



NORTH CAROLINA REAL ESTATE COMMISSION

Real Estate Bulletin

Volume 27

Fall 1996

Number 3

Commission Staff Update

The Real Estate Commission has changed the name of its regulatory section from "Legal Division" to "Legal Services Division" to more clearly define the division's function. The Commission has named Deputy Legal Counsel



Miriam J. Baer to the position of Assistant Director of Legal Services. Miriam graduated summa cum laude from the University of Kansas and received a law degree from UNC-Chapel Hill.

A licensed real estate broker, Miriam was in private law practice for three years prior to joining the Commission staff in 1987 as Examination Coordinator in the Education Division. She transferred to the Legal Services Division in 1988.



The Commission has filled a records-retention vacancy in the Administration Division's Records Section. **Geraldine M. "Geri" Gram** has been employed as a Records Specialist to assist with updating licensee records and to maintain permanent licensee files.

A licensed salesman, Geri attended Central Piedmont Community College

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Commission elects Officers

New Chairman and Vice-Chairman will serve from
August 1, 1996 - August 1, 1997.

John D. Bridgeman has been elected Chairman of the Real Estate Commission for 1996 - 1997.



John D. Bridgeman
Chairman

(continued on page 5)

Wanda J. Proffitt has been elected Vice-Chairman of the Real Estate Commission for 1996 - 1997.



Wanda J. Proffitt
Vice-Chairman

(continued on page 5)

Foreclosure:

Material fact or confidential information?

By: **Thomas R. Miller**, Special Deputy Attorney General

You're a broker and you've just listed a 3-year-old, 4-bedroom, 2½-bath house. The house is attractive, the price is reasonable, and you expect it to sell before the end of your 90-day listing agreement.

There's only one hitch: At the time you put the "for sale" sign in the yard, your seller told you that he was behind - *way behind* - on his mortgage payments! In fact, he showed you a couple of letters from the

bank indicating that the bank was getting pretty impatient. You've talked to the people at the bank yourself and they weren't very sympathetic. Maybe Saturday's open house will net a quick buyer - you *hope*! If the seller can get a fair offer and soon, all should be well.

But wait a minute. What should you tell prospective purchasers? Is the seller's financial distress a material fact which, under the Real

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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 Commission Rules, and proficiency in 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

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Chairman
Wanda J. Proffitt Burnsville
Vice-Chairman
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Spec. Dep. Attorney General
Miriam J. Baer Assistant Director
Blackwell M. Brogden, Jr. .. Chief Dep. Lgl.
Counsel
Marilyn E. Tomei Asst. Lgl. Counsel
Stephen L. Fussell Cons. Prot. Officer
Robin F. Oliver Cons. Prot. Officer

Editor - in - Chief

Phillip T. Fisher

Editor

Carrie D. Worthington

EXAM RESULTS

	Passed	Failed
June 1996		
Brokers	112	81
Salesmen	533	361
July 1996		
Brokers	92	58
Salesmen	334	264
August 1996		
Brokers	57	54
Salesmen	343	270

Commission Staff Update

(continued from page 1)

in Charlotte, where she majored in paralegal technology. Geri was previously employed as an office assistant with the City of Charlotte Operations Department and as an executive secretary at a packaging company.

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** spoke on real estate agency issues as they pertain to commercial

real estate agents when he addressed the Greensboro Regional REALTORS® Association...Chief Deputy Legal Counsel **Blackwell M. Brogden, Jr.**, delivered an address on the Residential Property Disclosure Act and real estate agency issues at a meeting of the Charlotte Regional REALTORS® Association in Hickory. Black attended a meeting of the North Carolina/South Carolina Chapter of the American Resort Development Association in Hilton

(continued on page 3)

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 10

☐ January 7

☐ February 11

☐ March 11

☐ April 8

☐ May 13

Name _____ Phone _____

(Daytime)

Address _____

(Street, P.O. Box, etc.)

(City)

(State)

(Zip)

☐ Broker (License No. _____)

Mail to:

NC REAL ESTATE COMMISSION

☐ Salesman (License No. _____)

Attention: License Specialist

P. O. Box 17100

Raleigh, NC 27619-7100

☐ Bookkeeper

Enclose \$35 tuition fee

Commission Staff Update

(continued from page 2)

Head, S.C., where he discussed the Commission's concerns regarding timesharing, resort development and related topics...**Marilyn E. Tomei**, the Commission's Assistant Legal Counsel, talked about problems of special concern to the

Commission when she addressed the High Point Regional Association of REALTORS®...Consumer Protection Officer **Robin F. Oliver** also discussed subjects of special concern to the Commission when she appeared before the Kerr

Lake 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.) □

Commission again provides free publications

In an effort to further serve the needs of real estate licensees and consumers, the Real Estate Commission is once again offering its informational publications free of charge to persons who request them. (Please see "Publications Order Form" on this page." Note the instructions at the bottom of the form.)

The Commission continues to add brochures to its popular *Question and Answer* brochure series. The latest brochure is reprinted in its entirety on pages 9 - 12 of this *Bulletin*. (See article on page 8.) □



REAL ESTATE COMMISSION PUBLICATIONS ORDER FORM

	No. Copies Requested
<i>Res. Property Disclosure Statement and Guidelines</i> (Free form - Please limit request to one copy.)	_____
<i>Questions and Answers on: Tenant Security Deposits</i> (Free Brochure) Also available in bulk to property managers to distribute to tenants and landlords.	_____
<i>Questions and Answers on: Fair Housing</i> (Free Brochure)	_____
<i>Questions and Answers on: Condos and Townhouses</i> (Free Brochure)	_____
<i>Questions and Answers on: Who Agents Represent</i> (Free Brochure)	_____
<i>Questions and Answers on: Purchasing Coastal Real Estate in North Carolina</i> (Free Brochure)	_____

()

Name _____

Phone Number (Including Area Code) _____

Street Address (NOT P.O. BOX) _____

City _____

State _____

Zip _____

Instructions

1. You may request single copies of these publications by returning this Order Form or calling the Commission office (919) 733-9580, ext.3.
2. To order multiple copies of these publications, please complete this Order Form and return it to the N.C. Real Estate Commission, P.O. Box 17100, Raleigh, N.C. 27619-7100. Attention: Publications.
3. Please allow two weeks for delivery.
4. Please understand that orders of more than 50 copies require special consideration.
5. The Residential Property Disclosure Statement and Guidelines may be duplicated as needed.
6. Space has been provided on the *Questions and Answers* brochures if you wish to add your company name.

Technologically speaking...

Electronic equipment upgrades include installation of "interactive voice response," "voice mail" and "optical imaging."



To ensure that its staff can efficiently handle the ever-increasing volume of telephone calls and correspondence from real estate licensees and consumers, the Commission has initiated technological changes in some of its office equipment.

The Commission has upgraded its telephone system to include "voice mail" and "interactive voice response" (IVR) features. According to Director of Administration Mary Frances Whitley, the new IVR unit will "enable callers to obtain licensee data, including whether the license has been renewed, and if so, whether it is on active or inactive status; information concerning the status of the

licensee's continuing education; and other information which may later be added to the system." Mrs. Whitley adds that the information is updated daily.

Also, the system helps licensees change their home and/or business addresses and confirms for brokers-in-charge the salesmen whom they have under their supervision. You may access the IVR system at (919) 850-2753.

The Commission has improved the efficiency of its recordkeeping system by converting its licensee records from microfilm to an optical imaging system - a change which Executive Director Fisher explains "will be both cost- and time-efficient." □

Commission reaches reciprocal licensing arrangement with Alabama

New arrangement is already in effect.

Under a new reciprocal arrangement between the North Carolina and Alabama Real Estate Commissions, a qualified North Carolina real estate broker



or salesman may obtain an equivalent license in Alabama without satisfying any additional education requirements or passing a license examination. Furthermore, the North Carolina licensee applying for reciprocal licensure in Alabama may be a resident of either state. A qualifying applicant must pay all required fees and file along with the application for licensure an irrevocable consent to service of process and a certification of license history.

To qualify, the broker's or salesman's license must be current and must have been issued by examination. The license does not have to be on active status at the time of application. However, the applicant must provide proof of errors and omissions insurance coverage as required by the Alabama Real Estate Commission. ■



Habla Usted Español?

If you speak Spanish, the North Carolina Housing Finance Agency (NCHFA) is interested in speaking with you! NCHFA is currently making an outreach effort to inform Hispanic homebuyers about its loan programs, with publications written in Spanish. A. Robert Kucab, NCHFA's Executive Director, has requested the Commission's help in informing real estate licensees about the outreach effort.

Mr. Kucab explains that NCHFA, as a state agency, cannot selectively endorse private

businesses. The agency does, however, provide the public with lists of all lenders who offer NCHFA's loan programs, as well as a manual which lists all government and nonprofit organizations which are involved with affordable housing. NCHFA would like to compile a similar public service list of all licensed real estate professionals who offer Spanish language services to the public.

If you speak Spanish and wish to be included in NCHFA's list, please contact Barry Norman at (919) 571-4812. □

New Officers

(continued from page 1)

Bridgeman

A broker, Mr. Bridgeman began his real estate career with employment as a mortgage loan officer at a bank in Gastonia. He opened Bridgeman Real Estate Company in 1970. The name changed to Coldwell Banker, Bridgeman & Associates, in 1987, upon its affiliation with a national real estate company.

Now with offices in Gastonia and Belmont, it is the largest real estate firm in Gaston County. Mr. Bridgeman is president of the firm, which has divisions for both residential and commercial/industrial sales.

The new chairman has been active in real estate for 26 years and has served as President of the Gaston Board of REALTORS®, been designated REALTOR® of the Year, has served on numerous professional boards including the Gaston Board of REALTORS®, Gaston Homebuilders Association, and is serving on the Licensing Committee of the National Association of REALTORS®.

Also active in his community, Mr. Bridgeman was elected to three terms on Gastonia's City Council. He has been an officer in his church, First Presbyterian of Gastonia. He has served on the local boards of the United Way, Chamber of Commerce, Salvation Army Advisory Board, the Schiele Museum and the Gaston Country Club. He is currently a Director of First Gaston Bank.

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

Governor Hunt appointed Mr. Bridgeman to the Commission in 1993, and recently reappointed him to a second three-year term. □



Proffitt

Mrs. Proffitt is a licensed real estate broker and state-certified real estate appraiser. She is owner and president of Carolina Mountain Realty, Inc. - a general real estate brokerage firm in Burnsville.

She is a Certified Residential Specialist (CRS), Certified Real Estate Brokerage Manager (CRB), and a Graduate of the REALTORS® Institute (GRI).

Mrs. Proffitt was founding-president of the Yancey-Mitchell Board of REALTORS® and a past-president of the N.C. Association of REALTORS® (NCAR) as well as the N.C. Real Estate Educational Foundation, Inc.

She has served as a regional vice-president of NCAR and as associate dean of the REALTORS® Institute. NCAR named Mrs. Proffitt "N.C. REALTOR® of the Year" in 1992.

A director of the National Association of REALTORS®, she has chaired its State Leadership Forum as well as the N.C. REALTORS® Political Action Committee.

A recipient of the Governor's Individual Community Volunteer Award, Mrs. Proffitt serves on the Western N.C. Regional Economic Development Commission, is director of Blue Ridge Hospital Systems, a past-director of the Yancey County Chamber of Commerce and past-finance chairman of Higgins Memorial United Methodist Church.

Mrs. Proffitt and her husband Bob have two children - Robert and Amy.

Having been appointed to the Commission by Governor Hunt in 1994, Mrs. Proffitt's three-year term will expire July 31, 1997. □

For your information...

You are reminded that the Real Estate Commission's meetings are open to the public. Real estate licensees and consumers are always welcome.

Although advance notice is not required in order for you to attend, you are encouraged, when possible, to please notify the Commission of your plans to attend a scheduled meeting at least ten business days prior to the meeting, in order to ensure adequate parking and seating arrangements. Please mail your notice to the North Carolina Real Estate Commission, P. O. Box 17100, Raleigh, NC 27619-7100, or call the Commission office (919) 733-9580.

For your convenience, the following calendar lists the meeting dates for the next six months. □

Commission Calendar

Meeting Dates

December 11

January 15

February 12

March 12

April 9

May 14

Meetings begin at 9 a.m. and are held in the conference room at the North Carolina Real Estate Commission office, 1313 Navaho Drive, Raleigh, NC 27609. *[Please understand that circumstances sometimes necessitate changes in meeting dates and times.]*

From the desk of the Director of Audits and Investigations

Christopher B. Smith, CFE, CREI

Commission continues to evaluate software.

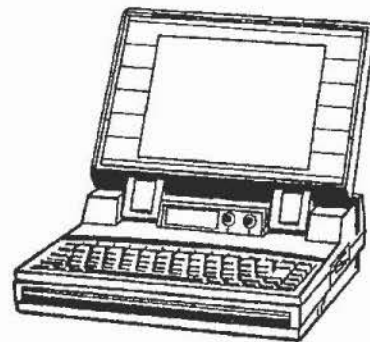
As reported in the Winter 1996 *Real Estate Bulletin* [please see Volume 26, Number 4, page 4] the Commission's Audits and Investigations staff is evaluating real estate trust accounting software packages.

The purpose? To compile a list of real estate software accounting packages that meet the minimum License Law and rule requirements and to make that list available to real estate licensees. The Commission cautions you, however, that inclusion in the list does not ensure that the software package will meet your specific needs.

Software vendors have been invited to submit samples of their products, and the staff continues to analyze these samples for compliance with the License Law and Commission rules, including whether all bank deposits are identifiable by date, payor, and purpose of deposit; and whether all disbursements are identifiable by check number, date, payee and purpose.

An updated list appears on page 7 of this *Bulletin*. If the software you are using does not appear in the list, you may wish to contact your software vendor to determine whether it participated in the Commission's evaluation program.

If the vendor did not participate and now wishes to do so, request the vendor to contact the Commission's Audits and Investigations Division at P.O. Box 17100, Raleigh, N.C. 27619-7100; (919) 733-9580 ext. 6. □



Did you know that...

...criminal convictions must be reported to the Commission?

Any real estate broker or salesman who is convicted of a criminal offense (misdemeanor or felony) after August 1, 1996 must notify the Real Estate Commission in writing within 60 days following final judgment in the case.

To report a conviction(s), the licensee should request a "Criminal Conviction Reporting Form" from the Commission office. The completed form must be returned to the Commission with a certified copy of the judgment of the court and a detailed statement in the licensee's own words describing all relevant facts and circumstances surrounding the conviction. □

...a licensee's failure to pay child support affects his or her license?

A new state law requires the forfeiture of licensing privileges (drivers licenses, fishing licenses, occupational licenses, etc. - including real estate licenses) of persons who are delinquent in court-ordered child support or who are subject to outstanding warrants for failure to appear for or comply with a court order for child support.

When notified by the court or the state child support enforcement agency that a licensed real estate broker or salesman is not in compliance with a child support order, the Commission will notify the licensee that his/her real

estate license will be revoked in 20 days unless the Commission is otherwise instructed by the licensee's local child support enforcement agency.

Upon revocation, the Commission will follow its normal post revocation procedures, including notification of the media and publication in the *Real Estate Bulletin* newsletter. □



Accounting Software Packages Which Satisfy the Requirements of The License Law and Commission Rules

VENDOR	SOFTWARE	TYPE
DATAFLOW COMPANIES, INC. 807 NINTH STREET DURHAM, NC 27705 1-800-769-2727	PROPERTY MANAGEMENT 4.0	RESIDENTIAL LONG-TERM
ENTECH DATA SYSTEMS, INC. P.O. BOX 175 GULF BREEZE, FLA 32562 (904)934-1225	ENTECH RENTAL MANAGEMENT	RESORT PROPERTY MANAGEMENT
FIRST RESORT SOFTWARE, INC. 300A ASPEN AIRPORT BUS. CENTER ASPEN, COLORADO 81611 1-800-872-3771	FIRST RESORT SOFTWARE V8.44	RESORT PROPERTY MANAGEMENT
OUTLOOK SOFTWARE CORPORATION 13800 MONTFORT DRIVE SUITE 100 DALLAS, TEXAS 75240 1-800-925-5700	REMS PROPERTY MANAGER 500	RESIDENTIAL LONG-TERM
PROPERTY AUTOMATION SOFTWARE CORPORATION 1701 N. GREENVILLE AVE. SUITE 901 RICHARDSON, TEXAS 75081 1-800-964-2792	TENANT PRO WINDOWS	RESIDENTIAL LONG-TERM
REAL ESTATE SOFTWARE COMPANY 10622 MONTWOOD DRIVE SUITE D EL PASO, TEXAS 79935 (915)598-6700	RPM - 50	RESIDENTIAL & COMMERCIAL LONG-TERM
SMITH CHARTER ASSOCIATES YARDI SYSTEMS 904 BROAD STREET DURHAM, NC 27705 (919)286-1790	PREMIER PROPERTY MANAGEMENT	RESIDENTIAL & COMMERCIAL LONG TERM
SOFTWARE DYNAMICS 4018 OLEANDER DRIVE WILMINGTON, NC 28403 (910)799-4805	RESORT MANAGER	RESORT PROPERTY MANAGEMENT
SPECTRUM SOFTWARE COMPANY 2117 FOOTHILL BLVD SUITE 138 LA VERNE, CALIFORNIA 91750 1-800-366-9840	TRUSTBOSS	SALES

ANSWERLINE!

Attention Property Managers: *Tenants' identity is a material fact and must be disclosed to owner-clients*

By Blackwell M. Brogden, Jr., Chief Deputy Legal Counsel

Q: I am a resort property manager. Must I disclose to my owner-clients the identity of their tenants?

A: Yes. As a property manager, you are the agent of your principal - the property owner. As such, you have the duty to tell that owner all material information, including the names, addresses and telephone numbers of the tenants who occupy the owner's property.

Q: Does that hold true even when clients dismiss me as their agent and list their properties with other property managers?

A: Yes. The Real Estate License Law and the common law of agency require an agent to tell the complete truth to his principal and to act in the principal's best interests, even when such action might conflict with the agent's own economic interest or benefit. Therefore, even if your services are being terminated by a property owner and you fear further economic loss because the tenants may choose to "follow the property," you cannot lawfully avoid the duty to disclose material information.

Q: Suppose my clients sign a contract agreeing not to receive that information?

A: The identity of a tenant is not a "trade secret" or "proprietary" information which the property manager can protect under any circumstances, so even if you use a management contract pur-

porting to limit your obligation to disclose it, failure to disclose a material fact is unlawful.

Q: How soon must I provide property owners with copies of lease agreements?

A: The Commission rule requires an agent to deliver to the property owner copies of any lease executed by the agent on the owner's behalf within five days after execution of the lease.

Although the rule allows for a broker to be relieved of the duty to provide the owner with lease copies in certain circumstances, the licensee must still furnish the owner with an "accounting" identifying the leased property, tenants' names, and rental rates. And, the rule also requires the licensee to furnish a copy of the lease to the property owner upon the owner's reasonable request. ■

New brochure added to *Q and A Series*

Questions and Answers on:
Purchasing Coastal Real Estate
In North Carolina



In cooperation with the North Carolina Sea Grant College Program, the Real Estate Commission has published a brochure which answers pertinent questions about buying real estate in coastal areas. *Questions and Answers on: Purchasing Coastal Real Estate in North Carolina* is especially timely in the wake of Hurricane Fran.

The new publication is the Commission's fifth "Q & A" brochure in a popular series which also addresses issues concerning agency representation, Fair Housing, condominiums and townhouses, and tenant security deposits.

The brochure is available free at the Commission office. [Please see article and order form on page 3. Starting on page 9, the brochure is reprinted in its entirety.] ■

Questions and Answers on: Purchasing Coastal Real Estate in North Carolina



Looking for property near the ocean? With more than 300 miles of ocean shoreline, North Carolina boasts some of the most spectacular beaches in the nation. But before buying, you should be aware of other factors that accompany the pleasures of owning property at the beach.

Most oceanfront real estate in North Carolina is located on one of the state's many barrier islands. These narrow strips of land between the sea and the sound are particularly vulnerable to ocean forces such as storms and beach erosion which can pose a threat to your prospective property and undercut its value.

This brochure focuses on basic questions you should ask as a potential purchaser of coastal real estate. Whether you are considering an undeveloped lot or an existing building, there are critical issues you should examine before committing to purchase. For more information, refer to the list of sources at the end of this brochure.

Q: What unusual hazards can affect real estate along ocean shorelines?

A: The greatest difference between real estate adjacent to the ocean or an inlet and inland real estate is the hazard of shoreline erosion. For inland real estate, property lines are generally unchanging. However, property on the oceanfront or adjacent to an inlet has a moving property line along the shore that is determined largely by the forces of nature. This moving boundary, called the "mean high water line," can change from day to day.

Q: What causes shoreline erosion?

A: Shoreline erosion is caused by a variety of factors. Along the oceanfront, hurricanes, northeasters and other storms cause seasonal fluctuations of the beach.

As a general rule, North Carolina's beaches erode more in the stormy fall and winter months than in the calm summer months. It is not unusual for the mean high water line to move landward temporarily by 75 to 100 feet during the stormy season. Of course, when a barrier island is hit directly by a hurricane, beachfront erosion can be even more dramatic. Inlets are also affected by seasonal storms and can change configuration rapidly and severely as tremendous amounts of water and sand flow through them. In severe storms, it is even possible for new inlets to form and existing inlets to close. Erosion associated with storms is often severe because large quantities of sand can be moved quickly offshore from the beach and dunes. This type of erosion is usually called "short-term" because the shoreline can return to its original profile as conditions calm.

Q: Do North Carolina's ocean beaches experience "long-term" erosion?

A: Yes. Long-term erosion, often called "beach migration" is generally associated with rising sea levels. The ocean has risen about 6 inches during the last century, causing North Carolina's barrier islands to migrate landward.

Although this process can cause erosion along the entire oceanfront, areas adjacent to inlets are often the most profoundly affected. Some "migrating inlets" are constantly moving in one direction. Others may stay in the same general location but expand and contract constantly. These inlets are often called "breathing inlets."

In addition to its natural causes, erosion can be set in motion by human activities. For example, a jetty constructed to stabilize an inlet or a structure built to stabilize a beach can trap sand on one side but increase erosion on the other. Such erosion will continue until the structure is removed or the beach adjusts.



(continued on page 10)

Purchasing Coastal Real Estate

(continued from page 9)

Q: What is the typical erosion rate of a North Carolina shoreline?

A: Studies by the N.C. Division of Coastal Management show an average long-term erosion rate of 2 to 3 feet annually for the entire coast over the last 50 years. However, the annual erosion rate is more than 20 feet for some shoreline areas, while others have been relatively stable. Ocean shorelines near inlets and inlet shorelines usually experience the greater fluctuations.

Oceanfront property is also subject to seasonal storm-related fluctuations that can result in short-term erosion of between 75 and 100 feet. Although most of this erosion is temporary, some land area lost to storms may not return.

[For information on erosion rates, contact the Division of Coastal Management or the local building official in the jurisdiction where you plan to purchase or build. There are also a few private companies that analyze shoreline hazards for a fee.]

Q: Will I automatically be informed about erosion and erosion rates?

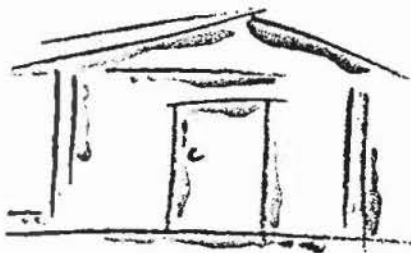
A: Not necessarily. Although the original developers of oceanfront property are informed of erosion hazards when they apply for a building permit, North Carolina law does not specifically require that the information be disclosed to subsequent buyers. Purchasers should be sure to research coastal hazards.

If you are working with a licensed real estate agent, the agent has a duty to disclose material facts that the agent knows or reasonably should know. Although real estate agents may not always know the erosion rates for particular oceanfront properties, they should advise you of the possibility of erosion and direct you

to available sources of information. If the agent knows the erosion rate of a particular property, the agent must disclose it to you.

Q: If I purchase undeveloped oceanfront property, where should I build on the lot?

A: North Carolina requires that new construction be a certain distance from the ocean. However, because the state's ocean shoreline is volatile, it may be in your best interest to build farther landward than the minimum distances allowed.



The Coastal Area Management Act (CAMA) authorizes the Division of Coastal Management to establish oceanfront setback lines for all development. The setback is measured landward from the line of stable natural vegetation nearest the sea, usually near the base of the frontal dune system. All single-family homes and buildings of 5,000 square feet or less, and their septic systems, must be located 30 times the historical, long-term erosion rate from this line, with a minimum setback of 60 feet. For example, if the long-term erosion rate is 3 feet per year for the shoreline of a particular lot, then the setback would be 90 feet (3 x 30) from the first line of vegetation. For large buildings (over 5,000 square feet), the setback is 60 times the long-term erosion rate or 30 times the erosion rate plus 105 feet, whichever is closer

to the ocean. For such structures, the minimum setback is 120 feet. Other requirements may also apply. Local building officials are familiar with these and can locate the minimum setbacks on your lot.

Please note that the required setback does not guarantee a safe location. In fact, it implies that if erosion occurs as expected, a building could be destroyed in 30 years - or about the time the structure is paid for under a traditional 30-year mortgage. If possible, it is generally wise to build well landward of the state's minimum setback requirements.

Q: What building construction features help reduce or prevent storm damage?

A: Several features can prevent or substantially reduce the likelihood of damage from severe storms or erosion. Pilings can raise the first floor above expected flood elevations and waves. Embedding the tip of pilings deeper than five feet below sea level can help a building stand during severe erosion. Any walls constructed between pilings should be designed to break away when hit by waves to prevent damage to the elevated portion of the building. Finally, the roof should be secured to the remainder of the building with corrosion-resistant hurricane straps.

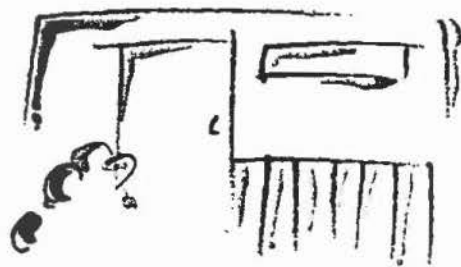
Sand dunes also provide significant protection during the most severe storms. You can protect and enhance frontal dunes by keeping vehicles and people off these areas, planting additional dune grasses, and installing sand fences. Keep in mind, however, that dunes protect against short-term erosion caused by very severe but infrequent storms and offer little protection from long-term erosion.

Q: If my oceanfront property becomes threatened by erosion can I:

(continued on page 11)

Purchasing Coastal Real Estate

(continued from page 10)



(1) Construct a seawall?

A: No. Seawalls, bulkheads, revetments, groins, jetties or breakwaters are not allowed along the beaches of North Carolina. These "hard" erosion-control devices can damage the beach and adjacent properties. If a building is severely threatened by erosion, the property owner may apply for a permit to place sandbags or build artificial sand dunes with bulldozers to allow more time to move or relocate the building. Both are temporary measures and require permits from the Division of Coastal Management. A sandbag bulkhead must be removed within two years and may be constructed only once per oceanfront lot, even if ownership of the lot changes.

(2) Replenish the eroding shoreline by pumping sand from an outside source onto my property?

A: Yes. Beach replenishment is allowed in North Carolina. However, it is expensive and generally provides only temporary relief. Also, to be effective, it must extend beyond the beach in front of a single property and include long stretches of ocean shoreline. *[For information on replenishment projects, contact your local building official, the U.S. Army Corps of Engineers or the N.C. Division of Coastal Management.]*

(3) Move my house away from the eroding shoreline?

A: Yes. House-moving is an allowable and cost-effective means of getting a structure out of harm's way. If space allows, a structure can be moved landward on the same lot; otherwise, it can be relocated to new property. Regardless of where the building is moved, it must meet existing setback requirements. **[NOTE:** As of 1993, new development permits for oceanfront structures require owners to move or dismantle buildings threatened by erosion; i.e., buildings that are less than 20 feet from the line of stable dune vegetation nearest the sea.]

Q: Can I get insurance for damage resulting from erosion and flooding?

A: Maybe. You may be able to purchase a flood insurance policy which is usually separate from a standard homeowner's policy. The National Flood Insurance Program was established by Congress to make flood insurance available nationwide to eligible properties. Policies issued under the National Flood Insurance Program include conditions and costs dictated by federal requirements. The federal government in turn guarantees to pitch in if losses occur - thus encouraging private companies to write affordable policies for areas that might normally be considered too risky. Large discounts on premiums are often available for buildings constructed above minimum standards.

For example, discounts are available for buildings elevated on pilings higher than required to avoid storm-surge flooding.

If the property is not eligible for the National Flood Insurance Program, the owner may be able to procure flood insurance coverage from a private insurer. However, private insurers regularly reassess whether or not to offer coverage, and it may not always be available.

Q: Is flood insurance mandatory for coastal property?

A: No law requires that an owner buy or maintain flood insurance. Nevertheless, federally insured lenders, including mortgage companies, banks and savings and loan associations, require buildings to carry flood insurance for the life of their lien if the property is in a flood-prone area. Failure to maintain coverage may permit the lender to declare the balance of the loan due and payable.

Flood-prone areas are identified on Flood Insurance Rate Maps, which should be available at the local building official's office. If your building is not in a flood-prone area or you haven't secured a mortgage to purchase your property, flood insurance is optional. However, when building or buying near the ocean, flood insurance is always a good idea, even if it's not required.

[For information about flood insurance and discounts, contact your local building official, insurance agent, N.C. Department of Insurance or the federal Flood Insurance Program.]

Q: What are the limitations of flood insurance?

A: Federal flood insurance covers only structural damage - including damage from waves - caused by flooding. As a rule, damage caused by chronic, long-term erosion is not covered. However, since most erosion that causes structural damage is associated with coastal storms, coverage is often available.

Furthermore, a federally-backed flood insurance policy covers only damage to the insured structure. It does not cover damage to land caused by flood, wave or erosion. And, it does not cover damage from other events, such as hurricane-related winds. These same limitations may

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Purchasing Coastal Real Estate

(continued from page 11)

apply to privately underwritten insurance.

When a structure is so badly damaged that it cannot be repaired or rebuilt, an owner may receive all benefits under the flood insurance policy and discover the coverage is inadequate to cover the cost of removing the structure and/or repaying the loan. In addition, the value of any remaining land may decline significantly if the land is "unbuildable."

Q: Can I get insurance for wind damage to coastal property?

A: Many privately underwritten homeowner policies cover wind damage and water damage caused by wind; e.g. wind damage to a roof resulting in leaks. However, because of the high risk in coastal areas, some private insurance companies are excluding coverage for wind damage. For that reason, the N.C. Department of Insurance has established an insurance pool known as the "Beach Plan" to provide wind coverage in areas where it is not otherwise available.

[For more information about the Beach Plan or homeowner's policy coverage, contact your insurance agent or the N.C. Department of Insurance.]

Q: Can I rebuild or repair my structure if it is damaged by a hurricane or other coastal storm?

A: It depends upon the extent of the damage. If damage is less than 50 percent of the building's value, you may be able to repair it at its original location. But if the building is more than 50 percent damaged, repairs are considered substantial and must meet both new setback requirements and other new building code requirements. Rebuilding is prohibited if erosion has left insufficient space on the lot to construct landward of the setback.

Additional Information

- **N.C. Sea Grant**
Coastal Construction and Erosion Specialist
N.C. Aquarium/Fort Fisher
P.O. Box 130
Kure Beach, NC 28449-0130
(910) 458-5780
- **N.C. Sea Grant**
Coastal Law Specialist
Box 8605
North Carolina State University
Raleigh, NC 27695-8605
(919) 515-2454
- **N.C. Division of Coastal Management**
P.O. Box 27687
Raleigh, NC 27611-7687
(919) 733-2293
- **N.C. Real Estate Commission**
Legal Division
1313 Navaho Drive
P.O. Box 17100
Raleigh, NC 27619-7100
(919) 733-9580
- **N.C. Department of Insurance**
For general information: 1-800-546-5664
"Beach Plan" information: 1-800-662-7048
- **National Flood Insurance Program**
1-800-638-6620
- **Local Building Officials**
Call the county tax or municipal building for the area in which you wish to develop.
- **U.S. Army Corps of Engineers/Wilmington Branch**
P.O. Box 1890
Wilmington, NC 28402-1890
(910) 251-4455



Foreclosure: Material fact or confidential information?



(continued from page 1)

Estate License Law, you have to disclose? Surely a buyer would like to have that information before making an offer. However, if you have to tell everyone about your client's payment problems, you can't expect a competitive price for his property.

Fortunately, at this stage in the transaction you don't have to tell prospective purchasers anything about your client's financial distress. In fact, you should keep it confidential because of your duty to him as his agent. Under the License Law, a listing agent is required to disclose material facts to prospective purchasers. And a fact is considered "material" if it relates to a defect in the property or the seller's ability to fulfill his promises under the contract. Since you know that your client has enough equity to cover his back payments if he can sell his property for market value, his financial problems - if they don't get any worse - would not be considered material.

Well, Saturday came and went. A nice couple stopped by the open house, said some nice things about the property and ate a couple of cookies. But by the end of the day, the balloons on the mailbox had wilted and there were no offers on the property.

Then it happened. On Tuesday your client got a formal notice from the trustee on the deed of trust. It said that his loan was in default and foreclosure proceedings had been filed in the clerk of court's office. The bank wants all its money - not just the back payments, but the whole unpaid balance of the loan - and they want it *now* - or they plan to sell the house from the courthouse steps!

The days now seem to fly by. Your seller can't pay, your pleas to the bank fall on deaf ears, and still there are no offers on the property.

Wait! Who's this? It's that nice couple from the open house with their buyer-agent. They tell you they're ready to make an offer - a full price offer! "Saved," you think to yourself.

But what should you say to the buyers and their agent? Shouldn't the buyers be told about the impending foreclosure? The hearing is tomorrow, so it's possible that the property could be sold in foreclosure before you can get the buyers' loan approved. This is serious. They're going to be awfully upset if they get halfway to closing and the seller loses the house. On the other hand, what about your duty to keep your seller's finances confidential?

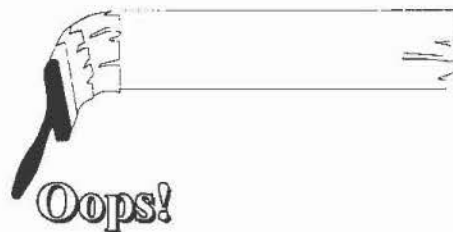
A foreclosure proceeding is a "fast track" lawsuit to enforce a lender's rights under a deed of trust. Its purpose is to extinguish the seller's interest in a property and to sell the property to produce cash to pay off the loan.

Under these circumstances, a broker or salesman must disclose the foreclosure to prospective purchasers. This is because a **foreclosure proceeding, once filed with the court, is a material fact about the property itself and it casts significant doubt upon the seller's ability to fulfill his contractual promise to convey the property to the buyer.** A foreclosure proceeding is a "fast track" lawsuit to enforce a lender's rights under a deed of trust. Its purpose is to extinguish the seller's interest in a property and to sell the property to

produce cash to pay off the loan. While there is always a chance that the seller will be able to pay off the loan before the foreclosure sale or that the bank will give the seller a break, the risk that the property will be sold out from under a buyer is just too great to leave him or her in the dark about the foreclosure.

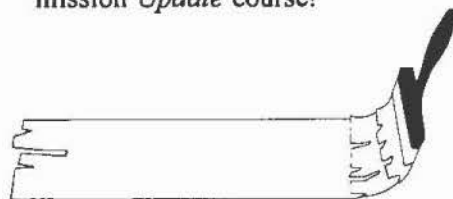
Commission Caveat

Although an agent who represents the seller has a duty to keep his client's financial problems confidential, a foreclosure action, once filed with the court, is a material fact which must be disclosed to prospective purchasers. □



It has come to the Commission's attention that some agencies and/or organizations are distributing lead-based paint disclosure forms which contain a typographical error. These forms give an incorrect citation to the U.S. Code provision setting forth the disclosure requirements. The correct citation is 42 U.S.C. 4852d.

The forms are correct as they appear in the Real Estate Commission *Update* course!



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.

LINDA CAROL BENNETT (Fayetteville) - By Consent, the Commission revoked Ms. Bennett's salesman license effective May 6, 1996. The Commission found that Ms. Bennett, over a period of approximately 1½ years, while she was employed as a rental manager by a real estate brokerage company, had converted at least \$52,000 of trust monies to her own use. Ms. Bennett neither admitted nor denied any misconduct.

CHARLOTTE C. BYRD (Brevard) - The Commission revoked Ms. Byrd's broker license effective September 1, 1996. The Commission found that in a real estate transaction involving the sale of her personal residence, Ms. Byrd had agreed to owner-finance a portion of the purchase price in exchange for a second deed of trust and had failed to disclose to the buyers her settlement agreement with the bank for release of an existing judgment against the property. The Commission further found that Ms. Byrd had failed to honor any part of her settlement agreement with the bank including failure to remit the buyers' monthly payments to the bank or to direct the buyers to do so and that she had failed to deposit the buyers' payments into a trust account; consequently, the loan went into default.

OLIVER L. BYRD (Brevard) - The Commission revoked Mr. Byrd's broker license effective September 1, 1996. The Commission found

that in a real estate transaction involving the sale of his personal residence, Mr. Byrd had agreed to owner-finance a portion of the purchase price in exchange for a second deed of trust and had failed to disclose to the buyers his settlement agreement with the bank for release of an existing judgment against the property. The Commission further found that Mr. Byrd had failed to honor any part of his settlement agreement with the bank including failure to remit the buyers' monthly payments to the bank or to direct the buyers to do so and that he had failed to deposit the buyers' payments into a trust account; consequently, the loan went into default.

BYRD REALTY OF BREVARD, INC. (Brevard) - The Commission revoked Byrd Realty of Brevard, Inc.'s corporate real estate broker license effective September 1, 1996. The Commission found that in a real estate transaction involving the sale of his personal residence, the corporation's president, principal broker and broker-in-charge, acting on behalf of Byrd Realty of Brevard, Inc. had agreed to owner-finance a portion of the purchase price in exchange for a second deed of trust and had failed to disclose to the buyers his settlement agreement with the bank for release of an existing judgment against the property. The Commission further found that he had failed to honor any part of his settlement agreement with the bank including failure to remit the buyers' monthly payments to the bank or to direct the buyers to do so and that he had failed to deposit the buyers' payments into a trust account; consequently, the loan went into default.

WILLIAM C. DETAMBLE (Banner Elk) - By Consent, the Commission suspended Mr. DeTamble's broker license for one year effective June 11, 1996. The Commission then stayed the suspension for a proba-

tionary term of one year. The Commission found that Mr. DeTamble, while serving as broker-in-charge of a resort rental operation, had been unable to obtain from his employer the resources necessary to properly account for the funds of others received by the firm, and that he thereby neglected his duty to maintain the trust account records in the form and manner required by Commission rule.

WANDAL FISHER (Jacksonville) - The Commission accepted the voluntary surrender of Ms. Fisher's broker license for three years effective July 18, 1996. The Commission dismissed without prejudice charges that Ms. Fisher had violated the Real Estate License Law and Commission rules as a result of her conduct as a real estate broker acting as an agent for others. Ms. Fisher neither admitted nor denied any misconduct.

RAY GARNER, JR. (Brevard) - By Consent, the Commission suspended Mr. Garner's broker license for six months effective June 1, 1997. The suspension has been stayed for a probationary term of one year. The Commission found that Mr. Garner had sold a residential building lot without disclosing to the buyer the terms of an easement to preserve the view from an adjoining lot. The Commission noted that Mr. Garner had asked the buyer's attorney to include the easement in the deed to the buyer and that he had believed that the attorney would show the easement to the buyer. Mr. Garner neither admitted nor denied any misconduct.

JOHNNY H. GRAHAM, JR. (Greenville) - By Consent, the Commission revoked Mr. Graham's salesman license effective May 6, 1996. The Commission found that Mr. Graham had collected cash payments from tenants who occupied properties managed by the firm with which he was associated

and had converted certain of those funds to his own use. The Commission further found that Mr. Graham had written checks to the firm's escrow account to cover the monies he converted, but that his bank had returned at least \$8,315 of his checks for insufficient funds and the escrow account had been charged back for the amounts of the checks. The Commission noted that Mr. Graham subsequently repaid \$8,315 to the firm.

JERRY C. HUFFMAN (Boone) - The Commission revoked Mr. Huffman's broker license effective September 1, 1996. The Commission found that Mr. Huffman had failed to deposit tenant security deposit money into a trust account and had instead commingled trust monies with his own. The Commission further found that Mr. Huffman had misrepresented to tenants in his lease form that he was holding their security deposits in a trust account and that although his checks bore the words "Trust Account," Mr. Huffman had instead employed the account as a general operating account. The Commission also found that Mr. Huffman had failed to maintain ledgers, journals, check stubs or other records of tenant security deposit funds sufficient to create a clear audit trail; had failed to produce records of the funds he held for others when requested to do so by the Commission's representative; and had failed to cooperate with the Commission's inquiry into his trust account books and records.

J.L.B. PROPERTY MANAGEMENT, INC. (Jacksonville) - The Commission accepted the permanent voluntary surrender of J.L.B. Property Management, Inc.'s corporate real estate broker license effective July 18, 1996. The Commission dismissed without prejudice charges that J.L.B. Property Management, Inc. had violated the Real Estate License Law and Commission rules

as a result of its conduct as a real estate corporation acting as an agent for others. J.L.B. Property Management, Inc. neither admitted nor denied any misconduct.

J.L.B. REALTY, INC. (Jacksonville) - The Commission accepted the permanent voluntary surrender of J.L.B. Realty, Inc.'s corporate real estate broker license effective July 18, 1996. The Commission dismissed without prejudice charges that J.L.B. Realty, Inc. had violated the Real Estate License Law and Commission rules as a result of its conduct as a real estate corporation acting as an agent for others. J.L.B. Realty, Inc. neither admitted nor denied any misconduct.

GEORGE E. MIDGETT (Raleigh) - By Consent, the Commission reprimanded Mr. Midgett effective August 1, 1996. The Commission found that during the time Mr. Midgett was acting as principal broker and broker-in-charge of a corporate broker, unlicensed employees under his supervision had performed acts which required a real estate license; namely, soliciting right-of-way and easement agreements.

SANDRA N. MOLLBERG (Salisbury) - By Consent, the Commission suspended Ms. Mollberg's broker license for three years effective August 1, 1996. Six months of the suspension are to be active and the remaining period stayed for a probationary term of two years and six months. The Commission found that Ms. Mollberg had assisted parties in preparing a contract reflecting a purchase price of \$150,000 for a property which she had listed for sale and which she knew to have a true purchase price of \$250,000.

BOBBETTE K. PYNE (Hickory) - By Consent, the Commission suspended Ms. Pyne's broker license for six months effective October 1, 1996. Thirty days of the suspension are to be active and the remaining period stayed for a probationary

term of five months. The Commission found that Ms. Pyne, in 1992, believing information supplied by the sellers that property Ms. Pyne had listed for sale did not have a significant or recurring leakage problem, had failed to disclose to buyers or their agent that the property's basement had leaked and had not been repaired. The Commission noted a financial settlement had been made with the buyers. Ms. Pyne neither admitted nor denied any misconduct.

MARK C. ROGERS (Charlotte) - The Commission revoked Mr. Rogers' broker license effective June 30, 1996. The Commission found that Mr. Rogers had made a false statement on his sworn application to the Commission for real estate licensure; namely, Mr. Rogers answered "no" to the application question regarding criminal convictions when, in fact, he had been convicted of the crime of driving while impaired. The Commission further found that after his licensure by the Commission, Mr. Rogers had been convicted of the crime of criminal domestic trespass.

THOMAS W. SEVIER (Cary) - By Consent, the Commission reprimanded Mr. Sevier effective June 11, 1996. The Commission found that Mr. Sevier, while marketing a new home subdivision, had received earnest money deposit checks on lot reservation agreements, but that he had failed to promptly deliver the checks to the broker-in-charge of the firm with which he was associated. The Commission noted that there had been no loss of any trust monies and that corrective measures had been promptly taken to prevent reoccurrence of the situation.

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Disciplinary action

(continued from page 15)



E.I. SUNSHINE, INC. (Emerald Isle) - By Consent, the Commission revoked E.I. Sunshine, Inc.'s corporate real estate broker license effective June 11, 1996. The Commission found that E.I. Sunshine, Inc., while engaging in real estate brokerage and property management, had failed to deposit and maintain the funds it held for others in a trust or escrow account and had failed to

account for and remit trust monies. The Commission further found that in October 1995, E.I. Sunshine, Inc.'s liability for the funds entrusted to it exceeded the funds on deposit in its trust account by more than \$275,000.

UNIVERSAL FIELD SERVICES, INC. (Raleigh) - By Consent, the Commission reprimanded Universal Field Services, Inc. effective August 1, 1996. The Commission found that Universal Field Services, Inc. had allowed its unlicensed employees to solicit right-of-way and easement agreements in North Carolina as a result of training procedures during which employees worked independently instead of being required to accompany and observe licensed real estate agents.

JEANNETTE P. WELLS (Winston-Salem) - By Consent, the Commission suspended Ms. Wells' salesman license for four years effective August 1, 1996. At any time after three years' active suspension, if Ms. Wells can demonstrate to the satisfaction of the Commission that she has been released from supervised and unsupervised probation imposed as a result of felony convictions, the Commission shall stay the suspension and place her on probation for the remainder of the suspension period. The Commission found that Ms. Wells had been convicted of four felony counts of trafficking cocaine and four felony counts of possession with intent to sell and deliver cocaine and sale and delivery of cocaine. □

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