



NORTH CAROLINA REAL ESTATE COMMISSION

Real Estate Bulletin

Volume 24

Spring 1993

Number 1

Educators meet in Raleigh

The Real Estate Commission, in cooperation with the North Carolina Real Estate Educators Association (NCREEA), sponsored the 1993 North Carolina Real Estate Educators Conference in Raleigh on April 1 and 2.

One hundred four instructors participated in this year's conference, which focused on providing information concerning changes in the industry. There were presentations on current legislative proposals, revisions in the course syllabi, and changes in FHA and VA financing. A highlight of the program was a three-hour session on agency relationships and disclosure.

Additional sessions provided instructors with useful information concerning the effect of the Americans with Disabilities Act, methods for teaching the trust account guidelines, orientation for new instructors and an update of appraisal topics.

The Educators Association conferred awards for outstanding contributions to real estate education during the past year. Tom Mangum, a director and instructor at a private real estate school in Raleigh, was named "Educator of the

Year." Ann Bowman, a real estate educator from Charlotte, was honored with the "Most Outstanding Program of the Year" award for her program on agency relationships and disclosure.

Participating in the conference were the Commission's Director of Education and Licensing Larry A. Outlaw, Education and Examination Officer A. Melton Black, Jr., Licensing Officer Evelyn Johnston, Appraiser Education and Examination Officer Earl H. Grubbs, Special Deputy Attorney General Thomas R. Miller, and Assistant Legal Counsel Miriam J. Baer. Education Secretary Penny Childress and Examination Clerk Amy Jones assisted with the arrangements. □



Education and Examination Officer A. Melton Black, Jr., addresses educators at their annual conference.

It's time to...*Renew!*

It's that time again: time for you to renew your real estate license for 1993-94. The mid-May mailing of broker, salesman and corporation renewal applications was the start of the annual renewal period, as the Commission prepared to renew over 75,000 licenses.

Your application was mailed in the familiar white envelope with the wide blue stripe. It was sent to your address-of-record which, for an active salesman, is the business address of the salesman's broker-in-charge.

This year's broker and salesman

renewal applications are lettered in black on the usual white background; corporation renewals are light grey with black lettering.

If you have not already done so, please send in your renewal application and fee immediately. Check it for accuracy before you mail it. That includes verifying the broker-in-charge designations for active salesmen, and the proper principal broker for each corporation. Indicate your changes/corrections on the application. For changes

(Continued on page 3)

Commission forms Agency Task Force

The real estate vocabulary of brokers and salesmen has grown in recent months and years to accommodate the new and perplexing subject of "agency disclosure."

"Subagent," "buyer broker," "disclosed dual agency," "facilitator" - these are just a few of the terms that licensees are struggling to define and understand as they try to comply with the dictates of their trade associations and state licensing authorities.

In its simplest form, "agency disclosure" would require real estate *agents* (brokers and salesmen) to *disclose* to buyers and sellers (and perhaps even landlords and tenants) whether they will be representing and promoting the best interests of the seller, the buyer, or perhaps even both the buyer and the seller.

Why is this important?

According to a 1983 study conducted by the Federal Trade Commission, 71% of all real estate purchasers surveyed believed that *they* had been represented by the real estate agents with whom they had been working, when in fact, the agents had represented the sellers! According to the FTC, this confusion

(Continued on page 8)

**New brochure
published in
Q & A Series!**

**See page 3 for article
and order form.**

Published quarterly as a service to real estate licensees to promote a better understanding of the Real Estate License Law and Rules, and proficiency in ethical real estate practice. The articles published herein shall not be reprinted or reproduced in any other publication without specific reference being made to their original publication in the **North Carolina Real Estate Commission Real Estate Bulletin.**

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

Gilbert L. Boger.....	Mocksville
Chairman	
Brantley T. Poole.....	Raleigh
Vice-Chairman	
Charles F. Biesecker.....	Lexington
James K. Polk.....	Charlotte
J. Edward Poole.....	Spring Lake
William A. Smith, Jr.	Cary
Grace T. Steed.....	Randleman

ADMINISTRATION

Mary Frances Whitley Director
Paula L. Lassiter Financial Officer

James E. Poole, Jr.Director
Earl H. GrubbsAppraiser Ed./Exam Officer

L. Ted Gayle.....Director

Larry A. Outlaw Director
Evelyn G. Johnston Licensing Officer
A. Melton Black, Jr. Ed./Exam. Officer

Thomas R. Miller.....	Legal Counsel
Spec. Dep. Attorney General	
Blackwell M. Brogden, Jr.....	Dep. Igl. Counsel
Miriam J. Baer.....	Asst. Igl. Counsel
Marilyn E. Tomei.....	Assoc. Igl. Counsel
Anita R. Burt.....	Cons. Prot. Officer
Stephen L. Fussell.....	Cons. Prot. Officer

Phillip T. Fisher

Carrie D. Worthington

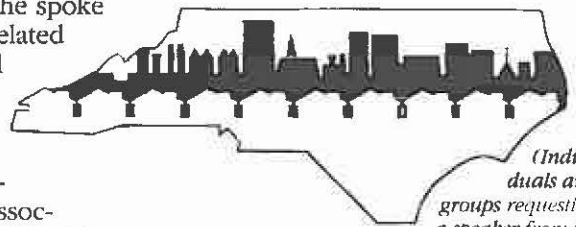
	<u>Passed</u>	<u>Failed</u>
January 1993		
Brokers	104	50
Salesmen	325	177
February 1993		
Brokers	54	51
Salesmen	276	182
March 1993		
Brokers	76	72
Salesmen	375	203

Mark Woltz has been employed by the Commission on a temporary basis this summer to assist the Commission's Legal Division with the preparation of investigator training materials. Mark will be a third-year law student at the University of North Carolina at Chapel Hill.

The following Commission staff members have made appear-



ances before various real estate industry and related groups since the last issue of the **Bulletin**. Commission Executive Director **Phillip T. Fisher** spoke to the Western N.C. Chapter of the Institute of Real Estate Management on the licensing and regulation of property managers and to the Chatham County Board of REALTORS® about various activities of the Real Estate Commission . . . **L. Ted Gayle**, the Commission's Director of Audits and Investigations, appeared before the Eastern North Carolina Chapter of the Institute of Real Estate Management in the Research Triangle Park and discussed the proper handling of funds in property management transactions . . . Special Deputy Attorney General **Thomas R. Miller**, the Commission's Legal Counsel, attended a workshop sponsored by the Havelock Board of REALTORS® where he spoke on offers to purchase and related issues . . . Deputy Legal Counsel **Blackwell M. Brogden, Jr.**, participated in a seminar conducted by the Property Management Division of the North Carolina Association of REALTORS® in Raleigh and in an educational seminar sponsored by the Avery-Watauga Association of



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

DATES

July 13
September 14

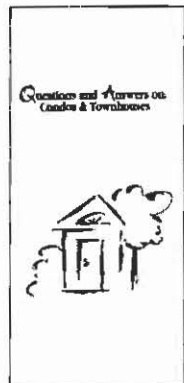
August 10
October 12

All Raleigh courses start at 1:00 p.m. and end at approximately 4:30 p.m.

To register for the course, telephone the Real Estate Commission Office (919-733-9580) at least 10 days prior to the course and ask for the Education Division. Please have your real estate license number (if any) handy! Registrations will be confirmed in writing, giving registrants more detailed information concerning the location of the course.

New publication available

Do you have questions about condos and townhouses? The Commission's new brochure has the answers! It's the latest in the Commission's **Q & A Series**, and it's yours free for the asking! [Please see "Publications Order Form" on this page.]



Due to cost factors and changing lifestyles, many people are choosing alternative forms of home ownership instead of traditional single-family houses. This new brochure, entitled **Questions and Answers on: Condos and Townhouses**, is the Commission's response to the increasing interest in purchasing these properties.

The Commission feels the brochure will be of benefit in addressing many consumer concerns about this timely topic. In addition to stating the difference between a condominium and a townhouse, it explains your responsibilities as an owner, and answers your questions about homeowners' associations.

Patterned after the others in the series which address tenant security deposits and Fair Housing issues, the latest publication is formatted in pamphlet style, making it as easy to read as it is interesting and informative. □

State's Pest Control Division reports referral fee violation

Executive Director Phillip T. Fisher was recently contacted by Carl E. Falco, Assistant Director of the Structural Pest Control Division of the N.C. Department of Agriculture, for assistance in advising real estate agents about a problem in the pest control industry.

According to Mr. Falco, a North Carolina pest control company has circulated a flier offering a referral fee to real estate agents who refer structural pest control work (i.e., "wood-destroying insect information reports" and treatment fees) to the company. Distribution of the flier has resulted in an investigation by the Division and has prompted an article in the spring issue of the Division's newsletter warning of the consequences of this practice, which is a violation of the General Statutes of North Carolina.

Mr. Fisher wishes to join Mr. Falco in reminding real estate licensees that by Commission rule, brokers and salesmen are prohibited from receiving any compensation for recommending, procuring or arranging for any service in connection with a real estate transaction unless full disclosure is made to the party to whom the service is recommended. In no event may a real estate licensee receive a referral fee if the payment of the referral fee is otherwise prohibited by law. Therefore, because payment of a referral fee by a licensed pest control operator is prohibited, a real estate licensee must not accept such a fee.

Mr. Falco assured Mr. Fisher that his Division does not suspect any real estate licensees of wrongdoing. His purpose in contacting the Commission was to request assistance from the real estate industry in reporting any knowledge of referral fee offers from persons regulated by the Structural Pest Control Division. The Division promises to "vigorously pursue and prosecute all such reports." □

Time to Renew

(Continued from page 1)

other than address, the Commission will advise you in writing as to any additional documentation which may be required to effect the change.

If you are a broker-in-charge, please remember your responsibility to make sure that all agents in your office - brokers as well as salesmen - renew their licenses by the deadline.

Director of Administration Mary Frances Whitley, who supervises the Commission's Financial Section, reminds you of potential problems with your renewal fee which can slow the process and delay your renewal. She cites checks which are unsigned, counter checks, and checks made payable to some entity other than the Real Estate Commission (i.e., Department of Revenue and Board of REALTORS®) which must be returned to the licensee. Checks drawn on real estate trust or escrow accounts and checks returned unpaid by the bank due to insufficient funds are cause for referral to the Commission's Legal Division and possible disciplinary action by the Commission.

She cautions that although one check is accepted for payment of multiple renewals, it will be returned if there is a problem with any one of the renewals - thus possibly delaying the renewal of all the licenses included in that check.

In order to speed the renewal process, the Records Division requests that you please return your original application with your filing fee. Do not send a photocopy or keep the application.

However, if you have not received an application, please send your check for exactly \$25, or exactly \$30 after June 30 (include no other fees with your renewal fee) to the North Carolina Real Estate Commission, Post Office Box 17100, Raleigh, North Carolina 27619-7100. Put your real estate license number on your

(Continued on page 8)

PUBLICATIONS ORDER FORM

Publication

No. Copies Requested

"Questions and Answers on: Tenant Security Deposits"
(Free Brochure)

Also available in bulk to property managers to distribute to tenants and landlords.

(Orders of more than 100 copies require special consideration.)

"Questions and Answers on: Fair Housing"
(Free Brochure)

(Orders of more than 100 copies require special consideration.)

"Questions & Answers on: Condos and Townhouses"
(Free Brochure)

(Orders of more than 100 copies require special consideration.)

"A Buyer's Guide to Vacation Real Estate in N.C."
(Free 28-page Booklet)

Also available in bulk to coastal and western N.C. real estate firms to distribute to clients and customers.

(Orders of more than 50 copies require special consideration.)

Firm Name

Phone

Street Address (NOT P.O. BOX)

City

State

Zip

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

Sewage disposal systems: Unimproved lots require special consideration

by Marilyn E. Tomei
Associate Legal Counsel

A licensee must be aware of many issues when helping a buyer purchase an unimproved lot in an area where municipal or community sewer service is not available. The buyer's intended use of the lot may be restricted by governmental regulations and other factors - including whether the property can support an on-site sewage disposal system.

Sewage Systems

The law requires that every residence or place of public assembly have an approved system for sewage disposal. Approved systems include municipal systems, community systems and on-site systems. Some properties which are not connected to a municipal or community system will not be suitable for on-site systems, and the use of such properties will therefore be severely limited.

On-site sewage disposal systems vary greatly in form and price. Subsurface systems - from the standard tank and drainfield ("conventional" system) to the more complicated and expensive low-pressure pipe system - are regulated by county health departments. Systems which discharge above the ground, such as the spray-irrigation system, and systems which discharge into streams and waterways are regulated by the State's Department of Environment, Health and Natural Resources. Off-site systems and community systems which serve more than one lot are also regulated at the State level.

In determining which sewage disposal system is appropriate for a particular lot, the old-style "perc test" (which consisted of pouring water into a shallow hole and calculating the time it takes the ground to absorb it) has been replaced by a more scientific and exact procedure of site soil analysis. Based upon the proposed use of a property, as stated on a simple application, a Health Department Registered Sanitarian inspects the lot, takes soil samples and rates soils in several places on the lot as either "suitable," "provisionally suitable" (suitable upon fulfillment of stated conditions), or "unsuitable" for an underground sewage disposal system.

Improvements Permit

If a property has sufficient areas of suitable or provisionally suitable soils for an on-site system, and enough land

for a "repair area" (which must remain vacant and undisturbed) should the system malfunction, the Health Department will issue an "improvements permit."

This permit authorizes an on-site underground system to be installed on the property - usually anytime up to five years after the permit is issued, even if the rules for suitability change in that time.

If the sanitarian finds that the property is suitable for a conventional system, the permit will likely map the best location for the system and repair area, and possibly other improvements. When the property's water source is a well, the well's location and operation must be coordinated with that of the sewage disposal system. All components of the system must be at least 100 feet from any wells serving either the subject property or adjoining property.

The permit will also set a capacity limit for the system, giving a maximum number of bedrooms for a residential property, or the maximum number of rooms (or some other measure) for a nonresidential property. The property must be used in accordance with the design capacity of the septic system. The permit may also prohibit the use of an automatic dishwasher, garbage disposer or other use of the property which might overload the system.

Conditional Permit

If the property is not suitable for a conventional system, or the property has unusual topographical features (such as a waterfront lot or a lot including a gully, stream or steep slope) the Health Department may issue the permit with conditions. A commonly-imposed condition, when features of the property make the conventional system impractical, is that the system be designed by a professional engineer.

Such a condition obviously adds to the cost of the system. The Health Department will require that the engineer draw plans and submit them for feasibility review. In making this review, the Health Department will give great deference to the engineer's expertise, but will expect the engineer's plans to take into account the natural features of the lot and the proposed use of the property.

If the lot is not suitable for an underground system, the owner may petition the State for permission to install an even more complex system. The appli-

cant should retain an engineer, and possibly an attorney, to assist in this time-consuming and expensive process which may not result in the issuance of the necessary permit.

System Installation

Installation of the system on the lot may begin once the improvements permit has been issued and any conditions imposed on the permit have been met. At certain stages of construction, the sanitarian inspects the system. After it is properly installed, the sanitarian issues a "certificate of completion," which is usually the final act of the Health Department in this process.

Agents' Do's and Don'ts

Because of the uncertainty regarding the sewage disposal system, a buyer will probably want his obligation to buy the lot to be dependent upon his ability to install a sewage disposal system to serve his desired building. However, a licensee should refrain from attempting to draft contract contingencies on the issue of sewage system approval.

In complaints received by the Commission, the Legal Staff often sees contracts which include such licensee-written clauses as, "Subject to perc test," or "Contingent upon septic permit." But what happens if the property is suitable for only a sophisticated, engineer-designed system costing \$12,000? Is the contingency fulfilled? What if the buyer anticipated spending only \$1,000 to \$2,000 on a septic system? Must the buyer buy the property? These questions have been raised by actual complaints received by the Commission. In addition to being vague and inadequate to protect the interests of the buyer and seller, the drafting of such terms constitutes the unauthorized practice of law.

An agent also should not attempt to advise the parties or give an opinion as to whether a lot might "perc," what type of septic system might work on the property, or what a system might cost. Leave these questions to an expert such as a sanitarian or engineer.

The agent's duty is to discover and disclose material facts. This duty includes obtaining as much information as possible from the seller concerning the sewage disposal system and its performance, and reporting this information to the buyers. Information can also be obtained from the Health Department. Health Departments keep public records of soil evaluations and im-

(Continued on page 5)



Cold calling phone regs became effective December 20, 1992

The following article appeared in the Spring edition of **Commission Comment**, the quarterly newsletter of the Nebraska Real Estate Commission. The article originally appeared in **REALTOR® News**, a publication of the National Association of REALTORS®. It is being reprinted here, with permission of both the NAR and the Nebraska Commission, because of its relevance to North Carolina licensees.

Licensees who use the telephone to get in touch with potential clients and customers must comply with a new regulation on telephone solicitations, effective December 20, 1992, according to National Association of REALTORS® analysts.

The regulation, issued October 16 by the Federal Communications Commission, implements portions of the Telephone Consumer Protection Act of 1991 (TCPA) and applies to all telemarketers.

The use of automated telephone dialing systems and prerecorded voice messages is severely restricted by the regulation, which places only minor limitations on person-to-person telephone solicitations.

Following is a rundown of the regulation's restrictions and the steps real estate brokers and salesmen must take to comply with them.

Person-to-Person Calls

No calls may be made to residences before 8:00 a.m. or after 9:00 p.m.

A solicitor must identify himself and the company and provide the company's telephone number. If an "estab-

lished business relationship" exists with a consumer, a solicitor is exempt from this requirement.

An "established business relationship" exists when there has been prior voluntary two-way communication between a business entity and a consumer, whether or not the contact resulted in an actual business transaction involving the services offered by the solicitor.

A real estate firm whose sales associates conduct live cold-calling must honor consumers' requests not to be called again by maintaining in writing a do-not-call list of residences. A company must also have a written policy for maintaining its list.

A firm must advise employees and independent contractors engaged in any aspect of telephone solicitation about its do-not-call list of residences and must train employees and independent contractors in how to maintain the list as required by the firm's written policy.

A consumer's request not to be called applies to the business entity making the call and not affiliated business entities unless the consumer reasonably would expect the affiliated businesses to be included, given the identification of the caller and the product or service being advertised.

Autodialers and Faxes

No calls may be made to any residential telephone line using an automatic telephone dialing system or artificial or prerecorded voice to deliver a message unless there is prior consent from the called party, an established business relationship exists, the call is

an emergency or the call is made by a tax-exempt non-profit organization.

Autodialers may not be used in such a way that two or more telephone lines of a multiple-line business are engaged simultaneously.

All automatic systems shall identify the name and address or telephone number of the person or firm making the call.

No individual or firm may use a telephone fax machine, computer or other device to send unsolicited advertisements to a telephone fax machine.

Penalties

Consumers, state authorities and the FCC may sue telemarketers for up to \$500 in damages for violating the regulation. Telemarketers who have established a record of compliance with the regulation may present examples of this compliance - such as a do-not-call list and a written policy for maintaining the list - as a defense to alleged violations.

State Laws

The Telephone Consumer Protection Act does not pre-empt state laws that may impose tighter regulations regarding automated or person-to-person telephone solicitations.

Want more information? If you have questions about the regulation or would like a two-page summary of it, contact Robert Nickens in NAR's State and Municipal Government Affairs Division, 777 14th St., N.W., Washington, DC 20005; telephone, 202-383-1201; fax, 202-383-7580. Or contact Roy DeLoach at the same NAR address; telephone 202-383-1171.

(Nebraska's Commission Comment Editor's note: After being notified of a possible court injunction regarding this regulation, I contacted Mr. Robert Nickens of NAR for an update. A temporary restraining order has been placed against the Justice Department forbidding them from enforcing the provisions of these regulations restricting Autodialers. Please note that this restraining order affects the Autodialer restrictions only. All other provisions of these regulations are in force.) □

Sewage Disposal Systems

(Continued from page 4)

provement permits and certificates of completion issued. Similarly, local agricultural extension and soil conservation offices have topographical maps and soil surveys which may also be helpful.

Agents should always encourage sellers and buyers of unimproved lots to have the lots evaluated by the Health Department. The fee is generally nominal, and the information obtained can be invaluable to the parties. If the property is found to be unsuitable, the seller should adjust his expectations with regard to selling the property, or per-

haps defer selling it until municipal or community service is available. Of course, any real estate agent involved must disclose the results of the evaluation to the parties. If the property is found to be suitable, the seller may want to request an improvements permit; the fact that one has been issued will likely make the property more attractive to a buyer.

When the parties are unwilling to have a soil evaluation performed prior to entering into a contract, or if an evaluation prior to making a contract is not practicable due to time or other constraints, the agent should refer the parties to their attorneys for the drafting of

appropriate contingency language. In the long run, the parties will be better served if they go into a contract with all the facts rather than vague contingencies or oral agreements that are not included in the contract. □

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.

TAMMY T. AIKEN (Gastonia) – By Consent, the Commission suspended Ms. Aiken's salesman license for two years effective February 15, 1993. One year of the suspension is to be active and the remaining period stayed for a probationary term of one year. The Commission found that Ms. Aiken had engaged in property management activities without the supervision of her broker-in-charge in violation of Commission rule. The Commission further found that Ms. Aiken had set up her own trust account to handle the property management funds she collected, had failed to keep adequate records of the funds she collected including failure to keep transaction ledgers or journals, had failed to reconcile internal trust account records to bank records on a monthly basis and had failed to properly account for and remit rental proceeds in a timely manner. The Commission also found that Ms. Aiken had deposited rental proceeds into an interest-bearing trust account without the written authorization of the parties.

LESTER E. ALFORD, JR. (Gastonia) – By Consent, the Commission suspended Mr. Alford's broker license for three months effective February 15, 1993. The Commission then stayed its Order for a probationary term of six months. The Commission found that Mr. Alford, as broker-in-charge of a licensed real estate corporation office, had failed to personally and actively supervise the property management activities of a salesman who was under his supervision including the salesman's handling and accounting for the funds of others. The Commission further found that Mr. Alford had allowed improper advertising practices; namely, advertising property management services when the corporation did not engage in the property management business.

LATEEF A. ANIMASHAUN (Greensboro) – The Commission revoked Mr. Animashaun's salesman license effective January 13, 1993. The Commission found that Mr. Animashaun had been convicted of a criminal offense involving moral turpitude which could reasonably affect his performance in the

real estate business; namely, importing heroin into the United States, and possession of heroin with the intent to distribute it.

WILLIAM C. BAUGHAM (Goldsboro) – By Consent, the Commission revoked Mr. Baugham's broker license effective March 1, 1993. The Commission found that Mr. Baugham, while employed as a property manager at a real estate firm, had failed to deposit and maintain rental funds and security deposits of others in a trust or escrow account and had failed to account for and remit the funds he collected to the firm's clients. Mr. Baugham neither admitted nor denied any misconduct.

BETTER HOMES ASSOCIATES OF GASTONIA, INC. (Gastonia) – By Consent, the Commission suspended the corporate real estate broker license of Better Homes Associates of Gastonia, Inc. for three months. The Commission then stayed its Order for a probationary term of six months. The Commission found that Better Homes Associates of Gastonia, Inc. had allowed a salesman to engage in property management activities including the handling and accounting for the funds of others without the supervision of her broker-in-charge. The Commission further found that the corporation had allowed improper advertising practices; namely, advertising property management services when it did not engage in the property management business.

JOHN C. BLACKWELDER (Statesville) – By Consent, the Commission suspended Mr. Blackwelder's broker license for one year effective April 1, 1993. Ninety days of the suspension are to be active and the remaining period stayed for a probationary term of nine months upon Mr. Blackwelder's fulfillment of various conditions. The Commission found that Mr. Blackwelder, while acting as broker of accommodation of a property management firm, had failed to adequately supervise an unlicensed bookkeeping employee and to account for and remit rental funds to the firm's clients.

JAMES B. BRAITHWAITE (Kitty Hawk) – By Consent, the Commission suspended Mr. Braithwaite's broker license for one year effective April 5, 1993. The Commission then stayed its Order for a probationary term of one year. The Commission found that Mr. Braithwaite had failed to examine the trust account records of the real estate firm where he was broker-in-charge,

which resulted in the firm's inability to determine whether it had properly accounted for all trust monies when the firm sold its business to another broker.

CHARLES F. CLARK (Burlington) – By Consent, the Commission suspended Mr. Clark's broker license for six months effective April 1, 1993. The Commission then stayed its Order for a probationary term of six months. The Commission found that Mr. Clark had prepared an offer to purchase for a lot in a subdivision which was not approved by municipal authorities on a contract form which did not comply with Commission rules.

RICHARD E. COATES (Sneads Ferry) – The Commission accepted the permanent voluntary surrender of Mr. Coates' broker license effective January 6, 1993. The Commission dismissed without prejudice charges that Mr. Coates had violated the provisions of the Real Estate License Law and Commission rules in various real estate transactions involving the sale of lots. Mr. Coates neither admitted nor denied any misconduct.

NORWOOD F. CRAWFORD (Sneads Ferry) – By Consent, the Commission suspended Mr. Crawford's broker license for 18 months effective January 6, 1993. Ten months of the suspension are to be active and the remaining period stayed for a probationary term of eight months. The Commission found that Mr. Crawford had failed to fulfill his responsibilities as principal broker of a licensed real estate corporation and had allowed the firm to engage in real estate activities without the supervision of a designated broker-in-charge.

SAMUEL L. CUNNINGHAM (La Grange) – By Consent, the Commission revoked Mr. Cunningham's broker license effective March 15, 1993. Mr. Cunningham will be issued a salesman license upon completion of an application and payment of the appropriate fee. On March 15, 1994, Mr. Cunningham will be issued a broker license upon fulfillment of various conditions. The Commission found that Mr. Cunningham had engaged in the unauthorized practice of law by drafting portions of an option contract and other contracts, had failed to maintain trust monies in a trust or escrow account, had failed to return an earnest money deposit for a period of one year even though it was not in dispute, and had failed to retain adequate trust account records in accordance with the License

Law and Commission rules and in such a manner as to create a clear audit trail.

BOBBY L. FERGUSON (Jacksonville) – The Commission suspended Mr. Ferguson's broker license for one year effective September 1, 1992. Sixty days of the suspension are to be active and the remaining period stayed for a probationary term of one year. The Commission found that Mr. Ferguson had arranged for the buyers in a V.A.-financed loan to pay discount points in violation of V.A. regulations, and had allowed contracts under his control to be altered without authorization from the parties. (Although this matter was originally heard by the Commission in 1985, publication of disciplinary action was delayed because the case has been under repeated appeal by Mr. Ferguson to the Wake County Superior Court. The Court upheld the Commission's final decision in the case, and the Commission's sanction was imposed upon the final expiration of all appeal periods.)

BRUCE F. HARRIS, SR. (Burlington) – By Consent, the Commission suspended Mr. Harris' broker license for six months effective April 1, 1993. The Commission then stayed its Order for a probationary term of six months. The Commission found that Mr. Harris had negotiated on behalf of the property owners to sell a lot in a subdivision which was not approved by municipal authorities, and had allowed the use of an offer to purchase which was prepared on a contract form which did not comply with Commission rules.

JOYCE W. HOLLAND (Cary) – By Consent, the Commission suspended Ms. Holland's broker license for six months. One month of the suspension is to be active and the remaining period stayed. The Commission found that Ms. Holland had failed to adequately investigate problems with the septic system of a residential property which she had listed and to disclose any resulting information to the buyer. Ms. Holland was aware that the property had previously been used as a family care home, but that such use was discontinued because of problems with the septic tank. The Commission noted that Ms. Holland had included a condition on the contract that the home meet all requirements for group home use.

LESLIE B. JACKSON (Chapel Hill) – The Commission revoked Ms. Jackson's broker license effective December 23, 1992, for failing to disclose a well's material defects to buyers and for misrepresenting the condition of the well

on property which she personally owned and had listed for sale with her company.

ROBIN A. KENNEDY (Apex) – By Consent, the Commission suspended Ms. Kennedy's salesman license for three years effective February 1, 1993. The Commission found that Ms. Kennedy had failed to properly account for or remit to her broker-in-charge a cash earnest money deposit she received from buyers in connection with their offer to purchase property and had failed to refund the money or otherwise account for it when the buyers' offer was not accepted. The Commission noted that Ms. Kennedy's broker-in-charge subsequently refunded the money to the buyers.

C. WAYNE KINSER (Asheville) – By Consent, the Commission suspended Mr. Kinser's broker license for two years effective March 15, 1993. Upon proof of his release from the probation imposed by a U.S. District Court in connection with his criminal conviction, any remaining period of suspension by the Commission shall be stayed for a probationary term. The Commission found that Mr. Kinser had been convicted of a criminal offense; namely, making illegal payments to a bank officer.

JAMES E. KNOWLES, II (Charlotte) – By Consent, the Commission revoked Mr. Knowles' broker license effective January 6, 1993. The Commission found that Mr. Knowles had failed to deposit and maintain rents in a trust or escrow account, and had failed to maintain adequate trust account records or to promptly make those records available for inspection by the Commission's investigator.

KIMBERLY A. MCDANEL (Duck) – The Commission suspended Ms. McDanel's salesman license for one year effective March 1, 1993. The Commission then stayed its Order for a probationary term of one year. The Commission found that Ms. McDanel had engaged in real estate activities without the supervision of the broker-in-charge at the licensed real estate corporation where she was employed, had failed to properly account for and remit trust monies she collected and had converted trust monies to the corporation's use at the direction of the unlicensed owner of the corporation.

JOHN GRAY B. MYERS, III (Duck) – The Commission suspended Mr. Myers' broker license for one year effective March 1, 1993. The Commission then stayed its Order for a probationary term of one year. The Commission found

that Mr. Myers, as broker-in-charge of the office of a licensed real estate corporation, had failed to deposit and maintain trust monies in a trust or escrow account and had failed to keep adequate records and to reconcile rental trust account records to bank records on a monthly basis, which led to a shortage in the corporation's trust account. The Commission noted that the unlicensed owner of the corporation subsequently replaced the missing funds and that Mr. Myers subsequently updated the trust account records and repaid all funds due to property owners.

ARTHUR H. PATELOS (Goldsboro) – By Consent, the Commission suspended Mr. Patelos' broker license for 90 days. The Commission then stayed its Order for a probationary term of one year upon condition that Mr. Patelos complete the Commission's Trust Account Short Course prior to May 1, 1993. The Commission found that Mr. Patelos, while employed as a property manager and broker-in-charge at a real estate firm, had failed to maintain proper trust or escrow account records, had failed to properly reconcile trust account records to bank records, and had allowed a shortage to occur in the firm's trust account. The Commission noted that after an independent audit revealed the shortage, Mr. Patelos replaced the missing funds.

ROBERT P. PROCTOR (Atlantic Beach) – The Commission accepted the permanent voluntary surrender of Mr. Proctor's broker license effective March 18, 1993, and dismissed without prejudice charges that Mr. Proctor had failed to properly maintain and account for trust monies he collected in his brokerage business. Mr. Proctor neither admitted nor denied any misconduct.

CATHERINE S. RUIZGOUBERT (Virginia Beach, VA) – By Consent, the Commission suspended Ms. Ruizgoubert's salesman license for two years effective April 1, 1993. Ninety days of the suspension are to be active and the remaining period stayed for a probationary term of two years. The Commission found that Ms. Ruizgoubert, as a rental manager and bookkeeper at a licensed real estate corporation, had failed to properly account for and remit rental proceeds in a timely manner. The Commission noted that Ms. Ruizgoubert did not convert trust monies to her personal use.

A SUN COAST COMPANY REALTY, INC. (Virginia Beach, VA) – By Consent,

(Continued on page 8)

Disciplinary Action

(Continued from page 7)

the Commission revoked the corporate real estate broker license of A Sun Coast Company Realty, Inc. effective March 10, 1993. The Commission found that the corporation, while engaging in property management, had failed to deposit and maintain trust monies in a trust or escrow account, had failed to keep adequate records of the funds it collected and had failed to properly account for and remit trust monies to its clients and tenants.

CHARLOTTE K. WELLS (Charlotte) – By Consent, the Commission suspended Ms. Wells' broker license for six months effective February 10, 1993. Seventy days of the suspension are to be active and the remaining period stayed for a probationary term of one year. The Commission found that Ms. Wells had procured a notary acknowledgment to a deed knowing that the grantor had not signed the deed in the notary's presence.

JERRY S. WRIGHT, JR. (Kitty Hawk) – By Consent, the Commission suspended Mr. Wright's broker license for three years. Upon proof of his release from the probation imposed by a U.S. District Court in connection with his criminal conviction, any remaining period of suspension imposed by the Commission shall be stayed for a probationary term. The Commission found that Mr. Wright had been convicted of a criminal offense; namely, falsifying statements on a loan application. ☐

Time to Renew

(Continued from page 3)

check! Indicate your current address-of-record, as well as your home address, if it is different from your address-of-record. If you are an active salesman, also please include the name and license number of your broker-in-charge. June 30 is the deadline for renewing without a late penalty. Be sure to have your renewal in the Real Estate Commission office by that date. ☐

Commission forms Agency Task Force

(Continued from page 1)

can prove detrimental to purchasers because, as agents for the sellers, these brokers and salesmen are required to report to the sellers any information they receive which the sellers would find beneficial.

For example, while under the mistaken impression that the real estate agent is "working for them," purchasers may confide to the agent a willingness to pay \$150,000 for property listed by the agent, even though their initial offer is for only \$140,000. The agent's responsibility to report this information to the seller is, of course, to the detriment of the purchaser. It is argued that, had the purchaser been aware that this special relationship existed between the agent and the seller, the purchaser would never have divulged this "confidential" and potentially harmful information to the agent.

From this rather simplistic beginning, the issue of agency disclosure appears to have expanded to incorporate and focus attention on a number of other related subjects. These include buyer representation, dual representation (where an individual broker or brokerage firm undertakes to represent buyers and sellers in the same transaction), and even to alternative working relationships where brokers act as limited agents or non-agents commonly referred to as "facilitators."

Through the enactment of laws, the adoption of rules, and the creation of forms, real estate regulatory agencies in a number of states have attempted to

identify and describe these various working relationships and to advise real estate agents and consumers of the agents' relative duties and responsibilities under each relationship. However, according to the Consumer Federation of America, the laws and rules in only a few of these states have actually resulted in any effective and meaningful disclosure of information to consumers.

In response to the many questions raised concerning agency disclosure, the Real Estate Commission staff has appeared before numerous meetings of brokers and salesmen. The Commission has also formed a task force to study the relevant issues and make recommendations to the Commission for its consideration.

Serving on the Commission's Agency Task Force are real estate brokers **Kaye Hancock** (Greensboro), **Scott Rooth** (Cashiers), **Chet Snow, Jr.** (Charlotte), and **Ed Willer** (Raleigh); buyer broker specialist **JoAnne Schimmel** (Durham); **Patrick K. Hetrick**, Dean of the Campbell University School of Law; and consumer member **Cynthia K. Meekins**, former Administrative Assistant to the Governor's Special Assistant for Minority Affairs.

The Task Force is scheduled to complete its study and file its report and recommendations with the Real Estate Commission in August.

Stay tuned to future issues of your *Real Estate Bulletin* for any actions proposed or taken by the Commission regarding agency disclosure. ☐

80,100 copies of this document were printed at a cost of \$.114 per copy.

NORTH CAROLINA
REAL ESTATE COMMISSION
P.O. Box 17100
Raleigh, NC 27619-7100

BULK RATE
U.S. Postage

PAID

Permit No. 99
RALEIGH, NC