



NORTH CAROLINA REAL ESTATE COMMISSION

Real Estate Bulletin

Volume 28

Fall 1997

Number 3

Proffitt elected to ARELLO Board of Directors



Wanda J. Proffitt

At the Annual Conference of the Association of Real Estate License Officials (ARELLO) held in September, North Carolina Real Estate Commission Chairman Wanda J. Proffitt of Burnsville was elected as a Director of ARELLO's Southern District. In addition to North and South Carolina, the Southern District includes Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, Tennessee, Texas, Virginia and West Virginia, as well as the Virgin Islands.

Mrs. Proffitt is serving her second term on the Commission, having been initially appointed by Governor Hunt in 1994 and recently reappointed to a three-year term expiring July 31, 2000.

Also at the Annual Conference, Commission Executive Director Phillip T. Fisher was appointed Vice-Chair of the Interjurisdiction Cooperation Committee, and Mary Frances Whitley, the Commission's Director of Administration, was appointed Vice-Chair of the Administrative Committee. □

Broker Price Opinion revisited

The North Carolina Appraisal Board has reconsidered its position concerning "broker price opinions." Earlier this year the Board adopted the view that except when representing a buyer or seller during the ordinary course of a real estate transaction, a licensed real estate broker or salesman must also be a state-licensed or state-certified appraiser to provide his or her opinion of the value of an identified parcel of real estate. The Board thus took a very strict view of the exception for comparative market analyses built into the still new appraiser licensing statutes. But after further

consideration of the question and more closely examining customary practice, the Board has somewhat relaxed its view.

Real estate brokers and salesmen occasionally are asked to assist buyers, sellers, and others in determining the probable sales prices of particular parcels of real property. Under certain circumstances, this type of analysis has come to be called a "broker price opinion." The question is, when may a person not licensed or certified by the Appraisal Board lawfully perform a broker price opinion?

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Announcing...

Legislature amends Residential Property Disclosure Act

An amendment to the Residential Property Disclosure Act which is effective December 1, 1997, clarifies the timing of the purchaser's right to cancel a contract if the purchaser does not receive the Residential Property Disclosure Statement prior to making an offer. This amendment made necessary a change in the Guidelines on the reverse side of the Statement. The Statement and revised guidelines are reprinted on pages 5 and 6 of this *Bulletin*.

The new legislation also authorizes and directs the Real Estate Commission to develop a new Residential Property Disclosure Statement for use on and after October 1, 1998. The time, date and place for the rulemaking hearing to consider the adoption of the Statement and other rules will be announced in the next issue of the *Bulletin*, scheduled for publication in early January. The *Bulletin* will also contain a proposed Statement. ■

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

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Raleigh, North Carolina 27619 - 7100
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Editor

Carrie D. Worthington

Commission Staff Update



Brenda H. Badger

Brenda H. Badger has been promoted to Senior Records Specialist to fill a position created by the retirement of

Naomi Cottle. Brenda joined the Records Section in 1989, having been previously employed at Shaw University where she was responsible for various administrative and clerical duties. In 1996, she transferred to the position of License

Specialist in the Commission's Education and Licensing Division. As Senior Records Specialist, Brenda will supervise the maintenance and updating of licensee files and records, including the processing of license renewals.

Legal Secretary/Receptionist Wanda E. Johnson has rejoined the Education and Licensing Division to assume the position of License Specialist. Employed with the Commission since 1992, Wanda transferred to the Commission's Legal Services

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REGISTRATION FORM for BASIC TRUST ACCOUNT PROCEDURES COURSE MONTHLY - RALEIGH

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.

☐ November 12
☐ January 6, 1998

☐ December 9
☐ February 3

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)

Division in 1996. Her previous employment included 21 years of secretarial experience. As License Specialist, Wanda will assist Licensing and Education Officer Diane Ursone. Her responsibilities will include the issuance of reciprocal and firm licenses and license reinstatement.

△△△△△△△△



Matthew Thompson

The Commission is participating in the "Supported Employment Program," sponsored by the Autism Society of North Carolina and Division TEACCH (Treatment and Education of Autistic and related Communication handicapped Children) of the UNC-Chapel Hill School of Medicine. Through the program, Matthew Thompson will assist Commission staff with opening mail and other duties on a part-time basis. Executive Director Phillip T. Fisher explains that the Commission's participation in the program will increase staff productivity, "and a deserving individual will be assisted and given an opportunity to enter the work force."

△△△△△△△△

EXAM RESULTS

	Passed	Failed
June		
Brokers	162	94
Salesmen	486	346
July		
Brokers	89	73
Salesmen	394	305
August		
Brokers	111	59
Salesmen	391	218

The following Commission staff members have made appearances before various real estate industry and related groups since the last issue of the *Bulletin*. Miriam J. Baer, the Commission's Assistant Director of Legal Services, attended the Greensboro Regional REALTORS® Association's "Brokers' Forum" and talked about issues of interest to firm owners and sales managers; at the Carteret County Association of REALTORS® 1997 Trade Show and Exposition in Morehead City, Miriam discussed

designated agency and other agency-related topics, as well as issues regarding risk management; and avoiding violations of the Real Estate License Law and Commission rules was the topic of her discussion when she addressed the Wilmington Regional Association of REALTORS®...Chief Deputy Legal Counsel Blackwell M. Brogden, Jr., delivered a speech on agency agreements and disclosure at a meeting of the Wilkes County Board of REALTORS® in North Wilkesboro.

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REAL ESTATE COMMISSION PUBLICATIONS ORDER FORM

	No. Copies Requested
<i>Res. Property Disclosure Statement and Guidelines</i> (Please limit request to one copy.)	_____
<i>Questions and Answers on: Tenant Security Deposits</i>	_____
<i>Questions and Answers on: Fair Housing</i>	_____
<i>Questions and Answers on: Condos and Townhouses</i>	_____
<i>Questions and Answers on: Who Agents Represent</i>	_____
<i>Questions and Answers on: Purchasing Coastal Real Estate in North Carolina</i>	_____
<i>Questions and Answers on: Renting Residential Real Estate</i>	_____

()

Name _____ Phone Number (Including Area Code) _____

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

Instructions

1. You may request single copies of these free publications by returning this Order Form or calling the Commission office (919) 875-3700, menu option 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.

Communicating with the Commission

If you wish to contact the North Carolina Real Estate Commission by phone, fax, mail or e-mail, please refer to the following information.

North Carolina Real Estate Commission

Mail

1313 Navaho Drive
Post Office Box 17100
Raleigh, North Carolina 27619-7100

Telephone

919/875-3700

You will receive more prompt service if you use this directory when calling the Commission. If the automated telephone attendant answers your call, you may access the section or division shown in the "Access Code" column by dialing on your touchtone phone the number shown parenthetically ().

Subject

Access Codes

- Application form requests Receptionist (0)
- Real estate license renewals and record changes Records Section (1)
- Complaints and legal matters (Consumer complaints/inquiries, pending cases/hearings) Legal Services Division (2)
- Education matters Education Section (3)
- Real estate license qualifications and examinations Application Section (4)
- Real estate firm licensing and licensing by reinstatement or reciprocity Licensing Section (5)
- Complaint investigations and audits . . . Audits and Investigations Division (6)
- Administration, personnel matters and accounting Administration Division (7)
- Other matters Receptionist (0)

Interactive Voice Response

To retrieve licensee data (license status, CE credits, broker-in-charge information, etc.) from the Interactive Voice Response (IVR) system, use a touchtone phone to dial (919) 850-2753.

E-Mail

- Executive exec@ncrec.state.nc.us
- Administration admin@ncrec.state.nc.us
- Education & Licensing . . educ@ncrec.state.nc.us
- Audits & Investigations . . ai@ncrec.state.nc.us
- Legal Services legal@ncrec.state.nc.us
- Records records@ncrec.state.nc.us

Internet

Web Site: www.ncrec.state.nc.us



"Visit" the Commission online - your easy access to Commission information. The Internet brings to your computer screen

licensing information including the License Law, Commission Rules, Trust Account Guidelines, State Fair Housing Act, general information and guides, sample forms and real estate licensing forms. Also, exam schedules and review dates as well as Commission publications including the *Bulletin* and *CE Schedule*, Commission brochure and the complete *Question and Answer Series*.

Fax-on-Demand

The following documents are available from the various Commission Divisions/Sections by dialing on your touchtone phone (919) 850-2757.

Document #	Administration/Records
200	Request to Activate Broker or Salesman License, Notification of Salesman Supervision, Notification of Change of Broker's Business Address
210	Broker-in-Charge Declaration
220	Request for Reissuance of Real Estate License Certificate and/or Renewal Pocket Card

Education/Licensing

300	Continuing Education Course Schedule
310	Publications Order Form
320	License Examination Schedule and License Examination Review Schedule
330	Basic Trust Account Procedures Course Schedule and Registration Form
340	Order Form for License Examination Candidate Roster/Order Form for Register of New Licensees
350	Verification of Salesman Experience
360	Request for Equivalent Education Credit

Legal Services

400	Complaint Form
410	Criminal Conviction Reporting Form
420	Residential Property Disclosure Statement
430	Disclosure to Buyer From Seller's Agent or Subagent

Other

500	1997 Commission Meeting Schedule
510	Request for Program Presenter

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 _____

REC 10/97

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. If you do not, the purchaser can, under certain conditions, cancel any resulting contract (See "Note to Purchasers" below). You should give the purchaser a copy of the Statement containing your signature and keep a copy signed by the purchaser for your records.

Note to Purchasers

If the owner does not give you a Residential Property Disclosure Statement by the time you make your offer to purchase the property, you may under certain conditions cancel any resulting contract. To cancel the contract, you must personally deliver or mail written notice of your decision to cancel to the owner or the owner's agent within three calendar days following the date of the contract or three calendar days following your receipt of the Statement, whichever occurs first. However, in no event does the Disclosure Act permit you to cancel a contract after the transaction has been closed or (in the case of a sale or exchange) after you have occupied the property, whichever occurs first.

If you properly cancel the contract, you are entitled to a refund of any deposit monies you may have paid, and you cannot be otherwise penalized.

Senior Records Specialist retires

By Carrie D. Worthington, Publications Officer



A familiar face (and voice) is missing from the Records Section: Naomi Cottle retired October 1.

"Records Section. This is Naomi Cottle."

Sound familiar? For almost 24 years, Naomi Cottle's pleasant voice greeted callers who were inquiring about their license status...or the status of another licensee or firm.

"Is my license 'active'?" "Did you receive my renewal check?" "What address do you show for me?" Can you tell me if someone is licensed?" "Do you show a company with the name?"

For all those years, Naomi patiently answered questions posed by licensees and consumers. She updated licensee records. She helped process thousands of renewal applications - each year! And she helped countless licensees who came to the Commission office in need of assistance in completing a form or an application.

She saw many changes in the real estate industry and in the Commission and its staff. Saw records retention go from file folders

to microfilm, and finally to optical imaging.

"It's unbelievable, in the length of time I've been here, how many changes have been made," she exclaimed. But 24 years is a long time, and now Naomi, herself has made a big change: Effective October 1, 1997, Naomi Cottle retired as Senior Records Specialist.

"It took me a long time to make the decision [to retire]," Naomi stated. "It was a hard decision. It really was," she said emphatically.

"I'm not looking at it as an end, just as a new beginning," she continued.

She echoed the thoughts of many licensees, the Commission and staff when she said, "It's going to be different. It's going to be an adjustment."

As we adjust to the office without Naomi, we wish her much happiness in her retirement. ■

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) 875-3700.

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

Commission Calendar

Meeting Dates

November 18

December 17

January 7, 1998

February 11

March 11

April 7

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

Commission Staff Update

(continued from page 3)

Deputy Legal Counsel Marilyn E. Tomei, Associate Legal Counsel Janet B. Dutton, Education and Examination Officer Anita R. Burt, and Auditor/Investigator Michael B. Gray attended the Seventeenth Annual Conference of the Council on Licensure,

Enforcement and Regulation (CLEAR) in Norfolk, Virginia.

(Individuals and groups requesting a speaker from the Real Estate Commission are reminded that a "Request for Program Presenter" form is available from the Commission Office or by calling (919) 850-2757.) ■

Questions and Answers on: Renting Residential Real Estate

The first portion of the Commission's latest **Q and A** brochure is reprinted below and on the next two pages. The reprint will be continued in the next **Real Estate Bulletin**.



The relationship between you (the tenant) and a landlord begins when you enter into a contract - typically a lease. The terms of a lease generally are not dictated by law. However, many of the duties that you owe to each other are controlled by statutory law and cannot be "bargained away."

This pamphlet focuses on questions that frequently arise during the landlord-tenant relationship. Although the term "apartment" is used throughout, you should be aware that the questions and answers apply equally to other types of residential rental real estate.

For information on tenant security deposits, discrimination in rental housing, condominiums and townhouses, and other consumer housing issues, contact the North Carolina Real Estate Commission (919/875-3700) and request a free copy of a "Questions and Answers" brochure on any of these topics. Other written materials are available from the Consumer Protection Section of the Attorney General's Office (919/733-7741). And for fair housing (discrimination) issues, call the North Carolina Human Relations Commission (919/733-7996) or your local fair housing agency. In addition, you may wish to consult a private attorney.

Q: In North Carolina, must a lease agreement be in writing?

A: No. An oral agreement can establish a landlord-tenant relationship if it is for a term of less than three years from the time the agreement is made and includes the • names of the landlord and tenant(s), • location of the property to be leased, • time period of the lease, and • amount of rent to be paid. *[Note: If the lease is required to be in writing, the signature of the party against whom you seek to enforce the lease is required.]*



Q: I filled out an application to rent an apartment and gave the landlord money to "hold" the apartment for me. Now I have found another place that I like better. Can I get my money back?

A: Probably not. Money you give to "hold" an apartment generally can be kept by the landlord. It is the price you pay to ensure that the landlord does not rent the apartment to someone else. Furthermore, if you have already agreed to rent a particular apartment for a particular term at a particular price, you may have created an oral lease; if so, the money may be considered a security deposit which can be retained by the landlord to the extent necessary to compensate him for your failure to pay rent.

Q: My landlord gave me a written lease but it does not include his earlier oral promise to replace worn carpet. Can I rely on his oral promise?

A: No. Do not rely on a prior oral agreement with the landlord. To make it "legal," have it written into the lease and initialled by both of you.

Q: Does the landlord have to repaint the apartment before I move in?

A: No. The landlord has no obligation to paint an apartment each time it is rented.

Q: Can the landlord charge me more because I have a pet?

A: Yes. The landlord may charge extra rent and/or a nonrefundable pet fee in exchange for allowing you to keep a pet in the apartment. Furthermore, the landlord may charge more for some types or sizes of pets than for others; or, may prohibit pets completely. Any agreement you have with the landlord about pets should be included in the written lease.



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Renting Residential Real Estate

(continued from page 8)

Q: If my personal property is damaged by fire or theft while I am a tenant, will the landlord have to compensate me for my loss?

A: Not necessarily. Many tenants assume that their belongings are protected under the landlord's insurance. But unless the fire or theft was the result of a negligent act by the landlord, he is not responsible for your loss. Therefore, it is generally a good idea for you to purchase renter's insurance for your protection.



Q: Can my landlord come into my apartment periodically just to check its condition?

A: Maybe. Many leases give the landlord the right to enter the property to inspect it to see if the tenant is complying with his obligations, to make necessary repairs, to place "for sale" or "for rent" signs on it, or to show it to prospective purchasers or tenants. Still, entry must be at reasonable times and upon reasonable notice. If your lease doesn't address it, the landlord has no right to enter your apartment during the term of your lease.

Q: Does the landlord have to repair anything in my apartment that breaks down? What if I signed a lease accepting the apartment "as is"?

A: The landlord is responsible for some repairs, and the tenant for others. For example,

The landlord must

- Comply with local housing and building codes;
- Do whatever is necessary to put and keep your apartment in fit and habitable condition;
- Maintain in good, safe working order all electrical, plumbing, sanitary, heating, ventilating, air conditioning and other facilities and appliances which he has provided, and promptly repair them when you notify him in writing they are in need of repair (except in cases of emergencies);
- Keep all common areas in safe condition; and
- Provide and install smoke detectors and replace batteries at the beginning of your tenancy.

[Note: After the tenancy begins, the landlord may enter a written agreement with you to pay you or reduce your rent in exchange for repairs.]

The tenant must

- Keep the rental unit clean (including toilet, sinks, and baths) and as safe as conditions permit;
- Dispose of trash and garbage in a clean and safe manner;
- Pay the rent as promised and otherwise comply with the lease;
- Not damage (or knowingly let anyone else damage) the property;

- Comply with any duties imposed by local building and housing codes;
- Replace batteries in smoke detectors as needed, and tell the landlord if a detector needs to be repaired; and
- Leave the unit clean at the end of the lease and in as good condition as when you moved in, except for reasonable wear and tear. *[Note: It is important at the beginning of your lease to note the condition of your apartment on a checklist and ask the landlord to initial it. That way, you will not be held responsible for damage that existed when you moved in.]*

Q: Can I withhold my rent if the landlord does not do the repairs?

A: No, not without a court order or the permission of the landlord. Give the landlord a written request for repairs, and keep a copy. If a reasonable time passes and the repairs are not properly done, you may seek a rent reduction in Small Claims Court for the decreased value of your apartment. If the landlord ignores your request to fix the problem and your apartment is uninhabitable, you may be able to vacate the apartment and end the landlord-tenant relationship under a legal theory called "constructive eviction." Consult an attorney for advice.



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Renting Residential Real Estate

(continued from page 9)



Q: Can the landlord evict me for complaining?

A: No. Under North Carolina law, you can do the following things without fear of eviction:

- Complain to the landlord;
- Complain to government agencies (such as housing inspectors and health departments);
- Assert your rights under the lease;
- Organize with other tenants to assert your rights; and
- Sue the landlord to enforce the lease.

Q: Can the landlord raise my rent during the term of my lease?

A: No. Unless the lease states otherwise, you are guaranteed the agreed-upon monthly rent for the agreed-upon term of the lease. However, you also give the landlord your guarantee to pay the agreed-upon rent, on time, for that period.

Q: Can't I always terminate my lease with 30 days' notice to the landlord?

A: No. If your lease provides for a definite termination date, you are

typically obligated for the entire lease term, even if you have a good reason for leaving such as illness or a job transfer. Only termination due to certain military transfers is excused. So, if you leave early and the landlord is unable to re-rent your apartment, he may sue you for the unpaid rent and costs, and/or file a negative credit report against you.

Some leases allow a tenant to terminate the lease early under certain circumstances by giving notice. Check your lease to determine if it permits early termination and what amount of notice is required. If, for example, your lease allows you to give 30 days' notice to terminate it, typically, you must notify the landlord at least 30 days before the end of the month in which you propose to leave and pay rent through the end of that month.

Q: I'm renting on a month-to-month basis. What notice must I give to terminate my lease?

A: Renting month-to-month is a form of "periodic tenancy." A periodic tenancy often occurs when a tenant remains in the apartment after the expiration of the initial lease term. Periodic tenancies have no termination date and may be terminated by either the landlord or tenant giving notice to the other. The amount of notice required will usually be set forth in the lease. If there is no lease, or if the lease does not contain a notice provision, then North Carolina law allows you to terminate a year-to-year tenancy by giving notice to the landlord at least one month before the end of the year; a month-to-month tenancy by giving notice at least seven days before the end of the month; and a week-to-week tenancy by giving notice at least two days before the end of the week.

(continued in next Bulletin)

Broker Price Opinion revisited

(continued from page 1)

Under the North Carolina Appraisers Act, a real estate appraisal is any analysis, opinion, or conclusion as to the value of an identified parcel of real property when performed for compensation. The statute requires that all persons who act as real estate appraisers or hold themselves out to be appraisers must be licensed or certified by the Board.

Specifically exempted from the requirements of the law is a duly licensed real estate broker or salesman who performs a comparative market analysis - provided the licensee does not represent himself or herself to be an appraiser.

Although the statute does not define the term "broker price opinion," it does define a comparative market analysis to be an analysis of sales of similar recently sold properties, performed by a broker or salesman for the broker's or salesman's principal, to get an indication of the probable sales price of a particular property. Therefore, when a broker price opinion is based upon recent sales of comparable properties, it is, essentially, a comparative market analysis.

Under the Board's newer view, a licensed real estate broker or salesman may perform a comparative market analysis (or broker price opinion) not only for his or her actual client in a real estate brokerage transaction, but also for prospective clients such as buyers or sellers just entering the real estate market, or banks and relocation companies who must regularly sell real property through a broker's services. The Board also has expanded its view of the meaning of the word "principal" to include any person or entity whom the real estate licensee reasonably anticipates may become a client for brokerage services. This view more closely conforms to customary practice in the real estate industry.

(continued on page 11)

Federal tax law changes affect real estate

(Excerpted from the 1997-98 Real Estate Continuing Education Update Course)

Sale of Principal Residence "Rollover" Provisions Replaced

- △ The old tax rules provided that gain realized on the sale of a principal residence is deferred ("rolled over") to the extent that the adjusted sale price (amount realized less fixing-up expenses) is reinvested in a new principal residence within a period beginning two (2) years before the date of sale of the old residence and ending two (2) years after such date.

Key Point

- △ The "rollover" provisions have been replaced with provisions that provide a capital gains exclusion of \$250,000 (for single taxpayers) or \$500,000 (for married taxpayers filing a joint return) provided the taxpayer(s) has occupied the property as a principal residence for two (2) of the last five (5) years.

- △ This is not a one-time exclusion. The exclusion applies to each sale of a principal residence so long as the occupancy requirement is satisfied.

- △ **Effective date** — May 7, 1997. The new provisions apply to sales on or after May 7, 1997.

- △ The new exclusion provisions also replace the old rules allowing taxpayers over the age of 55 to take a one-time exclusion of up to \$125,000 in gain realized on the sale of a principal residence.

New Capital Gains Rates

- △ The new long-term capital gains tax rates for gains on the sale of real estate and most other capital assets are 20% (for those currently in the 28% bracket) and 10% (for those currently in the 15% bracket). For investment real estate where depreciation has

been claimed, the rate will be 25% for recaptured depreciation deductions and 20% for other gain attributable to an increase in value.

- △ **Effective date** — May 7, 1997.

- △ Effective with sales on or after July 29, 1997, the new long-term capital gains holding period is 18 months.

- △ Beginning in the year 2001, the capital gains rates for property held over five (5) years will be 18%/8% (rather than 20%/10%).

Penalty-Free IRA Withdrawal for First-Time Homebuyers

- △ The new law also permits "first-time home buyers" to withdraw funds penalty free from an individual retirement account (IRA) for use toward a home purchase. Details regarding these provisions are complex and confusing. Agents should refer any buyers with questions about this matter to their tax consultant.

Broker Price Opinion revisited

(continued from page 10)

In Conclusion

To perform a comparative market analysis or comparable sales based broker price opinion for his or her principal for compensation, a licensed broker or salesman need not also be a state-licensed or state-certified appraiser - if the principal is actually the licensee's client for brokerage services or if the licensee reasonably believes the principal may become his or her client.

Practice Tip

When performing a comparative market analysis or broker price opinion for a client or potential client, be sure to document the recent sales of comparable properties upon which you base your analysis. Identify the results of your analysis as a "probable sales price" only and not the "market value" or an "appraisal." In your written report, state that "This is a comparative market analysis and not an appraisal and should not be used for lending purposes."

Agency Reminder...

Have you implemented agency disclosure in your sales practice? The Real Estate Commission has received a number of reports that some licensees are ignoring the rule governing agency relationships. Those provisions have been in effect since July 1995 - plenty of time to learn and implement them.

Remember these basic requirements of the rule:

1. All your agency agreements in real estate sales transactions must be in writing. This includes listing contracts, buyer agency agreements and dual agency agreements.
2. All such agency agreements must include a definite termination date, specified nondiscrimination language, and the *Description of Agent Duties and Relationships*.
3. When you are working directly with a buyer but you are not the buyer's agent, you must give the buyer the *Disclosure to Buyer from Seller's Agent or Subagent* form at your first substantial contact and ask him or her to sign it. If the buyer won't sign, you may choose to work with that buyer anyway, but be sure to make a note for your file of the circumstances under which you gave the *Disclosure* form and the fact that the buyer wouldn't sign it.

4. When you are a buyer's agent, you must disclose your agency status to the listing agent at the initial contact. Your disclosure can be made orally; e.g., over the phone. Confirm your buyer-agency status in writing no later than the presentation of the offer. You can simply check the "buyer agent" box at the bottom of the Offer to Purchase and Contract (*NCAR/NCBA Standard Form No. 2*).

If you have not yet implemented these basic principles into your sales practice, you are acting in violation of the law. Failure to make agency disclosures, representing a client without a written contract, or otherwise ignoring the rules can result in disciplinary action.

Note: A new set of provisions in the agency rule permits dual agents to practice "designated agency" in certain situations. Designated agency is optional, not required. (See "Designated Agency — A New Dual Agency Option" in *Real Estate Bulletin* Volume 28, Number 2, Summer 1997.) "Designated Agency" is the primary topic covered in the 1997-98 Real Estate Update mandatory continuing education course. The Commission urges you to attend the *Update* course at your earliest convenience for more detailed information on the subject.

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.

IDA L. ALEXANDER (Durham) - By Consent, the Commission revoked Ms. Alexander's broker license effective June 1, 1997. The Commission found that Ms. Alexander had failed to properly handle and maintain the rental monies and tenant security deposits she received while acting as a rental property manager. The Commission also found that Ms. Alexander had commingled her own monies with the funds of others, had engaged in deficit spending, and had converted trust monies to her own use. The Commission further found that Ms. Alexander had failed to maintain records of all receipts and disbursements of trust monies in such a manner as to create a clear audit trail, and that her trust account was short. Ms. Alexander neither admitted nor denied any misconduct.

REDDITT ALEXANDER (Durham) - By Consent, the Commission revoked Mr. Alexander's broker license effective June 1, 1997. The Commission found that Mr. Alexander had failed to properly handle and maintain the rental monies and tenant security deposits he received while acting as a rental property manager. The Commission also found that Mr. Alexander had commingled his own monies with the funds of others, had engaged in deficit spending, and had converted trust monies to his own use. The Commission further found that Mr. Alexander had failed to maintain

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Disciplinary action

(continued from page 12)

records of all receipts and disbursements of trust monies in such a manner as to create a clear audit trail, and that his trust account was short. Mr. Alexander neither admitted nor denied any misconduct.

APPLE REALTY 2000, INC. (Charlotte) - The Commission accepted the voluntary surrender of Apple Realty 2000, Inc.'s corporate real estate broker license for two years effective March 1, 1997. The Commission dismissed without prejudice charges that Apple Realty 2000, Inc. had violated the Real Estate License Law and the rules of the Commission in the conduct of a real estate brokerage business.

JO ANNE BAGGERLY (Burlington) - By Consent, the Commission suspended Ms. Baggerly's salesman license for one year effective April 1, 1997. The Commission then stayed the suspension for a probationary term of one year. The Commission found that Ms. Baggerly, while licensed only as a salesman, had operated a rental business and an unlicensed corporation.

SCOTT C. BORTZ (Charlotte) - By Consent, the Commission suspended Mr. Bortz' salesman license for four years effective August 1, 1997. Nine months of the suspension are to be active and the remaining period stayed for a probationary term of 39 months, upon certain conditions. The Commission found that while he was employed at a previous employer in the early 1990's and licensed only as a salesman, Mr. Bortz had received direct commission payments. The Commission further found that on one occasion, Mr. Bortz had signed his supervising broker's name on a check request form, without authority, in order to receive payment of one commission. The Commission noted that Mr. Bortz has paid his previous employer all commissions referred to above.

TONY CARR a/k/a MOHAMMAD HOSSAIN BAGHALZADEH (Charlotte) - The Commission revoked Mr. Carr's salesman license effective August 1, 1997. The Commission found that Mr. Carr had obtained a real estate license by making false statements about his employment history and failing to disclose his actual name on his license application. The Commission further found that prior to his licensure, Mr. Carr had held himself out as a licensee, and had falsely denied to the Commission staff his past conduct.

RAYMOND D. COLLINS, JR. (Winston-Salem) - By Consent, the Commission suspended Mr. Collins' broker license for six months effective June 11, 1997. The Commission then stayed the suspension for a probationary term of two years. The Commission found that Mr. Collins, while acting as a dual agent, in a negligent attempt to help a tenant obtain a permit, had placed the landlord's signature on a lease without authority and when the lease form did not reflect the final agreement of the parties. The Commission further found that a proper lease was never completed and that a dispute had arisen concerning responsibility for the tenant's fix-up expenditures and liability to the landlord for rents due on the premises. The Commission noted that Mr. Collins has paid all of these sums to resolve the dispute.

FRANK R. DAVIDSON (Charlotte) - The Commission revoked Mr. Davidson's broker license effective June 30, 1997. The Commission found that Mr. Davidson had failed to account for and remit trust monies received in connection with his management of rental properties and in connection with two sales transactions he had handled for one of his property management clients. The Commission also found that Mr. Davidson

had commingled trust monies with his personal funds and had converted trust monies to his own use. The Commission further found that Mr. Davidson had failed to maintain records of all transactions conducted in his capacity as a real estate broker.

HARRY R. DOCKERY (Murphy) - By Consent, the Commission suspended Mr. Dockery's broker license for one year effective July 1, 1997. The Commission then stayed the suspension for a probationary term of one year. The Commission found that Mr. Dockery had listed a property for sale at a price set by the sellers based on an appraisal of the property which the sellers had obtained, instead of doing further research to determine the property's real market value. The Commission also found that Mr. Dockery had contracted to purchase the property himself at a price lower than the listing price, and that before he closed on his purchase, Mr. Dockery had offered the property for sale at a price that was higher than the sellers' listing price. The Commission further found that when Mr. Dockery then received two offers to purchase the property, he had failed to disclose the offers to the sellers, had accepted the higher offer, and had made a significant profit. The Commission noted that Mr. Dockery had cooperated with its investigation and had taken the necessary steps to correct his mistakes.

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Disciplinary action

(continued from page 13)

HARDISON REALTY COMPANY (Carolina Beach) - By Consent, the Commission revoked the corporate real estate broker license of Hardison Realty Company effective July 11, 1997. The Commission found that Hardison Realty Company had failed to properly maintain trust monies on deposit and also had failed to maintain trust account records as required by Commission rule.

ESSEE J. HEBERT (Cary) - The Commission revoked Ms. Hebert's salesman license effective June 30, 1997. The Commission found that Ms. Hebert had failed to disclose the malfunction of the septic system to tenants in her rental property, had failed to correct the septic system malfunction or to vacate the property, and had rented the property to new tenants after being instructed by the Health Department to correct the problem or vacate the property because it was a health hazard. The Commission further found that Ms. Hebert had failed to account for and remit a tenant security deposit received from a tenant in her rental property.

ROBERT R. HEBERT (Sneads Ferry) - By Consent, the Commission revoked Mr. Hebert's broker license effective September 1, 1997. On September 1, 1999, upon application and payment of the applicable fee, Mr. Hebert shall be issued a real estate salesman license if certain conditions are met. On or after September 1, 2001, Mr. Hebert may apply for the reinstatement of his broker license. The Commission found that Mr. Hebert had allowed a corporation to operate without a real estate firm license. The Commission also found that as of October 11, 1996, a shortage existed in the firm's trust account, and numerous trust account checks had been returned unpaid for insufficient funds. Mr. Hebert was unable to

provide the Commission with complete copies of the firm's trust account records.

DAMIEN M.L. HERRERA (Fayetteville) - By Consent, the Commission suspended Mr. Herrera's salesman license effective May 1, 1997, until September 11, 1999. If Mr. Herrera furnishes to the Commission satisfactory written proof of his release from supervised probation prior to September 11, 1999, the Commission shall stay the remaining portion of his suspension, reinstate his license, and place Mr. Herrera on probation until September 11, 1999. The Commission found that Mr. Herrera had been convicted of one count of access device fraud and that he had failed to report this conviction to the Commission.

EUGENE P. HOLZ (Atlantic Beach) - By Consent, the Commission suspended Mr. Holz' broker license for two years effective September 1, 1997. The Commission then stayed the suspension for a probationary term of two years, upon certain conditions. The Commission found that as an agent for two real estate firms, and in one instance as seller of his own property, Mr. Holz had participated in a "time share trade-in scheme" that involved misrepresenting the nature of earnest money deposits and concealing from lenders certain material facts. The Commission noted that Mr. Holz had not originated this sales scheme and that he was involved in only a few transactions. Mr. Holz denied any misconduct.

CLETUS HUDSON (Siler City) - By Consent, the Commission suspended Mr. Hudson's broker license effective May 14, 1997. The Commission then stayed the suspension for a probationary term of two years. The Commission found that Mr. Hudson had brokered a transaction using a listing

agreement that he had not properly or adequately completed.

CEILE J. JAMES (Raleigh) - By Consent, the Commission reprimanded Ms. James effective September 1, 1997, as a result of improper telephone calls which arose from matters unrelated to real estate transactions. The Commission noted that Ms. James voluntarily disclosed this matter to the Commission and had cooperated with its inquiry.

DUDLEY MCGOUGH (Jacksonville) - The Commission accepted the voluntary surrender of Mr. McGough's broker license for one year effective August 27, 1997. The Commission dismissed without prejudice charges that Mr. McGough had violated provisions of the Real Estate License Law and the rules of the Commission in connection with his conduct as a real estate broker. Mr. McGough neither admitted nor denied any misconduct.

BRADLEY B. MINSHEW (North Topsail Beach) - By Consent, the Commission suspended Mr. Minshew's broker license for one year effective August 1, 1997. The Commission then stayed the suspension for a probationary term of one year. The Commission found that Mr. Minshew, while broker-in-charge of a real estate office, had failed to maintain the trust account records in the manner and form required by Commission rule.

ERICA L. NORTON (Charlotte) - The Commission accepted the voluntary surrender of Ms. Norton's salesman license for three years effective August 14, 1997. The Commission dismissed without prejudice charges that Ms. Norton had violated provisions of the Real Estate License Law. Ms. Norton neither admitted nor denied any misconduct.

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Disciplinary action

(continued from page 14)



OLE HERITAGE REALTY, INC. (Zebulon) - By Consent, the Commission suspended the corporate real estate broker license of Ole Heritage Realty, Inc. effective August 13, 1997. The Commission then stayed the suspension for a probationary term of one year. The Commission found that while Ole Heritage Realty, Inc. was brokering a home built by one of its principals, an agent of the corporation had promised a HOW 10 year warranty, but that the agent and the corporation had failed to pay the warranty premium at closing. The Commission further found that Ole Heritage Realty, Inc. could not later secure a warranty for the property because HOW was in receivership and the home was occupied.

EDITH A. RAETHER (North Topsail Beach) - The Commission accepted the voluntary surrender of Ms. Raether's salesman license for two years effective September 1, 1997. The Commission dismissed without prejudice charges that Ms. Raether had violated the Real Estate License Law and the rules of the Commission.

BETTY B. RAY (Zebulon) - By Consent, the Commission suspended Ms. Ray's broker license for one year effective August 13, 1997. The Commission then stayed the suspension for a probationary term of one year, upon certain conditions. The Commission found that while she was licensed as a real estate broker and selling homes built by a partnership in which she was a partner, Ms. Ray had promised a HOW 10 year warranty but had failed to pay the warranty premium at closing. The Commission further found that Ms. Ray could not later secure a warranty for the property because HOW was in receivership and the home was occupied.

ANTHONY P. SPADAFORA (Carolina Beach) - By Consent, the Commission revoked Mr. Spadafora's

broker license effective July 11, 1997. The Commission found that Mr. Spadafora, as broker-in-charge, had failed to properly maintain trust monies on deposit and also had failed to maintain trust account records as required by Commission rule.

SPECTRUM RESORT PROPERTIES, INC. (Emerald Isle) - By Consent, the Commission reprimanded Spectrum Resort Properties, Inc. effective July 1, 1997. The Commission found that while acting as broker and property manager, Spectrum Resort Properties, Inc. had failed to assure that at all times its trust accounts contained sufficient monies to fund the corporation's trust account obligations. The Commission further found that Spectrum Resort Properties, Inc. had failed to keep proper records of its handling of the funds of others. The Commission noted that Spectrum Resort Properties, Inc. has taken steps to correct its funding and record-keeping deficiencies.

SUGAR MOUNTAIN SKI & COUNTRY CLUB, INC. (Banner Elk) - By Consent, the Commission suspended the corporate real estate broker license of Sugar Mountain Ski & Country Club, Inc. for one year effective August 13, 1997. The Commission then stayed the suspension for a probationary term of one year. The Commission found that prior to March 1996, Sugar Mountain Ski & Country Club, Inc. had failed to maintain records of its rental trust accounts in the manner required by Commission rules. The Commission noted that no money of others was lost as a result of the record-keeping problem; however, some funds were delayed and other funds were not adequately accounted for by the corporation.

GEORGE TATE, JR. (Chapel Hill) - By Consent, the Commission revoked Mr. Tate's broker license effective May 14, 1997. The Commission

found that Mr. Tate had undertaken to secure a loan for prospective buyers of a home and lot at a time when the buyers could not qualify for such loan. The Commission further found that Mr. Tate had assisted the buyers in misrepresenting material facts to the lender who lent them the funds to buy the home and lot.

PHILIP R. VERDOW (West End) - The Commission revoked Mr. Verdow's salesman license effective August 1, 1997. The Commission found that Mr. Verdow had violated the Real Estate License Law and rules of the Commission by using a deceptive "time share trade-in scheme" and by receiving compensation for real estate sales while his license was on inactive status.

RICHARD L. VERDOW (Seven Lakes) - The Commission revoked Mr. Verdow's salesman license effective August 1, 1997. The Commission found that Mr. Verdow had violated the Real Estate License Law and rules of the Commission by using a deceptive "time share trade-in scheme," receiving compensation for real estate sales while his license was on inactive status, and using unlicensed or inactive salesmen to sell real property for compensation in a capacity requiring active licensure.

CHARLES D. WASHINGTON (Lewisville) - By Consent, the Commission suspended Mr. Washington's salesman license for 18 months effective September 1, 1997. The Commission found that in 1988, Mr. Washington had been convicted of the felony offense of embezzlement. The Commission further found that in 1996, Mr. Washington had been convicted of a simple worthless check charge. The Commission noted that Mr. Washington has paid the financial obligations arising from these offenses.

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Disciplinary action

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WILLIAM W. WATERS (Charlotte) - The Commission suspended Mr. Waters' broker license for two years effective April 30, 1997. Mr. Waters had appealed the Commission's order to Mecklenburg County Superior Court which affirmed the Commission's decision and order in its entirety. The Commission found that while he was engaged in the construction and sale of condominium properties through a corporation of which he was an officer, and as president of two homeowners' associations for the properties, Mr.

Waters had manipulated and arranged the collection of assessment monies and the payment of common expenses for both associations in a way that benefited the construction company instead of the associations and the unit owners. The Commission also found that Mr. Waters had commingled the funds of the two associations and had failed to keep adequate and complete financial records to enable the associations to comply with the Condominium Act. The Commission further found that Mr. Waters had failed to create and maintain a separate reserve account for one of the associations, had failed to maintain the funds of the association in a designated trust or escrow account, and had failed to account for and remit the association's records and funds when he ceased to control the association.

JOAN P. WORRELL (Raleigh) - By Consent, the Commission revoked Ms. Worrell's salesman license effective May 15, 1997. The Commission found that Ms. Worrell had failed to turn over to the lender or to her broker-in-charge monies she had received from the buyer of a residential property. The Commission further found that Ms. Worrell had endorsed the lender's name on a check payable to the lender toward the closing of the property, had deposited the check into her own account, and had used the funds to pay her own mortgage which was then in default. Ms. Worrell neither admitted nor denied any misconduct. □



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