



NORTH CAROLINA REAL ESTATE COMMISSION REAL ESTATE BULLETIN

Volume 32

Fall 2001

Number 3

The Commission members and staff extend their deepest sympathies to those who suffered from the tragic events of September 11, 2001.

Proposed Rule Changes Affect Business, Education Practices

Following is a summary of proposed amendments to Real Estate Commission rules. Copies containing the complete text can be obtained from the Commission of-fice prior to the rule-making hearing.

Property Management

1. Require that all rental property management agreements be in writing.

Owner Association Management

2. Establish a record keeping standard for licensees who act as custodians of property owner association monies.

Transaction and Trust Account Records

3. Allow licensees to keep electronic or imaged copies of cancelled trust account checks in lieu of the original checks.

(See Proposed, page 5)

The Road To A Rule

Learn about the process of developing and amending rules. (See Page 4)

This Issue



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New Update Course Focuses on Agency, Inspections Page 1

Know What Home Inspections Require of You Page 8

Register for the Spring Trust Account Caravan Page 10

CMA Policy Now Law in Appraisers Act Page 11

Translation Services Benefit Growing Population Page 12

Agency Rules, Home Inspections Focus of 2001-02 Update Course

By Larry A. Outlaw, Director of Education and Licensing

All real estate licensees are required to attend the 4-hour *Real Estate Update* continuing education course, as well as one 4-hour continuing education *elective* course, each license period in order to renew their licenses on active status.

The *Update* course is developed by the Real Estate Commission and addresses completely different topics each year.

Purpose of Course

The purpose of this mandatory CE course is to assure that all active licensees receive instruction on recent changes in laws, rules and procedures affecting real estate prac-

tice and on other topics or problem areas of special importance.

The 2001-02 *Real Estate Update Course* is now being offered around the state by Commission-approved sponsors and instructors. The topics covered include:

- ☐ Revisions to Commission Rule on Agency Agreements and Disclosure (effective July 1, 2001);
- ☐ Home Inspections; and
- ☐ Update on Agent's Responsibility for Reporting Residential Square Footage.

Readers are referred to the articles on pages 8 and 9 of the *Bulletin*

(See Update Course, page 6)

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 Commission's Real Estate Bulletin.

NORTH CAROLINA REAL ESTATE COMMISSION

1313 Navaho Drive
P. O. Box 17100
Raleigh, North Carolina 27619-7100
Phone (919) 875-3700
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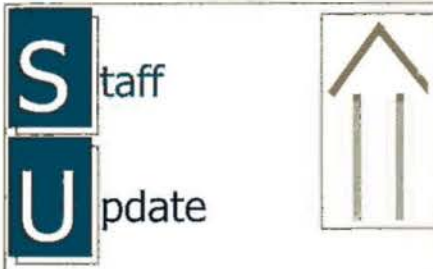
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Robert L. Forshaw



New to the Commission



Robert L. Forshaw has been appointed Publications Officer for the Commission. He has worked as a journalist, in communications with marketing agencies and corporations and in performing arts administration in Houston and as a licensed real estate salesperson in Connecticut.

Appointments



Mary Frances Whitley, Director of Administration, was elected Vice President of the Southern District of the Association of Real Estate License Law Officials. The district consists of 13 states, Puerto Rico and the Virgin Islands.



To request a speaker from the Commission, please submit the "Request for Program Presenter" form, which is available by calling Fax-on-Demand at (919) 850-2757 for Document No. 510.

Appearances

Thomas R. Miller, Legal Counsel, **Patricia M. Sullivan**, Legal Education Officer, and **Pamela R. Rorie**, Continuing Education Officer conducted Update Course Instructor Seminars in Raleigh and Charlotte.

Thomas R. Miller, Legal Counsel, and **Miriam J. Baer**, Assistant Director of Legal Services, served on a panel addressing property management issues and presented a program on "Hot Topics" at the North Carolina Association of REALTORS® annual convention at Myrtle Beach.

Emmet R. Wood, Director of Audits and Investigations, coordinated the Association of Real Estate License Law Officials' Advanced Investigator Workshop held in Austin, Texas and spoke on Using the Internet for Investigating.

Emmet R. Wood, Director of Audits and Investigations, and **Gary R. Caddell**, Auditor/Investigator Training Officer, taught the Basic Trust Account Procedures Course at the North Carolina Association of REALTORS® annual convention at Myrtle Beach.

Miriam J. Baer, Assistant Director of Legal Services, spoke to the Greenville-Pitt Association of REALTORS® on topics of general interest and taught Contract and Agency Law, Identifying False Documents and Identifying Secret Profits at the Association of Real Estate License Law Officials' Advanced Investigator Seminar in Austin.

Commission Calendar

December 12

January 8

February 13

All meetings, unless otherwise noted, begin at 9 a.m. and are held in Raleigh in the Commission's Conference Room at 1313 Navaho Drive (27609). Occasionally, circumstances necessitate changes in meeting times and locations.

Hamilton Reappointed For Third Term

Sang J. Hamilton, Sr., of Winton, has been reappointed to the Commission by Governor Michael F. Easley for a new three-year term effective August 1, 2001.

Commission chairman during 2000-01, Mr. Hamilton was originally appointed by Governor Hunt in 1995 and then to a second term in 1998.

He is a Production Engineer with Newport News Shipbuilding in Newport News, Virginia.

Q&A

Following is an excerpt from *Questions and Answers on: Condos & Townhouses*:

Q: What's the difference between a condo and a townhouse?

A: Condo unit owners own the *inside* of their units. Townhouse owners own the *complete* unit, including exterior surfaces and the land on which the unit is built. Every condo or townhouse development also has "common areas" of the property (recreation areas, sidewalks, parking lots, etc.). Condo owners share ownership of the common areas with other owners, while common areas in townhouse developments are usually owned by the homeowners' association for the benefit and use of unit owners.

www.ncrec.state.nc.us

2001-2002 REGISTRATION FORM

BASIC TRUST ACCOUNT PROCEDURES COURSE MONTHLY - RALEIGH

CONTINUING EDUCATION ELECTIVE CREDIT FOUR HOURS

TIME: 1:00—5:00 P.M.

LOCATION: MCKIMMON CENTER AT NCSU

TUITION: \$45.00

Each session is limited to 40 participants, scheduled according to the date the registration information is received.

The fastest way to register is online at www.ncrec.state.nc.us. Otherwise, complete and mail this form with a check for the tuition fee to the NC Real Estate Commission at the address below. Receipt must be no later than seven (7) days prior to the date of the preferred session. (Make additional copies, if needed.) Walk-ins accepted on a space available basis only.

- | | | |
|-------------------------------------|-------------------------------------|-------------------------------------|
| <input type="checkbox"/> November 6 | <input type="checkbox"/> December 4 | <input type="checkbox"/> January 15 |
| <input type="checkbox"/> February 5 | <input type="checkbox"/> March 5 | <input type="checkbox"/> April* |
| <input type="checkbox"/> May 7 | | |

Name _____

Address _____

City _____ State _____ Zip _____

Phone _____
Include Area Code

Broker _____ Salesperson _____ Bookkeeper _____

(Lic# _____)

*The Basic Trust Account Procedures course is not held during April because of the Spring Trust Account Caravan (see p. 10).

Mail to: NC Real Estate Commission, Audits and Investigations Division, P. O. Box 17100, Raleigh, NC 27619-7100

Registering online is easier, faster. Just have your credit card information and license number available.

The Road To A Rule

By Pamela V. Millward, Associate Legal Counsel

Proposed amendments to Real Estate Commission rules are reported beginning on page one. This is but one step in the yearlong process of rulemaking. How that process works is described here.

Both North Carolina law and the Commission's rules govern the conduct of those involved in the real estate field.

1. Commission approves rulemaking

2. Notice published in NC Register

While laws spell out the broad requirements governing licensees' activities, rules give specific details for licensure and conduct.

Real estate law is set out in Chapter 93A of the General Statutes of North Carolina. Section 93A-3 of the statute says, "The Commission shall have the power to make reasonable bylaws, rules and regulations...." And so the Commission does, codifying them under Chapter 58, a number derived from North Carolina Administrative Code, Title 21, Occupational Licensing Boards.

The rules cover a variety of topics including the activities of applicants, licensed individuals and firms, pre-licensing and continuing education schools, course materials and instructors, timeshare projects and hearings before the Commission.

As a real estate licensee, you are required to understand the import of these rules and how to apply them in the business. You also have a voice in their development with the opportunity to be heard during the nearly year-long developmental process.

Illustrating this article are the

steps involved in the development of rules. With publication of this Bulletin in October, Step 6 - the Commission's public hearing - will be next.

Generally, suggestions for rules come from licensees, members of the public, local Boards of REALTORS®, ongoing Commission review or in response to statutory change or public necessity. Once proposed, rules must go through a specific process before adoption by the Commission.

First, the Commission publishes notice of its intent to amend its rules in the North Carolina Register, published twice monthly by the Office of Administrative Hearings.

The Register contains notices and texts of proposed rule changes by any of the state's regulatory agencies and boards.

3. OSBM fiscal review

4. Local government impact review

Next, proposed rules must be evaluated for their fiscal impact. If a rule amendment will bring about a substantial economic impact on a state level, then a fiscal note must be prepared and approved by the Office of State Budget Management before rulemaking may continue. Similarly, if a rule will impact local government, then it is sent to the North Carolina Association of County Commissioners and the North Carolina League of Municipalities for review.

The Commission then publishes the text of the proposed rule changes in the Register and invites comment at a public hearing. As a result of that comment, further changes may be made to the pro-

posals before the final text is approved.

Once final text is approved, the Commission sends the text to the Rules Review Commission, an independent board created by the leg-

5. NC Register publishes text

6. Commission holds public hearing

islature to give a preliminary review of proposed changes in rules by North Carolina's regulatory agencies. The Rules Review Commission may approve the rules outright or may request that certain changes be made before submission to the General Assembly, the final stage in the rulemaking process.

If any member of the General Assembly objects to new rules, the member may submit a bill to stop passage. If no action is taken on the rules by the 31st legislative day or the day of adjournment, whichever is earlier, then the rules are adopted and published in the Administrative Code.

The North Carolina Real Estate Commission encourages its licensees and the general public to participate in the rulemaking process

7. Commission approves rules

8. General Assembly receives rules

by attending the public hearing or by sending written comments or suggestions to the Commission's Rules Coordinator at the Commission office at anytime prior to the hearing.

Proposed Rule Changes

Continued from page 1

4. Clarify that real estate transaction records must be retained for three years from the conclusion of the transaction.

Vacation Booking Fees

5. Permit licensees to pay fees to travel agents for vacation bookings.

Broker-in-Charge Course

6. Clarify that all active brokers who are brokers-in-charge (including sole practitioners) must take the *Broker-in-charge Course*.

Real Estate Commission

Payments and Fees

7. Allow all payments to the Commission to be made electronically, and clarify that electronic signatures are permitted for particular submissions.
8. Increase the license renewal fee to \$40 (now \$35). [Effective July 1, 2002]
9. Authorize the Commission to discipline licensees who do not provide proper payment for fees owed to the Commission.

Schools, Instructors, and Courses

10. No longer require schools to obtain advance approval from the Commission to change instructors.
11. No longer require private real estate schools to submit quarterly reports to the Commission on courses conducted and students enrolled.
12. Establish standards for pre-licensing course providers for securing their examinations and handling students who cheat on examinations or assignments; and clarify the weight of and passing requirement for course examinations.
13. Reduce to one hour (now two hours) the length of videotapes which must be submitted by appli-

cants for pre-licensing instructor approval.

14. Codify the application process for new instructor applicants.
15. Simplify the options for qualifying as a continuing education *Update Course* instructor.
16. Clarify the completion requirements for distance education study.
17. Require continuing education course sponsors to submit their reports to the Commission electronically or on diskette.

Other

18. Make technical changes to the *Residential Property Disclosure Statement*.
19. Allow the Commission to close Recovery Fund cases which do not mature in a timely manner.
20. Allow persons with out-of-state licenses to enroll in the broker course.
21. Correct references to 30-hour courses.

Unless otherwise indicated, the rule changes would become effective July 1, 2002. Anyone interested in the Commission's proposals may present comments at a public rule-making hearing to be held at 9:00 a.m., November 14, 2001 at the Real Estate Commission Office, 1313 Navaho Drive, Raleigh, NC. Written comments not presented at the hearing should be delivered by the hearing date to:

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

WAYS THE COMMISSION WEB SITE MAKES THINGS FASTER AND EASIER FOR YOU!

1. Renew your license online in minutes.
2. Change your residence and email address, phone and fax numbers.
3. Check on your completed continuing education credits.
4. Plan class attendance with the frequently updated continuing education schedule.
5. Print text of Commission publications.
6. Plan class attendance and register online

- with the complete Broker-in-Charge course schedule.
7. Register for the Basic and Resort Trust Account courses.
8. Download any of 20 forms.
9. Research past issues of the Bulletin.
10. Purchase rosters of new licensees and/or applicants.



Bookmark This REAL ESTATE COMMISSION Handy Reference List

MAIL

1313 Navaho Drive
P. O. Box 17100
Raleigh, NC 27619-7100

PHONE

919/875-3700

FAX

(Area Code 919)

Administration	877-4217
Audits/ Investigation	877-4218
Education/ Licensing	877-4216
Legal Services	877-4220
Records	877-4221

FAX-ON-DEMAND

919/850-2757

WEB SITE

www.ncrec.state.nc.us

EMAIL

All @ncrec.state.nc.us

Executive	exec@
Administration	admin@
Education/ Licensing	educ@
Audits/ Investigation	al@
Legal Services	legal@
Records	records@

Update Course

Continued from page 1

concerning the first two topics listed above. The previous edition of the *Bulletin* included a reprint (with comments) of the section of the Commission's *Residential Square Footage Guidelines* booklet that addresses an agent's responsibility for reporting square footage.

Working With Buyers

The revised rule on agency agreements and disclosure was effective July 1. Licensees should attend the *Update* course at their earliest opportunity to learn about using the new required *Working with Real Estate Agents* brochure and when they may work with buyers based on an oral agency agreement. The instruction on home inspections is especially interesting and should prove helpful to licensees struggling with this very troublesome area of real estate practice.

Licensees may obtain a schedule of CE course offerings from the Commission either by accessing the Commission's website (www.ncrec.state.nc.us), calling the Fax-on-Demand line (919/850-2757) or calling (919) 875-3700 to request that a schedule be mailed.

Licensees Must Report Convictions

Rule A.0113 requires any licensee who is convicted of a **misdemeanor** or **felony** or who has **disciplinary action** taken against him or her by any other professional licensing board to file a report with the Real Estate Commission.

The reporting requirement includes convictions for driving while impaired ("DWI"). The report must be filed within sixty (60) days of the final judgment or board action.

If you have questions about this rule, please call the Commission's legal division at 919-875-3700 for more information.

Keep
In
Mind...



Register, renew, review -
do all of this faster and
easier online at the
Commission's Web site,
www.ncrec.state.nc.us.

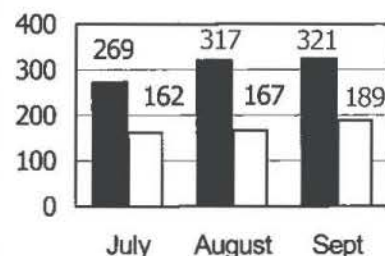
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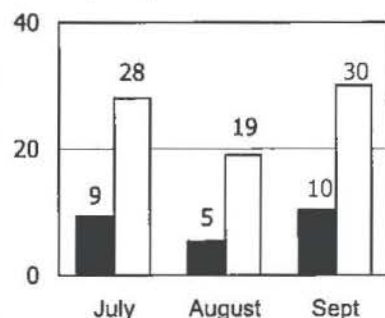


By Computer



■ Pass □ Fail

By Paper and Pencil



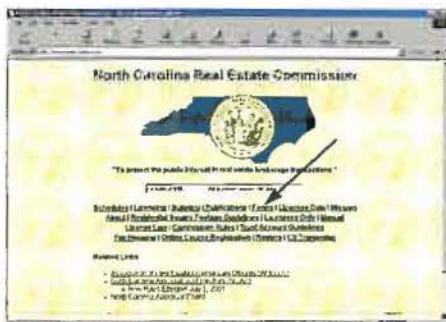
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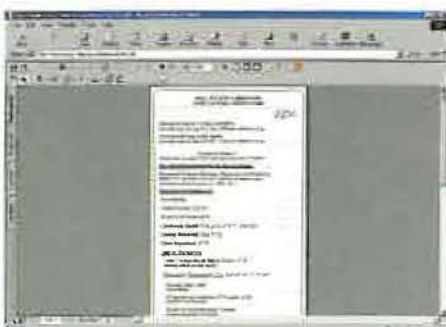
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2. Click on "Real Estate Commission Publications Order Form"



3. PRINT OUT the form after its image appears in Acrobat Reader.



REAL ESTATE COMMISSION PUBLICATIONS ORDER FORM

Quantity
Requested

Residential Square Footage Guidelines
(One free copy per agent per firm; \$.65 each additional copy.)

Working With Real Estate Agents
(One free copy per agent per firm; \$.20 each additional copy.)

Amount Enclosed: \$ _____

Checks only. We cannot take credit card orders for publications.

The following publications are free of charge:

Residential Property Disclosure Statement and Guidelines
(Please limit request to one copy; duplicate as needed. Also available on the Commission's Web site.)

Questions and Answers On:

Fair Housing

Tenant Security Deposits

Condos and Townhouses

Purchasing Coastal Real Estate in North Carolina

Renting Residential Real Estate

Home Inspections

Spanish Translations

Trato Con Agentes de Bienes Raices
(Working With Real Estate Agents)

Preguntas y Respuestas sobre: (Questions and Answers on:)

Vivienda Justa
(Fair Housing)

El Depósito de Seguridad del Inquilino
(Tenant Security Deposits)

Alquiler de Inmuebles para Viviendo
(Renting Residential Real Estate)

Name _____

()
Phone (include area code) _____

Street Address (NOT P.O. BOX) _____

City _____

State _____

Zip _____

Please allow two weeks for delivery.

Return the completed form to:
North Carolina Real Estate Commission
ATTN: Publications
P. O. Box 17100
Raleigh, NC 27619-7100

Update Course Reviews Home Inspections

By Patricia M. Sullivan, Legal Education Officer

A frequent source of controversy among licensees and parties is the issue of what is and is not subject to a home inspection and request for repairs under most standard Offers to Purchase and Contract.

One of several recommendations which emerged from a special Home Inspection Advisory Committee convened during the summer and fall of 2000 was that the Commission develop a course to enhance licensees' understanding of the requirements, obligations and duties of both real estate licensees and home inspectors in the home inspection process. The lengthiest section of this year's Update materials is devoted to the issue of home inspections, to which instructors may devote up to 100 minutes of class time.

The Home Inspection section of the Update materials attempts first to acquaint real estate licensees with the statutes and rules creating and governing the North Carolina Home Inspector Licensure Board, the agency which licenses and regulates home inspectors. The home inspector licensure rules are reprinted as an appendix to the materials and several terms, such as "home inspector," "home inspection," and "residential building," are defined in the initial pages.

Inspectors' Duties

The materials summarize a home inspectors' duties under their governing rules, the purpose and scope of home inspections, items or matters on which home inspectors are **not** required to report, actions they are not required to take, items and systems which they are required to inspect and what they

must report thereon, the standard or test utilized by home inspectors, and comments concerning their code of ethics.

Having reviewed what home inspectors are and are not required to do under their rules, the focus then shifts to a discussion of inspection and repair clauses in Offers to Purchase. The language of Paragraph 12 of the standard Offer to Purchase and Contract formulated by the North Carolina Association of REALTORS® in conjunction with the North Carolina Bar Association is utilized.

What is and is not included in and/or meant by the provi-

A discussion of the source of potential problems follows the review of the contract inspection/repair clauses. These sources include the different standards mandated by the home inspector licensure rules versus the sales contract standard (which is not as broad as the home inspector standard), and variance in the quality and detail of home inspection reports (there is no standard reporting form at this time).

Unreasonable Expectations

Failure to understand both a home inspector's duties as to what they must inspect and report under their rules, and what legitimately is encompassed within the inspection/repair clause of the applicable sales contract (Paragraph 12 in our example) renders a licensee ill-equipped to adequately prepare his or her client, particularly buyers, for the results of the home inspection and may

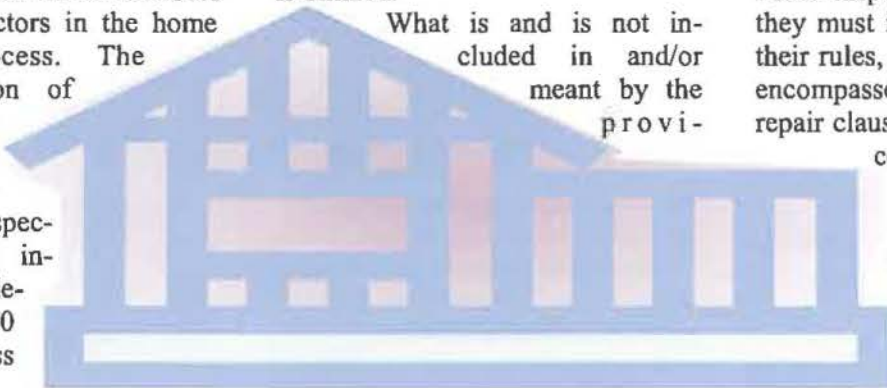
well lead to unreasonable expectations on the client's part.

For example, rarely, if ever, would it be appropriate for a buyer to demand that a seller repair everything noted in the home inspection report.

Conversely, there may be aspects of a property in which a buyer is interested, such as the condition of outbuildings or in-ground swimming pools, on which home inspectors under their rules are not *required* to inspect or report. These may be omitted from their home inspection report unless specifically agreed to in the employment contract with the buyer-client.

Additionally, these items may not be covered by the standard language of Paragraph 12 and thus may not be subject to a legitimate repair demand by the buyer, unless

(See **Inspections**, page 9)



New Agency Rules Allow More Flexibility

By Patricia M. Sullivan, Legal Education Officer

As most licensees hopefully are aware by now, Rule A.0104 governing agency disclosure and agreements was amended effective July 1, 2001. These recent changes and how to implement them in one's brokerage practice are the focus of the first section of the Commission's 2001-2002 Real Estate Update course, to which instructors will devote approximately eighty minutes of classroom instruction.

The primary two changes in Rule A.0104 are: 1) eliminating the lengthy "Description of Agent Duties and Relationships" which was part of every agency agreement and 2) allowing agents to work with buyers under an *oral buyer agency agreement* for a limited period of time.

Consumer-Friendly Brochure

The previous lengthy "Description" has been replaced by a more consumer-friendly brochure entitled *Working with Real Estate Agents* that **must be reviewed with every buyer or seller at first substantial contact**.

Providing this *Working with Real Estate Agents* brochure to all customers in a real estate sales transaction is mandatory. There is a tear-off panel that agents are to complete and have signed by the customer to acknowledge receipt of the brochure. However, this acknowledgment panel is **not a contract**, which is clearly written in boldface at the top of the panel.

The brochure is intended to fulfill only the *disclosure requirements* of Rule A.0104 and assist licensees in explaining the various agency relationship options a customer may have; it is **not** a substitute for a listing agreement, a buyer agency agreement (oral or written), or a dual agency agreement.

The only form the brochure does replace is the Disclosure to Buyer

from Seller's Agent or Subagent. In place of this one-page form, the agent, after reviewing and discussing the brochure's contents with a potential buyer customer, may merely check a box at the bottom of the tear-off panel indicating that the agent will be working with the buyer as a seller's agent or sub-agent, rather than as a buyer's agent.

"Providing this *Working with Real Estate Agents* brochure to all customers in a real estate sales transaction is mandatory."

In all instances, the customer retains the brochure and the agent retains the tear-off panel for his/her records.

The other primary change in Rule A.0104 was to allow agents to work with a buyer under an *oral buyer agency agreement* for a limited period of time. This is an **option** available to licensees; it is not mandatory.

If an agent or firm decides that they wish to continue requiring written buyer agency agreements from the inception or formation of the relationship, they may do so. However, they now have the flexibility of allowing their agents to work with buyers under an oral buyer agency agreement during the initial stages of the relationship, for reasons further explored in the Update course.

Non-Exclusive Agreements

An additional caveat is that **all oral buyer agency agreements must be non-exclusive**; in other words, oral buyer agency agreements may not restrict the buyer's right to work either independently or with other agents and may not bind the buyer to the agent for any

time period.

Oral agreements may be terminated by either the agent or the buyer at any time. The buyer agency agreement **must** be reduced to writing **no later than** the time the agent prepares an offer on the buyer's behalf. *If the buyer refuses to sign a written buyer agency agreement prior to presenting the offer to the seller, then the agent is prohibited from tendering the offer to the seller or seller's agent as a buyer's agent.*

The Agency section of the 2001-2002 Update materials explains briefly how and why Rule A.0104 arose, the perceived problems or tensions the old rule created between licensees and customers, the text and substance of the July 1, 2001 rule revisions, how subsections (a), (c), (d) and (e) interface with each other, and how to implement and apply these revised sections in one's real estate brokerage activities. Licensees are encouraged to take this year's Update course sooner, rather than later.



Inspections

Continued from page 8

somehow brought within the Paragraph 12 provisions in the Offer to Purchase *prior* to its being tendered to the seller.

The Home Inspection section ends with a discussion of three hypothetical home inspection reports, each containing five noted defects. Licensees are asked to decide which of the five defects in each hypothetical report would fall within the scope of Paragraph 12 and which fall outside its scope.

2002 Trust Account Caravan Registration Form

Four (4) hours continuing education credit will be awarded for completion of each course.

Asheville Renaissance Asheville Hotel, 1 Thomas Wolfe Plaza

- | | | | |
|--------------------------|----------------|-------------|---|
| <input type="checkbox"/> | March 19, 2002 | 9 am – 1 pm | Basic Trust Account Procedures |
| <input type="checkbox"/> | March 20, 2002 | 9 am – 1 pm | Basic Trust Account Procedures |
| <input type="checkbox"/> | March 21, 2002 | 9 am – 1 pm | Trust Account Procedures for Resort Property Managers |

Greensboro Ramada Inn-Greensboro Airport, 7067 Albert Pick Road

- | | | | |
|--------------------------|---------------|-------------|--------------------------------|
| <input type="checkbox"/> | April 2, 2002 | 9 am – 1 pm | Basic Trust Account Procedures |
| <input type="checkbox"/> | April 3, 2002 | 9 am – 1 pm | Basic Trust Account Procedures |

Charlotte Hilton Charlotte University Place, 8629 J.M. Keynes Drive

- | | | | |
|--------------------------|---------------|-------------|--------------------------------|
| <input type="checkbox"/> | April 4, 2002 | 9 am – 1 pm | Basic Trust Account Procedures |
| <input type="checkbox"/> | April 5, 2002 | 9 am – 1 pm | Basic Trust Account Procedures |

Boone Quality Inn Appalachian Conference Center, 949 Blowing Rock Road

- | | | | |
|--------------------------|----------------|-------------|---|
| <input type="checkbox"/> | April 9, 2002 | 9 am – 1 pm | Basic Trust Account Procedures |
| <input type="checkbox"/> | April 10, 2002 | 9 am – 1 pm | Trust Account Procedures for Resort Property Managers |

Fayetteville Holiday Inn Bordeaux, 1707 Owen Drive

- | | | | |
|--------------------------|----------------|-------------|--------------------------------|
| <input type="checkbox"/> | April 15, 2002 | 1 pm – 5 pm | Basic Trust Account Procedures |
| <input type="checkbox"/> | April 16, 2002 | 9 am – 1 pm | Basic Trust Account Procedures |

Wilmington Coast Line Convention Center, 501 Nutt Street

- | | | | |
|--------------------------|----------------|-------------|---|
| <input type="checkbox"/> | April 22, 2002 | 1 pm – 5 pm | Basic Trust Account Procedures |
| <input type="checkbox"/> | April 23, 2002 | 9 am – 1 pm | Trust Account Procedures for Resort Property Managers |

Morehead City Crystal Coast Civic Center, 3505 Arendell Street (Highway 70)

- | | | | |
|--------------------------|----------------|-------------|---|
| <input type="checkbox"/> | April 24, 2002 | 9 am – 1 pm | Basic Trust Account Procedures |
| <input type="checkbox"/> | April 25, 2002 | 9 am – 1 pm | Trust Account Procedures for Resort Property Managers |

Kill Devil Hills Ramada Inn Outer Banks Resort & Conference Center, 1701 South Virginia Dare Trail

- | | | | |
|--------------------------|----------------|-------------|---|
| <input type="checkbox"/> | April 30, 2002 | 9 am – 1 pm | Basic Trust Account Procedures |
| <input type="checkbox"/> | May 1, 2002 | 9 am – 1 pm | Trust Account Procedures for Resort Property Managers |

The fastest way to register is online at www.ncrec.state.nc.us. Otherwise, please complete this form (make copies for additional persons) and mail with a check for the \$45 tuition fee. Each session is limited to 40 participants.

NAME _____ PHONE(____) _____

ADDRESS _____
Street, P. O. Box City State Zip

LICENSE NO. _____

MAIL TO: North Carolina Real Estate Commission
ATTN: Audits and Investigations Division
P. O. Box 17100
Raleigh, NC 27619-7100

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CMA Policy Now In Appraisers Act

The General Assembly has amended the North Carolina Appraisers Act to define the role of real estate brokers and salespersons in performing comparative market analyses (CMAs).

The policy of the North Carolina Appraisal Board is now stated in the law; namely, that real estate brokers and salespersons may perform CMAs for compensation or other valuable consideration **ONLY** for their prospective or actual real estate clients or for real property involved in an employee relocation program. They may not perform CMAs for any other purpose—especially lending purposes.

A comparative market analysis is defined as “the analysis of sales of similar recently sold properties in order to derive an indication of the probable sales price of a particular property by a licensed real estate broker or salesperson.” Although the Act does not define the term “broker price opinion (BPO)”, a BPO is essentially a CMA if it is based upon recent sales of comparable properties.



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”.

State in your written report that “This is a comparative market analysis and not an appraisal and should not be used for lending purposes.”

2002-03 Real Estate Manual to Publish in December

Authors of the Commission’s *North Carolina Real Estate Manual* are working on revisions for the 2002-03 edition that will be available for purchase in December 2001.

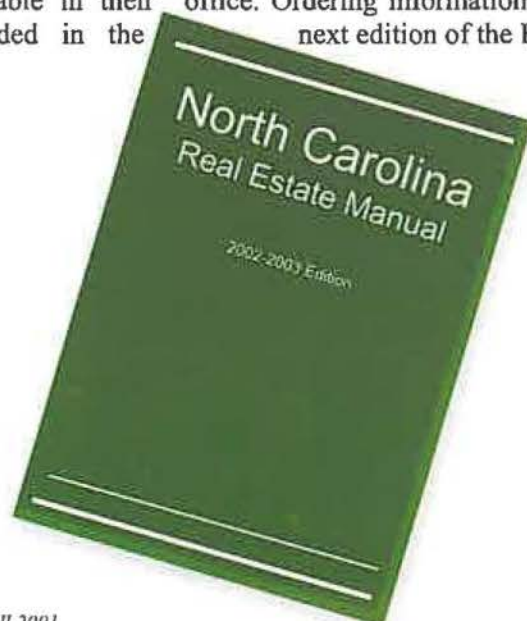
The *Manual*, which serves both as the text for the Broker Pre-licensing Course and as a reference for real estate practitioners, is published biennially by the Commission to assure that students and licensees have a reliable source of current information on real estate law and brokerage practices.

The first edition of the *Manual* (2000-01 edition) was extremely well received by instructors, students and licensees, with nearly 8,000 copies being sold through August 2001 following its introduction in October 2000.

The *Manual*’s principal author is Patrick K. Hetrick, Professor of Law at Campbell University’s School of Law, who is North Carolina’s leading authority on real estate law and who was also the principal author of the Commission’s previous text, *North Carolina Real Estate for Brokers and Salesmen* (which was replaced by the *Manual*). Professor Hetrick’s co-authors are Com-

mission staffers and attorney-educators, Larry A. Outlaw and Patricia M. Sullivan.

Licensees who want the most current copy of the *Manual* should order the new edition when available, and brokers-in-charge are especially urged to assure that a copy is available in their office. Ordering information will be included in the next edition of the Bulletin.



Translation Services Can Benefit Growing Number of People in NC

By Miriam J. Baer, Assistant Director, Legal Services

Have you ever been involved in a transaction where one of the parties spoke little or no English?

As North Carolina's population grows, so too grows the number of people here from other nations, some of whom could benefit from the use of translators.

Licensees have inquired whether they are required to hire translators and if they do so, whether they will be responsible for the accuracy of the translation.

(7) steer a person toward or away from a particular residential property;

(8) threaten, intimidate, retaliate against or otherwise interfere with the use and enjoyment of housing;

(9) advertise or make statements directly or indirectly indicating an intent to discriminate; or

(10) engage in "blockbusting," i.e., scare a person into moving out of a neighborhood by representing that persons from other countries

sees to bear this expense.

But, if a prospective party to a real estate transaction brings his or her own translator to the licensee, the licensee should work with that prospect and the translator. A licensee who chooses not to work with a prospect from another country must be certain that he or she has only a non-discriminatory basis for that decision, and that the non-discriminatory basis is applied uniformly, regardless of a prospect's country of origin.



Discrimination Prohibited

Licensees are forbidden from discriminating against persons based upon national origin under both the State and Federal Fair Housing Acts. For example, it is against the law to do any of the following based upon a party's country of origin, color or race:

(1) refuse to engage in a real estate transaction;

(2) refuse to rent or sell housing;

(3) discriminate in the terms or conditions of a sale or rental;

(4) refuse to receive or fail to transmit a bona fide offer;

(5) indicate that housing is not available when it actually is;

(6) refuse to negotiate;

are moving in.

This does not mean that licensees are required to hire a translator in the event that a non-English speaking person seeks assistance from the licensee in a real estate transaction. The Real Estate Commission does not require its licen-

Agent Liability

What happens if the translator makes a critical mistake? Will the licensee be responsible for that error? Under the Real Estate License Law, the licensee is held to an ordinary standard of care - the same standard to which the licensee is

held with regard to the use of inspectors, surveyors and other professionals involved in real estate transactions.

This means that unless the licensee knows of the translator's error, or has reason to know of it, and fails to bring it to the parties' attention promptly, the licensee will not be held responsible. Because most licensees are not

(See **Translation**, page 13)

Some "Do's" and "Don'ts"

1 DON'T discriminate against persons from other countries. It is a violation of state and federal housing laws as well as the Real Estate License Law and can get you into lots of trouble.

1 DON'T try to act as a translator yourself unless you are fluent in the language in question.

1 DON'T hire a translator you know to be less than competent or who has a history of problems.

1 If you hire a translator, DO be sure the person has a good reputation in your community and appears competent.

1 DO work with persons who have limited English and bring their own translator. Failure to do so could easily be interpreted as a Fair Housing or other civil rights violation.

1 DO disclose to all parties any possible translation error as soon as it comes to your attention.

1 DO obtain copies of Commission informational brochures for use with your Spanish-speaking clients and customers.

Translation

Continued from page 12

fluent in languages other than English, it generally is reasonable for them to rely on the expertise of the translator unless some sort of "red flag" exists which calls the translator's ability into question.

Commission Resources

In an effort to assist the rising Hispanic community in North Carolina, the Real Estate Commission has recently had certain of its informational brochures translated into Spanish. These are:

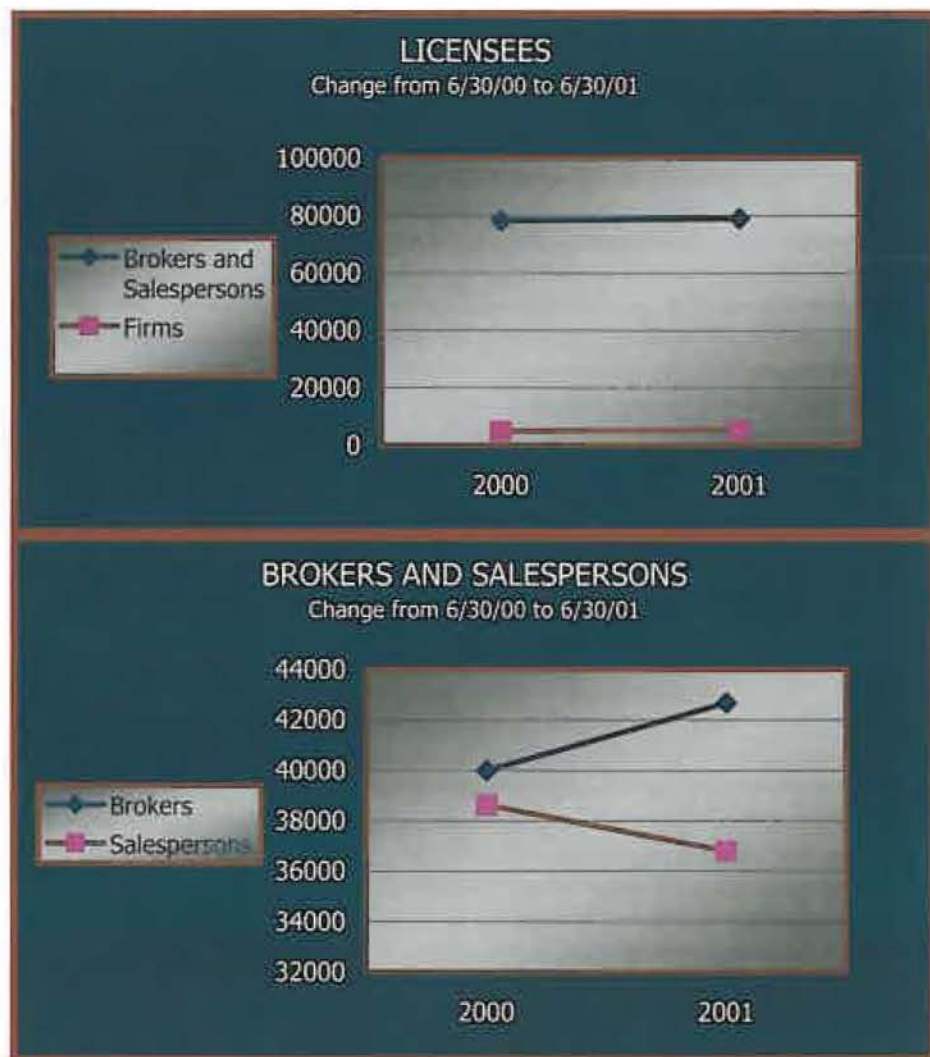
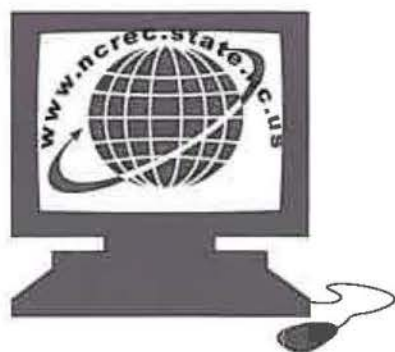
(1) *Working With Real Estate Agents* (*Trato Con Agentes Bienes Raices*);

(2) *Questions and Answers on: Fair Housing* (*Preguntas Y Respuestas sobre: Vivienda Justa*)

(3) *Questions and Answers on: Tenant Security Deposits* (*Preguntas Y Respuestas sobre: El Deposito de Seguridad del Inquilino*)

(4) *Questions and Answers on: Renting Residential Real Estate* (*Preguntas Y Respuestas sobre: Alquiler de Inmuebles para Viviendo*).

You can order these free brochures by using the Publications Order Form on page 7 of this *Bulletin* or printing it out from the Commission's web site at www.ncrec.state.nc.us. Click on Forms. Please allow two weeks for delivery.



Industry Trends

Both North Carolina real estate licensees and firms increased in number as of June 30, 2001 compared with June 30, 2000. Licensees (brokers and salespersons combined) grew from 78,250 to 78,913 (+.85%) while licensed firms (excluding sole proprietorships) rose from 5,017 to 5,404 (+7.7%).

Reflecting the impact of changes in rules relating to broker licensing, the number of brokers rose from 39,998 to 42,632 (+6.5%) while the number of salespersons shrank from 38,633 to 36,802 (-4.7%).



Look for tips in the Auditor's Corner on how to properly maintain your trust account records. This month's article describes the procedure of referencing a supplemental deposit worksheet.

By Gary R. Caddell, Auditor/Investigator Training Officer

In the last Auditor's Corner, we looked at Commission Rule A.0107 (e)(3), which states that specific information must be identified on every trust account deposit ticket.

However, when multiple transactions require more space than is available on the trust account deposit ticket, it is permissible to use a supplemental deposit worksheet.

The worksheet breaks down the total amount being deposited by sales transaction, property owner or property. The same information that would normally be entered onto the trust account deposit ticket is instead entered onto the supplemental deposit worksheet. Make reference on the deposit ticket to the supplemental deposit worksheet, then cross-reference the worksheet to the deposit ticket.

Typically, the date and deposit amount will be sufficient to cross-reference the worksheet to the deposit ticket. However, you may also sequentially number your trust account deposit tickets, then enter the deposit ticket number onto the supplemental deposit worksheet. This will provide an additional cross-reference, and help create the clear audit trail required by the Commission.

YOUR REALTY COMPANY, INC. TRUST ACCOUNT DATE <u>1/4/00</u>		
	DOLLARS	CENTS
CURRENCY <i>SDW</i>	\$1,700	00
COINS		
CHECKS		
1		
2		
3		
TOTAL	\$1,700	00

**Deposit Tickets
Sequentially
Numbered**

**Reference To
Supplemental
Deposit
Worksheet**

SUPPLEMENTAL DEPOSIT WORKSHEET

Deposit Ticket #00-3


Date: 1/4/00

REMITTER/ TENANT	PROPERTY/LEDGER REFERENCE	PURPOSE	AMOUNT
<i>Clark</i>	<i>143 North Blvd</i>	<i>Security Deposit</i>	<i>\$600.00</i>
<i>Stephens</i>	<i>2500 Johnson St</i>	<i>Security Deposit</i>	<i>\$550.00</i>
<i>Stephens</i>	<i>2500 Johnson St</i>	<i>Jan Rent</i>	<i>\$550.00</i>
	TOTAL		\$1,700.00

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Disciplinary Action



ABBY MORTON REAL ESTATE ACADEMY, INC. (Jacksonville) – By Consent, the Commission suspended the school license of Abby Morton Real Estate Academy for a period of 90 days effective September 15, 2001. The Commission then stayed the suspension for a probationary term of two years. The Commission found that the school offered and conducted a real estate pre-licensing course July 3 through August 9, 2001 without having properly renewed its private real estate school license that had expired on June 30, 2001. The school's license was reinstated as part of the Consent Order.

JAMES F. DORMAN (Banner Elk) – By Consent, the Commission reprimanded Mr. Dorman effective September 6, 2001. The Commission found that Mr. Dorman advertised properties without having written listing agreements as required by Commission rule.

1ST ATLANTIC MANAGEMENT CORPORATION (Wilmington) – By Consent, the Commission accepted the voluntary surrender of the 1st Atlantic Management Corporation's real estate firm license for one year effective August 1, 2001. The Commission dismissed without prejudice allegations that 1st Atlantic violated provisions of the Real Estate Law and Commission rules. 1st Atlantic neither admitted nor denied any misconduct.

ROBERT G. HASTY (Raleigh) – By Consent, the Commission reprimanded Mr. Hasty effective August 1, 2001. The Com-

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.

mission found that Mr. Hasty was convicted of the offense of driving while impaired in February 2000 and failed to report his conviction to the Commission in timely fashion.

SHERRI H. MCKEEL (Surf City) – By Consent, the Commission revoked the salesperson license of Ms. McKeel effective August 1, 2001. The Commission found that Ms. McKeel, without the knowledge of her broker-in-charge, authorized a closing attorney to pay some of the buyer's expenses from the commission due the firm. The Commission also found that Ms. McKeel received a check payable to the firm at the closing for approximately \$3,000, which she endorsed and cashed without the knowledge of the broker-in-charge. The Commission noted that Ms. McKeel has repaid \$900 toward the commission due the firm. Ms. McKeel neither admitted nor denied any misconduct.

JOHN E. RICE (Boone) – By Consent, the Commission reprimanded Mr. Rice effective July 26, 2001. The Commission found that Mr. Rice, as broker-in-charge of a real estate firm, failed to maintain the trust account records of the firm in the form and manner required by Commission rule. The Commission noted that Mr. Rice cooperated with the Commission and brought the firm records into compliance.

BRIAN F. STRUM (Cashiers) – By Consent, the Commission suspended Mr. Strum's salesperson license for one year effective August 15, 2001. Three months of the suspension were to be active and the

remaining period stayed for a probationary term of nine months. The Commission found that Mr. Strum failed to disclose on his application for a salesperson license that a charge of Level 5 Driving While Impaired was pending against him. The Commission further found that after licensure, Mr. Strum failed to report his conviction on the charge. The Commission noted that when Mr. Strum applied for a broker license, he reported his Level 5 Driving While Impaired conviction. Upon successful completion of the probationary period and the submission of an updated application, Mr. Strum shall be granted a broker license.

SUCCOR, INC. (Chapel Hill) – By Consent, the Commission reprimanded Succor, Inc., effective July 26, 2001. The Commission found that Succor, a real estate firm engaged in property management, failed to maintain trust account records in the manner required by Commission rules. The Commission further found that Succor used a bank account that was not properly designated as a trust or escrow account and to hold funds that should have been paid to an Escheat Fund. The Commission noted that Succor has corrected its trust account practices.

FRANK S. THOMPSON (Wilmington) – By Consent, the Commission reprimanded Frank S. Thompson effective July 26, 2001. The Commission found that Mr. Thompson, broker-in-charge of a rental management firm, failed to implement a trust account record

(See **Disciplinary Action**, page 16)

Disciplinary Action

Continued from page 15

keeping system that complied with Commission rules. The Commission noted that Mr. Thompson cooperated with the Commission audit and corrected the violations of Commission rules.

HENRY M. WATTS (Greensboro) - By Consent, the Commission accepted the voluntary surrender of Mr. Watts' broker license for one year effective August 13, 2001. The Commission dismissed without prejudice allegations that Mr. Watts violated provisions of the Real Estate Law and

Commission rules. Mr. Watts neither admitted nor denied any misconduct.

DIANA L. WEATHERBEE (Chapel Hill) - By Consent, the Commission reprimanded Ms. Weatherbee effective July 26, 2001. The Commission found that Ms. Weatherbee, as broker-in-charge of a real estate firm, failed to maintain trust account records in the manner required by Commission rules. The Commission further found that Ms. Weatherbee allowed the firm to use a bank account that was not properly designated as a trust or escrow account and to hold funds that should have been paid to an Escheat Fund. The Commission noted that Ms. Weatherbee has corrected the firm's trust account practices.

YONAHLOSSEE INN, INC. (Boone) - By Consent, the Commission reprimanded Yonahlossee

Inn, Inc., effective July 26, 2001. The Commission found that Yonahlossee, a real estate firm engaged in vacation rental management, failed to maintain its trust account records in the form and manner required by Commission rule. The Commission noted that Yonahlossee cooperated with the Commission and brought its records into compliance.

Q&A

Following is an excerpt from *Questions and Answers on: Home Inspections*:

Q: What is a home inspection?

A: It is an evaluation of the visible and accessible systems and components of a home (plumbing system, roof, etc.) and is intended to give the client (usually a homebuyer) a better understanding of their condition. It is also important to know what a home inspection is not! It is not an appraisal of the property's value; nor should you expect it to address the cost of repairs. It does not guarantee that the home complies with local building codes (which are subject to periodic change) or protect you in the event an item inspected fails in the future. *[Note: Warranties can be purchased to cover many items.]* Nor should it be considered a "technically exhaustive" evaluation, but rather an evaluation of the property on the day it is inspected, taking into consideration normal wear and tear.

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