a single family dwelling unit to buildings containing up to four dwelling units. It applies whether the property is to be sold, exchanged, optioned or purchased under a lease with option to purchase (unless the tenant is already occupying or intends to occupy the dwelling). Certain transactions are exempted from the Act, including the first sale of a dwelling which has never been inhabited. [For a complete list of exemptions, see N.C.G.S. 47E-2.]

Completing the Statement

As the owner of the property, you must enter on the Statement the address of the property (sufficient to identify it) and sign and date it. You must also check ☒ one of the boxes for each of the six items listed.

If you check "Yes" for any item, you must describe the problem ("septic tank malfunctions", "electrical outlet in living room doesn't work", etc.). If you are using the services of a real estate broker or salesman, you are still responsible for completing and delivering the Statement to the purchaser. Instead of inserting your written description of the condition, you may attach to the Statement any report which you might have from an engineer, contractor, pest control operator or other expert or public agency describing it. If you attach a report from an expert or public agency, you will not be liable for any inaccurate or incomplete information contained in it so long as you were not grossly negligent in obtaining or transmitting the information.

If you check "None Known" for an item, you are stating that you have no actual knowledge of any problem. If you check "None Known" when you know there is a problem, you may be liable for making an intentional misstatement.

[Note: If you check "Yes" or "None Known" and something happens to make your Statement incorrect or inaccurate (for example, the roof begins to leak), you must promptly give the purchaser a corrected Statement or correct the problem.]

If you check "No Representations", you have no duty to disclose the conditions of the property, whether or not you should have known of them.

If you are assisted in the transaction by a licensed real estate broker or salesman, the agent must disclose any material facts about your property which the agent knows or should reasonably know. The real estate agent has a duty to disclose material facts regardless of your responses on the Statement.

Furnishing the Statement

You must give the completed Statement to the purchaser no later than the time the purchaser makes an offer for your property. You should give the purchaser a copy of the Statement containing your signature, and you should keep a copy signed by the purchaser.

If you do not give the Statement to the purchaser by the time the purchaser makes an offer, the purchaser may withdraw the offer or terminate any resulting sales contract at any time within three days after receiving the Statement. However, once the purchaser closes the transaction or occupies your property, the purchaser gives up the right under the Act to terminate the contract or withdraw the offer.

Note to Purchasers

If the owner fails to give you a Residential Property Disclosure Statement by the time you make your offer, you may withdraw your offer or terminate any resulting real estate contract by personally delivering or mailing written notice of your decision to terminate or withdraw to the owner or his agent no later than three days after you receive the disclosure statement. If you properly terminate the contract or withdraw your offer, you are entitled to a refund of any deposit monies you may have paid, and you cannot be otherwise penalized.

Disciplinary action

(continued from page 8)

ALAN J. BLAKE (Spring Lake) - The Commission revoked Mr. Blake's broker license effective August 30, 1995. The Commission found that Mr. Blake had made numerous misrepresentations to his clients and to the State Bar concerning his handling of various legal matters for clients and his handling of the funds of others. The Commission further found that Mr. Blake had failed to account for and remit funds of others which came into his possession.

CONNALLY P. BRANCH (Greenville) - By Consent, the Commission reprimanded Mr. Branch effective June 7, 1995. The Commission found that Mr. Branch, as broker-in-charge of a real estate office between December 1993 and December 1994, had failed to submit the salesman supervision form for a salesman affiliated with the firm and who was paid during that period for acting in a capacity for which an active license was required.

DANIEL T. CANADA (Greensboro) - By Consent, the Commission reprimanded Mr. Canada effective May 15, 1995. The Commission found that Mr. Canada, as an agent for the U.S. Department of Housing and Urban Development (HUD) in the sale of a property, had received notification that the city had condemned the property and had failed to so notify the buyers until after HUD had accepted their offer. The Commission further found that HUD had refused to refund the buyers' earnest money deposit but noted that Mr. Canada had reimbursed the buyers.

NANCY D. CANADY (Garner) - By Consent, the Commission suspended Ms. Canady's broker license for three years effective May 1, 1995, based upon allegations that Ms. Canady had assisted and encouraged buyers in a real estate transaction to provide potential mortgage lenders with incomplete and inaccurate information; that in two other transactions, Ms. Canady knew or should have known that water produced by wells on the properties was contaminated, but that she had failed to fully disclose this

information to the buyers; that in one of the latter transactions, Ms. Canady had failed to provide the parties with a correct closing statement; and that Ms. Canady had engaged in the brokerage business as a corporation which was not properly licensed as a real estate broker. Ms. Canady did not admit the allegations.

MICHAEL A. CAPRISTO (Wilmington) - The Commission revoked Mr. Capristo's salesman license effective August 30, 1995. The Commission found that Mr. Capristo had made representations concerning his real estate experience and college degrees in a real estate advertisement which were false and contrary to his sworn application to the Commission for licensure.

CLARK-BRANCH, INC. (Greenville) - By Consent, the Commission reprimanded Clark-Branch, Inc. effective June 7, 1995. The Commission found that Clark-Branch, Inc., between December 1993 and December 1994, had paid compensation to a real estate salesman for acting in a capacity for which an active license was required, although the salesman's license was on inactive status.

H. KENT CONKLIN (Graham) - By Consent, the Commission suspended Mr. Conklin's broker license for 90 days effective June 15, 1995. The Commission then stayed the suspension for a probationary term of 18 months. The Commission found that Mr. Conklin, as principal broker and broker-in-charge of a licensed corporate broker engaging in property management, had placed tenant funds into an interest-bearing escrow account without proper authority from the property owners who were his clients or from the tenants. The Commission further found that Mr. Conklin had arranged for repairs to the properties on behalf of his owner-clients without disclosing to them in writing that they were being charged in excess of the actual cost to perform such repairs. The Commission also found that Mr. Conklin's trust account transaction ledgers did not contain running balances or other information required by Commission rule. Mr. Conklin neither admitted nor denied any misconduct.

ALLEN K. CRAVEN (Concord) - By Consent, the Commission suspended Mr. Craven's broker license for two years effective September 15, 1995. One month of the suspension is to be active and the remaining period stayed for a probationary term of twenty-three months. The Commission found that Mr. Craven had participated in the development of a residential subdivision in which he had listed certain properties for sale and had failed to advise certain purchasers about the expansion of an existing landfill in the vicinity of the subdivision. Mr. Craven did not admit intentional wrongdoing.

YANCEY C. ELLIOTT, JR. (Washington) - By Consent, the Commission revoked Mr. Elliott's broker license effective August 15, 1995. After November 15, 1995, Mr. Elliott may apply for a salesman license and be placed on probation until January 1, 2000. The Commission found that Mr. Elliott had been convicted of the criminal offenses of three counts of misdemeanor conversion by a bailee. Mr. Elliott did not contest the Commission's findings.

GREGORY KENT GAY (Wilson) - The Commission accepted the voluntary surrender of Mr. Gay's broker license for five years effective May 1, 1995. The Commission dismissed without prejudice charges that Mr. Gay had violated the Real Estate License Law in the conduct of a real estate brokerage business.

ROBERT J. GLADDEN (Lenoir) - By Consent, the Commission suspended Mr. Gladden's broker license for 30 days effective June 15, 1995, then stayed the suspension for a probationary term of 30 days based upon allegations that Mr. Gladden had shown prospective property buyers a .958 acre property that had been reconfigured from a 1.5 acre tract and had supplied the buyers with information indicating the new boundaries of the property but still representing its size as 1.5 acres; and that he had prepared an offer to purchase which included inappropriate questions concerning the property and certain poorly drafted contract provisions. Mr. Gladden neither admitted nor denied any misconduct.

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Disciplinary action

(continued from page 13)

JAMES C. HERRING (Greenville) - The Commission revoked Mr. Herring's broker license effective May 11, 1995. The Commission found that Mr. Herring had represented to certain sellers who had owner-financed the sale of property to him that he would give them a first-recorded lien against the property and then had failed to record the deed of trust. The Commission further found that Mr. Herring had falsely represented that he had made certain payments when he had not and had failed to advise his own lender in connection with his application for a separate loan that the property was the security for his purchase from the sellers.

DOUGLAS M. HOLLOWAY (Hickory) By Consent, the Commission suspended Mr. Holloway's broker license for six months effective June 15, 1995. The Commission then stayed the suspension for a probationary term of one year. The Commission found that Mr. Holloway, after having sold approximately 1/2-acre of an advertised 1.5-acre property, had continued to advertize the remaining .958 acre at its previous acreage of 1.5. The Commission further found that Mr. Holloway had supplied to a real estate agent working with prospective buyers a copy of a survey and an MLS listing which indicated the previous acreage.

GEORGE P. JENKINS (Washington) - The Commission suspended Mr. Jenkins' broker license for six months effective July 1, 1995. The Commission then stayed the suspension for a probationary term of one year. The Commission found that Mr. Jenkins, while licensed by the Commission as an "inactive" real estate salesman, had engaged in illegal brokerage activity and had concealed it from his employing company and attempted to collect a commission outside of closing.

BROOKS E. JOHNSON (Lillington) - The Commission accepted the voluntary surrender of Mr. Johnson's broker license for one year effective July 1, 1995. The Commission dismissed without prejudice charges that Mr. Johnson had violated provisions of the Real Estate License Law as a result of

having been convicted of certain criminal offenses. Mr. Johnson neither admitted nor denied any misconduct.

CAROLYN M. MCDOWELL (Wilkesboro) - By Consent, the Commission reprimanded Ms. McDowell effective June 15, 1995. The Commission found that Ms. McDowell had advertised the heated square footage of a residential property inaccurately when she listed it for sale in the local Multiple Listing Service. The Commission further found that Ms. McDowell had not measured the property but had based her overstated square footage figure on an earlier MLS listing of the property.

DAVID S. MENAKER (Kill Devil Hills) - By Consent, the Commission suspended Mr. Menaker's broker license for 30 days effective July 1, 1995. The Commission then stayed the suspension for a probationary term of one year. The Commission found that Mr. Menaker had drafted a legal instrument by preparing a document that purported to bind the parties to sign a lease agreement for a commercial property and then producing a lease by adding and deleting terms from a lease prepared by an attorney for another property.

THEDA H. MOORE (Wilkesboro) - By Consent, the Commission reprimanded Ms. Moore effective June 15, 1995. The Commission found that Ms. Moore had overstated the heated square footage of a residential property when she listed it for sale in the local Multiple Listing Service.

DEBRA LYNN MULLER (Knightdale) - The Commission suspended Ms. Muller's salesman license for one year effective June 1, 1995. Sixty days of the suspension are to be active and the remaining period stayed for a probationary term of 10 months. The Commission found that Ms. Muller had made a false statement on her application for real estate licensure; namely, Ms. Muller had answered "no" to the application question regarding criminal convictions when, in fact, she had been convicted of the crime of willfully delaying or destroying the United States Mail.

RAND A. NEYLAND (Durham) - By Consent, the Commission reprimanded Mr. Neyland effective June 15, 1995.

The Commission found that Mr. Neyland's trust account reconciliations reflected a variance between his actual bank balance and his reconciled bank balance ranging between \$98 and \$368. The Commission noted that Mr. Neyland subsequently performed additional reconciliations and a review of his trust account records and that he was then able to account for all but a \$79.94 shortage and made restitution to the trust account in that amount.

JON P. O'BRIEN (Concord) - By Consent, the Commission suspended Mr. O'Brien's broker license for 90 days effective April 15, 1995. The Commission then stayed the suspension for a probationary term of one year. The Commission found that Mr. O'Brien had falsely represented a corporation in which he was an officer as "Contractor" when he applied for and received a building permit to construct a residence; neither Mr. O'Brien nor the corporation is a licensed general contractor.

EDWARD S. ORGAIN, JR. (Atlantic Beach) - By Consent, the Commission revoked Mr. Orgain's salesman license effective July 18, 1995. The Commission found that Mr. Orgain, while his license was expired, was the sole shareholder and chief executive officer of a licensed real estate corporation, and that in this position, he allowed the corporation to breach its fiduciary obligations as a real estate broker and to misapply funds it held in trust for others.

MARIA A. PAULOVITS (Asheville) - The Commission accepted the voluntary surrender of Ms. Paulovits' broker license for three years effective July 15, 1995. The Commission dismissed without prejudice charges that Ms. Paulovits had violated provisions of the Real Estate License Law by failing to disclose material facts as a real estate broker selling her own properties. Ms. Paulovits did not admit any misconduct.

QUALITY SECURITIES CORPORATION (Graham) - By Consent, the Commission suspended the corporate real estate broker license of Quality Securities Corporation for 90 days effective June 15, 1995. The Commission then stayed the suspension for a probationary term of 18 months. The

Commission found that Quality Securities Corporation, while engaging in property management, had placed tenant funds into an interest-bearing escrow account without proper authority from the property owners who were its clients or from the tenants. The Commission further found that Quality Securities Corporation had arranged for repairs to the properties on behalf of its owner-clients without disclosing to them in writing that they were being charged in excess of the actual cost to perform such repairs. The Commission also found that the corporation's trust account transaction ledgers did not contain running balances or other information required by Commission rule. Quality Securities Corporation neither admitted nor denied any misconduct.

THE REAL ESTATE GROUP, INC. (Concord) - By Consent, the Commission suspended the corporate real estate broker license of The Real Estate Group, Inc. for two years effective September 15, 1995. The Commission then stayed the suspension for a probationary term of two years. The Commission found that The Real Estate Group, Inc. had participated in the development of a residential subdivision in which the corporation had listed certain properties for sale and had failed to advise certain purchasers about the expansion of an existing landfill in the vicinity of the subdivision. The Real Estate Group, Inc. did not admit intentional wrongdoing.

ANTHONY G. ROBISON (Wake Forest) - The Commission revoked Mr. Robison's broker license effective May 1, 1995. The Commission found that Mr. Robison had misrepresented to a tenant in a personally-owned property the disposition of her tenant security deposit, had failed to account for, maintain in trust and remit the funds of others and had failed to produce trust account records to the Commission upon demand.

SHIRLEY W. RUDISILL (Raleigh) - By Consent, the Commission reprimanded Ms. Rudisill effective June 15, 1995. The Commission found that Ms. Rudisill had acted as the selling agent in a real estate transaction where the offer to purchase and contract contained various provisions which were not clearly drafted. The Commission

further found that Ms. Rudisill had allowed the buyers to close their purchase of the property without obtaining a title search or survey and that the buyers had discovered, after closing, both a title defect and an encroachment problem affecting the property. Ms. Rudisill neither admitted nor denied any misconduct.

SUE P. SELLERS (Sunset Beach) - The Commission accepted the permanent voluntary surrender of Ms. Sellers' salesman license effective August 10, 1995. The Commission dismissed without prejudice charges that Ms. Sellers had violated provisions of the Real Estate License Law in connection with the sale of her personal home. Ms. Sellers neither admitted nor denied any misconduct.

RHETTA M. SLADE (Greensboro) - The Commission revoked Ms. Slade's broker license effective May 1, 1995. The Commission found that Ms. Slade had violated provisions of the Real Estate License Law pertaining to the handling of trust monies and trust account recordkeeping in a real estate transaction, including failure to account for and remit trust monies within a reasonable time. The Commission further found that Ms. Slade had falsely represented to a buyer that she would refund the buyer's earnest money, when, in fact, she never did so, and that she had failed to produce trust account records as requested by the Commission auditor.

JANE W. SPELL (Clinton) - By Consent, the Commission reprimanded Ms. Spell effective April 15, 1995. The Commission found that Ms. Spell, with advice and assistance of counsel, had filed a *lis pendens* and a lawsuit against sellers of real estate - thereby seriously encumbering the title. The Commission noted that Ms. Spell subsequently dismissed her suit and authorized the release of the escrowed proceeds to the sellers. The Commission also found that Ms. Spell had formed a corporation through which to conduct her real estate brokerage business and did conduct business through the corporation from approximately July 8, 1994, until early March 1995, without applying for a corporate broker license. The corporation subsequently obtained a license.

ROBERT L. SPROUSE, JR. (Raleigh) - By Consent, the Commission revoked Mr. Sprouse's broker license effective September 1, 1995. The Commission found that Mr. Sprouse, as president of a licensed real estate corporation had contracted to build a house and had failed to apply the buyers' \$40,000 partial payment to the contract price but instead had used a portion of the payment toward his own business obligations which were unrelated to the buyers' transaction.

LADONNA F. SPURLIN (Denver) - The Commission accepted the permanent voluntary surrender of Ms. Spurlin's broker license effective August 1, 1995. The Commission dismissed without prejudice allegations that Ms. Spurlin had violated provisions of the Real Estate License Law by removing items of personal property from listed houses. Ms. Spurlin neither admitted nor denied any misconduct.

STONEGATE REALTY, INC. (Wilkesboro) - By Consent, the Commission reprimanded Stonegate Realty, Inc. effective June 15, 1995. The Commission found that Stonegate Realty, Inc., through its principal broker and broker-in-charge, had advertised the heated square footage of a residential property inaccurately when the corporation listed it for sale in the local Multiple Listing Service. The Commission further found that the principal broker/broker-in-charge had not measured the property but had based her overstated square footage figure on an earlier MLS listing of the property.

GEORGE TATE, JR. (Chapel Hill) - The Commission suspended Mr. Tate's broker license for five years effective August 1, 1995. Two years of the suspension are to be active, after which time, Mr. Tate may apply for and receive the reinstatement of his real estate broker license - on probation for three years - provided that he has met certain conditions. The Commission found that Mr. Tate had failed to deposit and maintain earnest money in a trust or escrow account and to ensure that trust monies coming into his possession were properly accounted for and remitted. The Commission also found that Mr. Tate had converted trust monies to his own use and had commingled trust monies with his

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Rules

(continued from page 10)

of state from the obligation to submit course completion reports on forms prescribed by the Commission, provided such sponsors timely submit rosters of North Carolina licensees who have completed the course along with the \$5 per student fee. Also, the rule amendment would allow such sponsors the option to provide licensees a sponsor-developed course completion certificate in place of a certificate on a form prescribed by the Commission.

10. Amend Rule E.0407 to refer to required course completion reports generally rather than by specific name.
11. Amend Rule E.0411 to change the deadline for renewal of course and sponsor approval from March 31 to April 30 to provide that when an original course or sponsor approval is granted after April 1, the deadline for renewal of such approval shall be June 10.
12. Amend Rule E.0503 to provide that compliance with the minimum class size requirement, which is 5, shall be determined by the number of students preregistered for the course and that the minimum class size restriction shall not apply if the sponsor notifies the Commission of the class session in a timely manner and advertises the class session generally in the local real estate community. The rule would also require sponsors to provide proof of advertising to the Commission.
13. Amend Rule E.0511(a) and (b) to provide that *sponsors* as well as instructors shall have the responsibility for enforcing the student participation standards, that sponsors shall not issue course completion reports or report successful completion for students violating the standards, and that sponsors shall provide a timely detailed report to the Commission of violations by a student. □

Disciplinary action

(continued from page 15)

own funds. The Commission further found that Mr. Tate had made false representations at the closing of a real estate transaction as to the amount of cash he brought with him, and had attempted to conceal his inability to bring all of the buyer's funds to the closing.

DAVID L. TURNER (Charlotte) - By Consent, the Commission suspended Mr. Turner's broker license for 60 days effective June 7, 1995. The Commission found that Mr. Turner, as listing agent in a real estate transaction, had failed to immediately notify the seller that an earnest money check had been returned unpaid by the bank due to insufficient funds. At the time of the transaction, Mr. Turner was on probation in connection with a prior disciplinary action.

CARL C. WATSON (Sanford) - The Commission revoked Mr. Watson's broker license effective May 12, 1995. The Commission found that Mr. Watson had failed to disclose certain material facts to parties in a real estate transaction, had used a listing contract form which failed to contain nondiscrimination language, and had supplied to the parties a purchase contract form which failed to require the entry of information as required by Commission rule. The Commission further found that Mr.

Watson had commingled earnest money with his own funds, earned interest on trust monies without obtaining written authority from his principals, failed to designate his trust account checks and bank statements as "trust" or "escrow" and otherwise failed to properly handle the funds of others.

WILLIAMS & ORGAIN REAL ESTATE, INC. (Atlantic Beach) - By Consent, the Commission revoked the corporate real estate broker license of Williams & Orgain Real Estate, Inc. effective July 18, 1995. The Commission found that Williams & Orgain Real Estate, Inc. had failed to maintain rental deposits and funds of others in a trust or escrow account and had allowed a substantial amount to be converted to other uses.

JULIANNA M. WRIGHT (Raleigh) - By Consent, the Commission reprimanded Ms. Wright effective June 15, 1995. The Commission found that Ms. Wright had executed an offer to purchase and contract with regard to a lot in a subdivision in which she had a personal interest, and on the same date, also had executed a general warranty deed conveying the lot to the purchasers without advising them of a title defect about which she should have known. □

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