



## NORTH CAROLINA REAL ESTATE COMMISSION

# Real Estate Bulletin

Volume 28

Spring 1997

Number 1

## Commission Staff Update

The North Carolina Real Estate Commission recently filled a position in its Legal Services Division.

Marilyn E. Tomei, the Commission's Assistant Legal Counsel, has been promoted to Deputy Legal Counsel. Marilyn received both her undergraduate and law degrees from UNC-Chapel Hill.

She joined the Commission staff as Associate Legal Counsel in 1990. Prior to her employment with the Commission, Marilyn was associated with a Hillsborough law firm.

*(continued on page 2)*

## Smoke Detector Law Please remember...

The law requiring smoke detectors in North Carolina applies to all residential rental properties - regardless of the age of the dwellings. The smoke detector law went into effect January 1, 1996.

Any licensee who fails to comply with the law when acting as a property manager for others or when handling personal rental properties will be subject to disciplinary action by the Real Estate Commission. ◻

## Examination Subject Matter Advisory Committee assists Commission

Advisory Committee's findings affirm the validity of the Commission's current license examination program while identifying additional topics to be tested on future examinations.

*By Anita R. Burt, Education and Examination Officer*

As the first step in substantially updating its licensing examinations, the Real Estate Commission appointed a twenty-member Examination Subject Matter Advisory Committee to analyze brokerage activities and to identify the knowledge and skills needed by licensees to engage in real estate brokerage. Meetings were held in Raleigh on October 28 and December 2, 1996.

Serving on the Advisory Committee were:

Margaret "Micki" Fisher, Charlotte  
Tim Gentry, Blowing Rock  
Ron Giles, Spindale  
Ginger Hale, Roanoke Rapids  
L.D. Jones, Jr., Fayetteville

J. Lamar Kellar, Jr., Gastonia  
Mary "M.L." Koebberling, High Point  
Sarah Gray Lamm, Chapel Hill  
Jack Leonard, Pinehurst  
Betty Maxwell, Lumberton  
Bonnie Mitchell, Hickory  
Ward Mullis, Charlotte  
Ted Napper, Greensboro  
Fred O'Neal, Raleigh  
Llew Ramsey, Atlantic Beach  
Jean Smith, Cary  
Anne Stokes, Hendersonville  
Carol Tyndall, Kinston  
Ed Willer, Raleigh  
John W. "Bill" Willoughby, Ahoskie.

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## Renewal reminder!

Renewal applications will be mailed in mid-May. To avoid the expiration of your license and the \$5 late penalty, your renewal application must be returned to the Commission with your fee and received in the Commission office no later than June 30.

## REAL ESTATE BULLETIN

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

### NORTH CAROLINA REAL ESTATE COMMISSION

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

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Chairman  
Wanda J. Proffitt ..... Burnsville  
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Robin F. Oliver ..... Cons. Prot. Officer  
Rebecca A. Sabel ..... Information Officer

Editor - In - Chief

Phillip T. Fisher

Editor

Carrie D. Worthington

## Commission Staff Update

(continued from page 1)

Senior Auditor/Investigator Gary R. Caddell has been designated as a Certified Fraud Examiner by the Association of Certified Fraud Examiners (ACFE).

The following Commission staff members have made appearances before various real estate industry and related groups since the last issue of the *Bulletin*. Miriam J. Baer, the Commission's Assistant Director of Legal Services, was at the Goldsboro-Wayne County Association of REALTORS®

Educational Seminar to discuss real estate agency, offers to purchase and related subjects. She discussed measuring and calculating the square footage of structures when she addressed the High Point Regional Association of REALTORS®...Deputy Legal Counsel Marilyn E. Tomei talked about property disclosure, lead-paint disclosure and related topics at a meeting of the Salisbury Board of REALTORS®...

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### REGISTRATION FORM

for

### BASIC TRUST ACCOUNT PROCEDURES COURSE

### MONTHLY - RALEIGH

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

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

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

☐ May 13 ☐ June 3  
☐ July 8 ☐ August 12  
☐ September 9 ☐ October 7  
Name \_\_\_\_\_ Phone \_\_\_\_\_  
(Daytime)

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

☐ Broker (License No. \_\_\_\_\_) Mail to: NC REAL ESTATE COMMISSION  
☐ Salesman (License No. \_\_\_\_\_) Attention: License Specialist  
☐ Bookkeeper P. O. Box 17100  
Raleigh, NC 27619-7100

Enclose \$35 tuition fee

## Commission Staff Update

(continued from page 2)

Consumer Protection Officer Stephen L. Fussell attended the Property Management Meeting of the Fayetteville Association of REALTORS® and discussed consumer complaints involving property management issues. (*Individuals and groups requesting a speaker from the Real Estate Commission are reminded that a "Request for Program Presenter" form is available from the Commission Office.*) □

## Another anniversary announcement...

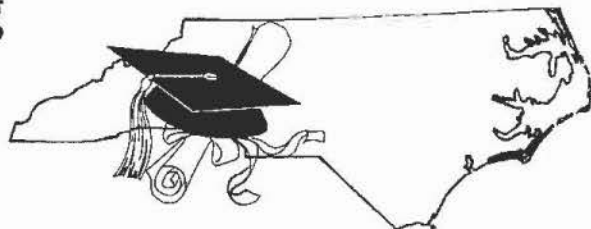
The North Carolina Real Estate Commission once again reminds you that on July 1, 1997, it will celebrate forty years of service to the state's real estate consumers and licensees. In honor of this occasion, the Commission is preparing a special anniversary edition of the *Real Estate Bulletin*.

Look for special features and articles, "meet" the Commission and staff, and see some of the changes since 1957 - in the anniversary edition of the *Bulletin*, Volume 28, Number 2, Summer 1997. □

### EXAM RESULTS

	Passed	Failed
December 1996		
Brokers	95	67
Salesmen	385	222
January 1997		
Brokers	113	58
Salesmen	571	282
February 1997		
Brokers	87	53
Salesmen	165	153

## Continuing Education Corner



### Renewal alert!

Your renewal application will include a summary of your CE credits reported to the Commission during the current fiscal year (since July 1, 1996) and credited to your record as of April 25, 1997. (After that date, changes in

licensee files will not be reflected on renewal applications.) However, because sponsors are allowed 15 days following a class to report CE credits to the Commission, courses taken in April may not be reflected on your application. ■

### REAL ESTATE COMMISSION PUBLICATIONS ORDER FORM

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

( )  
Name \_\_\_\_\_ Phone Number (Including Area Code) \_\_\_\_\_

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

#### Instructions

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



# "Interactive voice response"; "fax-on-demand"

Systems provide licensee data; enable callers to request and immediately receive Commission forms and documents.

## "Interactive Voice Response" (IVR)

Call (919) 850-2753 for licensee data including your license status, CE credits, and broker-in-charge information.

## Fax-on-demand

Call (919) 850-2757 to request any of the following documents, available from the various Commission Divisions/Sections:

### Administration/Records

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

### Education/Licensing

- Continuing Education Course Schedule
- Publications Order Form
- License Examination Schedule and License Examination Review Schedule
- Basic Trust Account Procedures Course Schedule and Registration Form
- Order Form for License Examination Candidate Roster
- Order Form for Register of New Licensees

### Legal Services

- Complaint Form
- Criminal Conviction Reporting Form
- Residential Property Disclosure Statement
- Disclosure to Buyer From Seller's Agent or Subagent

### Other

- Request for Program Presenter
- 1997 Commission Meeting Schedule

## "Trust Account Guidelines" revised

Starting on page 5 of this *Bulletin* are the final two pages of the Commission's "Trust Account Guidelines," as they appear in the latest edition of the license application booklet, *Real Estate Licensing in North Carolina* (Revised 11/1/96). The Commission is reprinting the Guidelines for your review and information. The first installment appeared in the last *Bulletin* - Winter 1997, Volume 27, Number 4. □

## In memoriam

*With deep regret, the Real Estate Commission announces the death of James K. "Jim" Clinard of Colfax. Mr. Clinard retired from the Real Estate Commission in 1993, having served as a Commission Investigator from 1962-1968 and again from 1972 until his retirement.*

*The Commission extends deepest sympathy to Mr. Clinard's family.* ■

## For your information...

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

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

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

## Commission Calendar

### Meeting Dates

May 14  
June 11  
July 10\*  
August 13  
September 17  
October 15

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

\*Town Hall, Blowing Rock, NC

# TRUST ACCOUNT GUIDELINES

(continued from Real Estate Bulletin Volume 27, Number 4, Winter 1997)

offset such "deficit spending," because this would, of course, constitute a commingling of the property manager's funds with funds which he is holding for others.

Regarding the disposition of tenant security deposits, the property manager or leasing agent should be aware that such deposits may be used only for certain specified purposes, and if not used, the deposit must be promptly refunded to the tenant (certainly within 30 days after termination of the tenancy). Chapter 42, Article 6 of the North Carolina General Statutes, entitled "Tenant Security Deposit Act", with which brokers acting in the capacity of property managers, leasing agents, etc. should be thoroughly familiar, sets forth the permitted uses of the deposit. These permitted uses are nonpayment of rent, actual damage to the premises, excluding ordinary wear and tear, nonfulfillment of the rental period, unpaid bills which become a lien on the property, costs of re-renting the premises after breach of the lease by the tenant, costs of removal and storage of tenant's property after a summary ejectment proceeding and court costs in connection with terminating the tenancy. Brokers must remain aware that security deposits are the property of the tenants, not owners, during the duration of the tenancy.

Property management fees, including interest earned by the broker, should be disbursed promptly (within 30 days) from the trust account to the broker's general business account, and division of earned fees among the broker's agents should be handled through the general business account.

## VII. RECORDKEEPING AND ACCOUNTING

### Retention of Records

Brokers are required to maintain complete records of all trust account receipts and disbursements, including bank statements, cancelled checks, deposit tickets, closing statements, property management reports and agreements, copies of offers (both accepted and rejected), copies of contracts, leases and management agreements, and other transaction records. Rule A.0107(e) requires brokers to maintain copies of these documents as well as other detailed books and records. The use and maintenance of separate ledger sheets (sometimes referred to as subsidiary ledgers or as individual transaction ledgers) comparable to those illustrated in the "Guidelines" is required. In the event a branch office maintains a separate trust account, a separate bookkeeping system should be maintained in such office.

### Trust Account Journal

Pursuant to Rule A.0107(e), the broker's trust account records must include a journal or check stubs and individual ledgers. The journal records in chronological sequence trust money received and disbursed by the broker on behalf of all parties. The bookkeeping entries recorded in the journal must include the following information: 1) the date of the transaction; 2) the remitter's name or the payee's name; 3) the property identification; 4) the check number for disbursement; 5) the amount of the deposit or disbursement; 6) the purpose for the deposit or disbursement, and 7) a running balance after each entry.

### Trust Account Ledgers

The ledger records in chronological sequence trust money received and disbursed by the broker on behalf of a particular seller and buyer or landlord and tenant. Each ledger must identify the seller or landlord's name, the buyer or tenant's name and the property address of the property sold or managed by the broker. The bookkeeping entries posted to the ledger must include the same information as those recorded in the journal.

### Security Deposit Ledgers

Security deposits may be identified on a separate ledger apart from the ledger that records the income and expenses on behalf of the property owner. This ledger should identify the property owner's name, the tenant's name and the property address. The bookkeeping entries posted to this ledger for security deposits must include the date of the deposit or disbursement; the purpose of the deposit or disbursement; the remitter's name or the payee's name; the check number; the amount of the transaction and a running balance after each bookkeeping entry.

### Timely Posting

It must be emphasized that all receipts and disbursements must be recorded in chronological order in both the journal and applicable ledgers at the time at which the transactions occur. The posting of receipts and disbursements several days after the activity occurs is an unacceptable accounting practice.

### Supplemental Worksheets

Bank deposit tickets may include monies from more than one real estate transaction. For example, two earnest money deposits may be included on one deposit ticket. In such an instance, the date and the amount of the total deposit may be recorded on the journal. The deposit ticket itself, or a supplemental worksheet for each deposit ticket, must be prepared identifying the properties, parties to the transactions, purposes, dates and amount of deposits. Each bookkeeping entry on the supplemental worksheet or deposit ticket must be referenced to the corresponding ledger.

Likewise, cancelled checks may represent disbursements applicable to more than one ledger. In such an instance, the date, check number, payee and amount may be recorded on the journal. A supplemental worksheet must be prepared for each of these cancelled checks referencing the check numbers, identifying the properties, parties to the transactions, purposes, dates and amount of disbursements. Each bookkeeping entry on the supplemental worksheet must be referenced to the corresponding ledger.

### Reconciliation/Trial Balance

Rule A.0107(e) further requires that brokers report all receipts and disbursements of trust monies in such a manner as to create a clear audit trail from deposit tickets and cancelled checks to check stubs or journals and to the ledger sheets. A broker must reconcile ledger sheets and his journal or check stubs to the trust account bank statements on a monthly basis. The broker must create a worksheet (Trial Balance) for each such monthly reconciliation and must retain the worksheet (Trial Balance) as part of his trust account records.

The trial balance must identify each ledger (e.g. buyer

& seller, property address, tenant, etc.) and show the ledger balance as of the date of the trial balance. A trial balance is simply a list of all funds in the trust or escrow accounts and the identification of the owners of those funds. The month-end bank statement balance must be reconciled to the checkbook and/or journal balance (i.e. running balance of funds on deposit) taking into consideration outstanding checks and deposits. The checkbook and/or journal balance should equal (be balanced with) the total outstanding liability as shown on the ledgers (individual transaction ledgers).

**Trust account records must be retained by brokers for at least three years and must be made available for inspection by the Commission or its authorized representatives without prior notice. [NOTE: The Real Estate Commission employs Trust Account Auditors to make "spot inspections" of trust accounts and to assist in the investigation of complaints alleging improper handling of trust money.]**

#### **Computers**

The Commission receives numerous inquiries concerning the format of bookkeeping systems, especially computerized bookkeeping systems. The Commission cannot endorse or recommend a specific computer product for brokers to use. The basic requirements for the computerized bookkeeping system are the same as those requirements for a manual system. The broker-in-charge is encouraged to review these requirements prior to investing in a computerized system which may not comply with Commission guidelines.

#### **Accounting to Principals**

Brokers must account for all trust money which they receive and disburse during the course of a real estate transaction. In the property management area, this accounting would be in the form of a "property management report," and in sales transactions, a "closing statement" is used.

Although no specific form or format is required, the property management report and the closing statement must set forth in a clear and concise fashion a complete accounting of all funds received and disbursed by the broker.

#### **Property Management Reports:**

The "property management report" is simply a periodic accounting to the owner of all funds received and paid out in connection with the owner's property. The major item of income is, of course, rent, and the major expense items include utilities, maintenance expenses, and administrative costs. It is the responsibility of the broker/property manager to see that the property owner receives this income and expense report at such times as are required by the management agreement (usually monthly) and that the report covers all receipts and disbursements handled by the property manager on behalf of the owner. The broker/property manager must also make a full accounting to the tenant, within 30 days of the termination of the tenancy, regarding the tenant's security deposit (See G.S. 42-52).

#### **Closing Statements:**

The "closing statement" is used in sales transactions to show all receipts and disbursements that the broker has handled for the seller, and all money that the broker has received from the buyer and how much money was disbursed. While it is the broker's responsibility to see that the buyer and seller receive a copy of this statement(s) at the closing of the transaction (or not more than five days after closing), the broker is not required to personally prepare the closing statements. He may instead elect to adopt the statements prepared by the person who closed the transaction (usually an attorney or lending officer) provided such statements account for all funds received and disbursed in the transaction; however, the broker will be held responsible for the accuracy of closing statements he provides to the parties, regardless of who prepares such closing statements. □



# Commission sends *sample notice* to brokers-in-charge

Brokers-in-charge of real estate offices recently received a sample reminder notice informing them that, if they do not renew their real estate licenses **ON ACTIVE STATUS** by June 30, the licenses of all salesmen working at their offices will be placed

on "inactive" status, and the Commission will change its addresses-of-record for all brokers and salesmen at the office to their residence addresses.

The sample notice was not meant to imply negligence on the part of all brokers-in-charge in meeting the

renewal deadline. Instead, it was sent (and is being reprinted here) as a reminder to all brokers and salesmen with "active" licenses: Complete your continuing education by June 10 so that you can renew your license on "active" status by June 30.

NORTH CAROLINA REAL ESTATE COMMISSION  
P.O. Box 17100  
RALEIGH, N.C. 27619-7100  
PHONE: (919) 733-9580  
VOICE RESPONSE (919) 850-2753



REPORT DATE:  
CHANGE (S) DESIGNATED BY\*  
NOTICE TO BROKER-IN-CHARGE

## NOTICE OF LICENSE RECORD CHANGE

IN MID-MAY, THE REAL ESTATE COMMISSION WILL SEND YOU A FORM TO RENEW YOUR REAL ESTATE LICENSE FOR 1997-98. IF YOU DO NOT RENEW YOUR LICENSE ON "ACTIVE" STATUS BY JUNE 30, WE WILL IN EARLY JULY SEND YOU A "NOTICE OF LICENSE RECORD CHANGE" SIMILAR TO THIS. IF YOU HAVE NOT RENEWED YOUR LICENSE, THE NOTICE WILL INDICATE "EXPIRED". IF YOU RENEWED YOUR LICENSE BUT DID NOT COMPLETE ALL REQUIRED CONTINUING EDUCATION, IT WILL INDICATE "INACTIVE" STATUS AND THAT YOUR ADDRESS OF RECORD HAS BEEN CHANGED TO YOUR RESIDENCE ADDRESS.

A COPY OF THE NOTICE SHOWING YOUR LICENSE "EXPIRED" OR "INACTIVE" WILL BE SENT TO ALL BROKERS AND SALESMEN WORKING AT YOUR OFFICE. THEY WILL ALSO RECEIVE A SEPARATE NOTICE INFORMING THEM THAT, AS A RESULT, THEIR ADDRESSES HAVE BEEN CHANGED TO THEIR RESIDENCE ADDRESS AND SALESMAN LICENSES CHANGED TO "INACTIVE" STATUS.

LIKewise, IN EARLY JULY, WE WILL SEND A NOTICE INDICATING "EXPIRED" OR "INACTIVE" TO ALL BROKERS AND SALESMEN AT YOUR OFFICE WHO HAVE NOT RENEWED THEIR LICENSES ON "ACTIVE" STATUS. YOU WILL BE SENT A COPY OF EACH NOTICE SO YOU CAN TAKE APPROPRIATE ACTION TO ASSURE THAT THESE BROKERS AND SALESMEN DO NOT PERFORM ANY ACT REQUIRING A REAL ESTATE LICENSE.

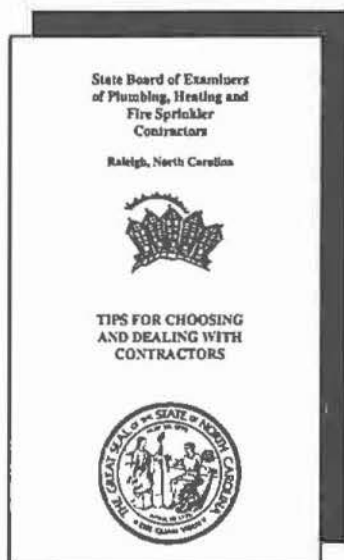
TO PREVENT THE CLOSING OF YOUR REAL ESTATE OFFICE JULY 1, MAKE CERTAIN THAT YOU HAVE COMPLETED ALL CONTINUING EDUCATION COURSES BY THE JUNE 10 DEADLINE AND YOU HAVE RENEWED YOUR LICENSE BY JUNE 30.

PLEASE REVIEW THE INFORMATION CONTAINED IN THIS NOTICE AND IMMEDIATELY REPORT ANY INCORRECT INFORMATION TO THE REAL ESTATE COMMISSION RECORDS SECTION (EXT.772).

TO

**BROKER-IN-CHARGE**

## New brochure offers helpful consumer tips



The State Board of Examiners of Plumbing, Heating and Fire Sprinkler Contractors (the agency that licenses contractors who install, alter, or restore plumbing, heating, air conditioning or fire sprinkler systems) is offering **TIPS FOR CHOOSING AND DEALING WITH CONTRACTORS.**

According to the brochure, "Contracting is a major project for most people, whether it is building a home or replacing a heating and air conditioning system. There is no way to ensure that every person will be satisfied every time with every

job done by every contractor in North Carolina." The agency hopes its brochure "will increase the odds in your favor."

In addition to stating the agency's purpose, the publication addresses consumer awareness issues and gives pertinent addresses and phone numbers.

For copies of this informative publication, contact:

**State Board of Examiners of  
Plumbing, Heating and Fire  
Sprinkler Contractors**  
801 Hillsborough Street, Suite 403  
Raleigh, North Carolina 27603 ◊

# Examination Subject Matter Advisory Committee

(continued from page 1)

The Advisory Committee members were experienced real estate brokers from throughout North Carolina. They were chosen to be representative of the state's active licensee population in terms of gender, race, size of affiliate-firm and industry focus (residential and commercial real estate and property management).

Their first assignment was to complete a *Real Estate Broker and Salesman Task Analysis*. The process required Advisory Committee members to identify tasks performed by real estate practitioners that are directly related to protecting the public interest, and then to determine for each task the relative importance of new licensees possessing at least minimal competence to perform the task.

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***The Advisory Committee's work established the foundation for the examination revision process to be completed in 1998.***

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The purpose of the analysis was to ensure that the revised real estate license examinations will address subjects which are directly related to tasks actually performed by licensees active in real estate brokerage.

Upon completion of the task analysis, the Advisory Committee turned its attention to the specific knowledge and skills newly licensed brokers and salesmen must possess in order to perform essential tasks in a manner which protects the public interest. By completing a *Real Estate License Examination Subject Matter Study*, the Advisory Committee identified topics appropriate to be tested on the licensing examinations. The study also determined

for each identified topic (1) the relative importance of new licensees having at least minimal competence with regard to the topic and (2) the expected level of competence for new licensees.

The results of the *Task Analysis* and *Examination Subject Matter Study* largely affirm the validity of the Commission's current license examination program. The Advisory Committee identified several new areas of knowledge and skill in which licensee competence has become essential, and they identified some subjects which warrant a change in emphasis. The Advisory Committee's work established the foundation for the examination revision process to be completed in 1998.

Assisting the Advisory Committee were the following members of the Commission's Education and Licensing Division: Larry A. Outlaw, Director of Education and Licensing; Anita R. Burt, Education and Examination Officer; Pamela R. Milligan, Continuing Education Officer; former Continuing Education Officer Evelyn G. Johnston (who recently transferred to the Commission's Audits and Investigations Division as Compliance Officer) and Education Secretary Penny Childress.

## Commission Appreciation

The Real Estate Commission extends its sincere appreciation to the members of the Examination Subject Matter Advisory Committee. Because of their hard work and dedication to their assigned duties, the subject matter of the revised real estate examinations will be directly related to knowledge and skills necessary for competent real estate brokerage. ■

# 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.*

ROBERT M. ALLEN, JR. (Winston-Salem) - By Consent, the Commission suspended Mr. Allen's salesman license for two years effective December 15, 1996. Eight months of the suspension are to be active and the remaining period stayed for a probationary term of 16 months. The Commission found that Mr. Allen had acted outside the supervision of his broker-in-charge and had received a fee for his services from a party other than his employing broker. The Commission further found that in a proceeding before the United States Bankruptcy Court, while acting as the agent for the seller of another property, Mr. Allen had exaggerated the chances of successfully closing a proposed sale in order to forestall the claims of creditors and to obtain additional time to find a buyer for the property.

WILLIAM H. BEARD (Sophia) - The Commission revoked Mr. Beard's broker license effective December 16, 1996. The Commission found that Mr. Beard had failed to deliver subdivision street disclosure statements, as required by law, to purchasers of homes and lots in a subdivision which he had created through his corporation. The Commission further found that Mr. Beard had falsely represented to purchasers that the subdivision road would be taken over by the State when a certain number of homes were occupied.

(continued on page 9)



# Disciplinary action

(continued from page 8)

LOUIS J. BOURGAULT (Holly Ridge) - By Consent, the Commission suspended Mr. Bourgault's broker license for one year effective January 1, 1997. Two months of the suspension are to be active and the remaining period stayed for a probationary term of 10 months. The Commission found that Mr. Bourgault, as broker-in-charge of a real estate firm, had failed to undertake prompt bank reconciliations or trial balances and that the ledger balances did not equal the running balances on the journal. The Commission further found that Mr. Bourgault and others had undertaken an audit of the escrow account which determined that the account was short. The Commission noted that the shortage was promptly replaced and the firm was subsequently sold with a fully funded escrow account.

JOHNNY W. BUTTS (Siler City) - The Commission suspended Mr. Butts' salesman license for one year effective March 1, 1997. The Commission found that Mr. Butts had misrepresented his appraisal credentials on State-certification applications, and that the North Carolina Real Estate Appraisal Board had revoked Mr. Butts' certification as a State-certified general appraiser.

J. ROLIN CHOATE (Charlotte) - By Consent, the Commission suspended Mr. Choate's broker license for one year effective February 1, 1997. The Commission then stayed the suspension for a probationary term of one year upon certain conditions. The Commission found that while Mr. Choate was broker-in-charge of a salesman, the salesman had collected residential tenant security deposits which were not placed into an escrow or trust account. Mr. Choate neither admitted nor denied any misconduct.

WILLIAM R. DAVENPORT (Greenville) - By Consent, the Commission suspended Mr. Davenport's broker license for 90 days effective December 1, 1996. The Commission then stayed the suspension for a probationary term of six months. The Commission found that a salesman under Mr. Davenport's supervision had converted cash trust monies to his own use. The Commission further found that Mr. Davenport had failed to perform monthly reconciliations of the firm's trust account records as required by Commission rule and therefore did not promptly discover the salesman's conversion. The Commission noted that when Mr. Davenport discovered the salesman's conversion, he immediately notified the Commission, restored the converted funds to the account and cooperated fully with the Commission's investigation.

JAMES KELLY HART, JR. (Fairview) - The Commission revoked Mr. Hart's broker license effective December 1, 1996. The Commission found that Mr. Hart had been convicted of a charge of Attempt to Commit a Felony, conspiring to possess and distribute cocaine.

THOMAS W. HAYS (Raleigh) - The Commission revoked Mr. Hays' salesman license effective March 1, 1997. The Commission found that Mr. Hays had made a false statement on his application for real estate licensure; namely, Mr. Hays answered "no" to the application question regarding criminal convictions when, in fact, he had twice been convicted of driving while impaired. The Commission further found that after licensure, Mr. Hays had been convicted of the felony of common law robbery and the misdemeanor of unauthorized use of a motor vehicle.

RAMONA F. HURST (Hickory) - By Consent, the Commission revoked Ms. Hurst's broker license effective December 12, 1996. The Commission found that as of November 1, 1996, the trust account liabilities of the corporation of which Ms. Hurst was broker-in-charge exceeded the funds on deposit by at least \$142,000. Ms. Hurst neither admitted nor denied any misconduct.

JACK L. KIMBALL (Raleigh) - By Consent, the Commission suspended Mr. Kimball's broker license for six months effective March 1, 1997. The Commission then stayed the suspension for a probationary term of one year. However, if Mr. Kimball successfully completes a Commission-approved continuing education course in commercial real estate practices by September 1, 1997, he shall be released from probation on September 1, 1997. The Commission found that Mr. Kimball, while broker-in-charge of a real estate office, had negligently cooperated with brokers in this state who were licensed in another jurisdiction but were not licensed in North Carolina. Mr. Kimball neither admitted nor denied any misconduct.

KATHY S. LANG (Fleetwood) - By Consent, the Commission revoked Ms. Lang's salesman license effective October 21, 1996. The Commission found that Ms. Lang had engaged in activities requiring an active license while her license was on inactive status and while she was not supervised by a broker-in-charge. The

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# Disciplinary action

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Commission further found that Ms. Lang had failed to maintain trust monies in a trust or escrow account, had commingled trust monies with her own funds, and had failed to produce trust account records for review by the Commission's auditor.

RON W. LAWRENCE (South Brunswick) - The Commission revoked Mr. Lawrence's real estate salesman license effective October 18, 1996, in accordance with N.C.G.S. Section 110-142.1).

BEVERLY M. LEE (Charlotte) - By Consent, the Commission reprimanded Ms. Lee effective December 1, 1996. The Commission found that Ms. Lee had advertised in the Multiple Listing Service that a property had "new gas heat and water heater, 11/90," although she knew that the heating system was at least 20 years old. The Commission noted that the error was inadvertent.

VANICE C. MERCER (Wilson) - By Consent, the Commission suspended Ms. Mercer's broker license for 90 days effective November 5, 1996. The Commission then stayed the suspension for a probationary term of one year. The Commission found that Ms. Mercer had contracted to purchase a property listed by the firm with which she was associated, then had requested the listing agent to ask the seller to significantly reduce the price. The Commission further found that without advising the seller and without the seller's written permission, Ms. Mercer had transferred the contract to purchase the property for the reduced price to a principal in the firm who purchased the property in Ms. Mercer's place.

MVPD GROUP, INC. (Greenville) - By Consent, the Commission suspended the corporate real estate broker license of MVPD Group, Inc. for 90 days effective December 1, 1996. The Commission then stayed the suspension for a probationary term of six months. The Commission found that a salesman with the corporation had converted cash trust monies to his own use. The Commission further found that monthly reconciliations of the firm's trust account records had not been performed as required by Commission rule and therefore the salesman's conversion had not been promptly discovered. The Commission noted that when MVPD Group, Inc. discovered the salesman's conversion, it immediately notified the Commission, restored the converted funds to the account and cooperated fully with the Commission's investigation.

WILLIAM E. NORTINGTON (Advance) - By Consent, the Commission reprimanded Mr. Northington effective December 1, 1996. The Commission found that Mr. Northington had been convicted of misdemeanor assault and misdemeanor breaking and entering for conduct arising out of disagreements with a partner in the real estate brokerage business.

RAYMOND B. ROGERS (Mount Airy) - By Consent, the Commission suspended Mr. Rogers' broker license for two years effective February 1, 1997. The Commission found that Mr. Rogers had failed to exercise the necessary supervision and control over the activities of a salesman employed by his firm and had allowed the salesman to implement a "time share trade-in" program to sell residential building lots. The

Commission further found that in order to make this program work, the true facts about the program were not disclosed on the face of the sales contracts and instead were placed in addenda, which did not appear in the files of various lenders financing these sales.

ROGERS REALTY & AUCTION COMPANY, INC. (Mount Airy) - By Consent, the Commission suspended Rogers Realty & Auction Company, Inc.'s corporate real estate broker license for one year effective February 1, 1997. The Commission then stayed the suspension for a probationary term of one year. The Commission found that Rogers Realty & Auction Company, Inc.'s officers had failed to exercise the necessary supervision and control over the activities of a salesman in its employ, and had allowed the salesman to implement a "time share trade-in" program to sell residential building lots. The Commission further found that records of these transactions on behalf of, or in the name of, Rogers Realty & Auction Company, Inc. were not complete as required by Commission rules. The Commission also found that in order to make this program work, the true facts about the program were not disclosed on the face of the sales contracts and instead were placed in addenda, which did not appear in the files of various lenders financing these sales.

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# Disciplinary action

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**BERNITA C. SHIELDS** (Winston-Salem) - By Consent, the Commission reprimanded Ms. Shields effective December 15, 1996. The Commission found that Ms. Shields had failed to properly maintain in trust or escrow accounts tenants' security deposits for approximately twenty rental properties which she owned and managed with her husband. The Commission noted that following a divorce from her husband, Ms. Shields had been allocated approximately one-half of the jointly owned rental properties, and that she had deposited funds into a properly designated escrow account to cover the security deposit liability for those properties.

**OSCAR S. SHIELDS, SR.** (Winston-Salem) - By Consent, the Commission reprimanded Mr. Shields effective December 15, 1996. The Commission found that Mr. Shields had failed to properly maintain in trust or escrow accounts tenants' security deposits for approximately twenty rental properties which he owned and managed with his wife. The Commission noted that following a divorce from his wife, Mr. Shields had been allocated approximately one-half of the jointly owned rental properties, and that he had deposited funds into a properly designated escrow account to cover the tenant security deposit liability for the properties.

**GUY T. SOLIE** (Durham) - The Commission accepted the voluntary surrender of Mr. Solie's broker license for two years effective December 1, 1996. The Commission dismissed without prejudice charges that Mr. Solie had violated the Real Estate License Law and Commission rules in the management of his rental real estate.

**ALEX F. SPRUILL** (Goldsboro) - The Commission revoked Mr. Spruill's real estate broker license effective October 18, 1996, in accordance with N.C.G.S. Section 110-142.1.

**SHARONE SWANGER** (Charlotte) - By Consent, the Commission suspended Ms. Swanger's broker license for two years effective July 1, 1997. Sixty days of the suspension are to be active and the remaining period stayed for a probationary term of 22 months. The Commission found that Ms. Swanger, while licensed as a real estate salesman, had entered into a real estate transaction on her own account and as an agent without her supervising broker's knowledge or consent and had charged and collected a substantial commission on this transaction without reporting it to her supervising broker. The Commission noted that Ms. Swanger had cooperated with the Commission's investigation. The Commission further noted that Ms. Swanger subsequently obtained a real estate broker license and has had no further complaints, and that she has resolved the matter with those concerned.

**THOMAS V. TANNER** (Emerald Isle) - By Consent, the Commission revoked Mr. Tanner's broker license effective November 22, 1996. The Commission concluded that Mr. Tanner, as broker-in-charge of a corporation that was engaging in real estate brokerage and property management, had failed to maintain the funds the corporation held for others in a trust or escrow account and had failed to account for and remit trust monies, and that in October 1995, the

corporation's liability for the funds entrusted to it exceeded the funds on deposit in its trust account. Mr. Tanner did not admit any misconduct.

**WATER SIDE REALTY, INC.** (Buxton) - By Consent, the Commission revoked Water Side Realty, Inc.'s corporate real estate broker license effective December 20, 1996. The Commission found that Water Side Realty, Inc., while engaging in real estate brokerage and property management, had failed to properly maintain the funds it held for others in a trust or escrow account and had failed to maintain proper trust account records. The Commission further found that in March 1996, Water Side Realty, Inc.'s liability for the funds entrusted to it exceeded the funds on deposit in its trust account. The Commission noted that Water Side Realty, Inc. had cooperated with the Commission's inquiry. Water Side Realty, Inc. neither admitted nor denied any misconduct.

**MARSHALL E. WEAVER** (Warrenton, GA) - The Commission revoked Mr. Weaver's real estate broker license effective October 18, 1996, in accordance with N.C.G.S. Section 110-142.1.

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# Disciplinary action

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**ROBERT LOUIS YANCEY (Buxton)** - By Consent, the Commission revoked Mr. Yancey's broker license effective December 20, 1996. The Commission found that Mr. Yancey, as broker-in-charge of a corporation that was engaging in real estate brokerage and property management, had failed to properly maintain the funds it held for others in a trust account and had failed to maintain proper trust account records. The Commission further found that in March 1996, the corporation's liability for the funds entrusted to it exceeded the funds on deposit in its trust account. The Commission noted that Mr. Yancey had cooperated with the Commission's inquiry. Mr. Yancey neither admitted nor denied any misconduct.

**ROBERT A. YOUNG & ASSOCIATES, INC. (Kill Devil Hills)** - By Consent, the Commission revoked Robert A. Young & Associates, Inc.'s corporate real estate broker license effective November 22, 1996. The Commission found that Robert A. Young & Associates, Inc., while engaging in real estate brokerage and property management, had failed to maintain client funds in a trust account and had failed to account for and remit trust monies. The Commission further found that as of December 1995, Robert A. Young & Associates, Inc.'s liability for the funds entrusted to it exceeded the funds on deposit in its trust account by more than \$300,000. Robert A. Young & Associates, Inc. neither admitted nor denied any misconduct. □

## Please check your label

The number of continuing education credit hours credited by the Commission to your licensee record for the **current** license period as of a stated date will appear on the mailing label of each edition of the *Real Estate Bulletin*. **Please avoid calling the Commission office to verify the crediting of continuing education credit hours to your licensee record unless you have reason to believe that an error was made.** Your cooperation in this regard is especially needed during the May 15 - June 30 period each year.

**Remember that you may access the IVR system at (919) 850-2753 for licensee data including your license status, CE credits, and broker-in-charge information.** ■

### *On the inside...*

**Examination Subject  
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Commission**

**"Interactive voice  
response"; "fax-on-  
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**Attention brokers-in-  
charge!**

**Continuing Education  
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**"Trust Account  
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**Renewal reminder!**

**Disciplinary action**

**...and more.**

### *A reminder...*

**The countdown is on! June 10 is the deadline to earn continuing education credits for the current fiscal year.**

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