



NORTH CAROLINA REAL ESTATE COMMISSION

Real Estate Bulletin

Volume 25

Spring/Summer 1994

Number 1/2

Commission adopts rules on agency agreements and disclosure



Administrative Procedures Act Coordinator Anita R. Burt presents proposed rules at a rulemaking hearing.

At its June meeting, the Real Estate Commission adopted rules establishing a procedure which real estate brokers and salesmen must follow in disclosing to consumers whom they represent in real estate sales transactions. The rules will become effective **July 1, 1995**, subject to approval by the state's Rules Review Commission.

In general, the rules are designed to inform prospective buyers and sellers of the duties owed to them by real estate brokers and salesmen in various agency relationships (seller agency, buyer agency, dual agency), and to provide meaningful disclosure to buyers when a broker or salesman with whom they are working is representing the seller's interests and *vice versa*.

The approach to disclosure adopted by the Commission is also designed to minimize the paperwork required of agents. Information describing your duties and relationships with buyers and sellers is to be included in listings and other agency agreements.

The only new form is one which the Commission has prescribed for use by an agent who is representing the seller, but working directly with a buyer. The seller's agent must review this disclosure form with the buyer and have him or her sign it.

If approved by the Rules Review Commission, the new rules will be taught this year in the Commission's continuing education Update Course, and copies of the Disclosure Form and "Description of Agent Duties and Relationships" will appear in a future issue of your *Real Estate Bulletin*.

Following is a summary of some of the highlights of the new rules:

Agency Agreements

All listing, buyer agency, dual agency and other agency agreements must (1) be in writing; (2) contain a "Description of Agent Duties and Relationships" prescribed by the Commission; and (3) contain a statement prescribed by the Commission indicating whether there is a possibility that you or your firm may be representing both sellers and buyers in the transaction (i.e., acting as a dual agent).

Offer and Sales Contracts

All preprinted offer and sales contract forms must contain a provision identifying each agent and firm involved in the transaction and whom they represent.

(continued on page 12)

Educators meet in Chapel Hill

The Real Estate Commission, in cooperation with the North Carolina Real Estate Educators Association (NCREEA), sponsored the 1994 North Carolina Real Estate Educators Conference in Chapel Hill on March 22 and 23.

Nearly 200 individuals, the most in the conference's 15-year history, attended this year's conference. The record number was due largely to interest in the Commission's new continuing education requirement. Commission staff explained plans for implementing the Continuing Education Program, provided a complete presentation on the proposed continuing education rules and received feedback from educators through a series of lively discussions.

Highlights of the remainder of the program included individual presentations by the President and President-Elect of the [National] Real Estate Educators Association, a session for appraisal instructors and an open forum where attendees were provided the opportunity to ask questions of a panel of Commission staff.

The Educators Association conferred awards for outstanding contributions to real estate education during the past year. Ann Bowman, a real estate educator from Wilmington, was named "Educator of the Year." Tom Mangum, a director and instructor at a private real estate school in Raleigh, was honored with the "Most Outstanding Program of the Year" award.

(continued on page 3)

REAL ESTATE BULLETIN

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.

NORTH CAROLINA REAL ESTATE COMMISSION

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

COMMISSION MEMBERS

Charles F. Biesecker Lexington
Chairman
James K. Polk Charlotte
Vice-Chairman
Raymond A. Bass, Jr. Fayetteville
Gilbert L. Boger Mocksville
John D. Bridgeman Gastonia
J. Edward Poole Spring Lake
William A. Smith, Jr. Cary

Phillip T. Fisher
Executive Director

ADMINISTRATION

Mary Frances Whitley Director
Paula L. Lassiter Financial Officer

AUDITS & INVESTIGATIONS

L. Ted Gayle Director

EDUCATION & LICENSING

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

LEGAL

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

Editor - in - Chief

Phillip T. Fisher

Editor

Carrie D. Worthington

EXAM RESULTS

	Passed	Failed
March 1994		
Brokers	126	90
Salesmen	483	263
April 1994		
Brokers	122	66
Salesmen	357	235
May 1994		
Brokers	78	88
Salesmen	279	250

Commission hosts ARELLO Conference

Approximately 120 members and guests of the Association of Real Estate License Law Officials (ARELLO) attended the 1994 Southern District Conference which the Commission hosted in Wilmington from June 12 - 15.

Special Deputy Attorney General Thomas R. Miller, Legal Counsel for the Commission, Chief Deputy Legal Counsel Blackwell M. Brogden, Jr., Deputy Legal Counsel Miriam J. Baer, and Assistant Legal Counsel Marilyn E. Tomei made presentations on legal issues affecting real estate licensing officials.

The conference was coordinated by Commission Executive Director Phillip T. Fisher and Director of Administration Mary Frances Whitley. □



Commission again gives "go-ahead" to *It's Your Move*

Again this year, the Commission has funded the publication and distribution of *It's Your Move* booklets to North Carolina's high school students. The booklets are designed as an introduction to buying, selling, and renting real estate.

Eleven thousand student manuals and 550 teacher guides will be printed for the 1994-95 school year. Approximately one-third million copies have been published and delivered free-of-charge since the Commission began the program in 1979. □

Vicki M. Strickland (Wilson) and Charles P. Byrne (Kitty Hawk) have been named recipients of the annual Joe Schweidler Memorial Scholarship and Blanton Little Memorial Scholastic Achievement Award, respectively. The awards are sponsored by the Real Estate Commission and recognize outstanding achievement at the North Carolina REALTORS® Institute.

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)

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

Educators meet

(continued from page 1)



Deputy Legal Counsel Miriam J. Baer, Education and Examination Officer A. Melton Black, Jr., and Director of Education and Licensing Larry A. Outlaw listen as Continuing Education Officer Anita Burt addresses educators. Also participating in the conference were the Commission's Education and Licensing Officer Evelyn Johnston and Appraiser Education and Examination Officer Earl H. Grubbs. Education Secretary Penny Childress, Education and Examination Clerk Amy Jones, and Licensing Specialist Wanda Johnson assisted with the arrangements. □

Short Course Caravan completes 1994 tour

The Commission's annual Trust Account Short Course Caravan has successfully completed another tour across the state. More than 200 real estate licensees and bookkeepers participated in the courses this spring.

Commission Licensing Officer Evelyn Johnston presented the Trust Account Short Course in Wilmington, New Bern, Nags Head, Asheville, Charlotte and Greensboro. The Resort Property Management Course was conducted in Wilmington, Asheville and Nags Head by L. Ted Gayle, Director of Audits and Investigations, who designed both courses.

The Commission instituted the Caravan as a means of providing the courses to people who cannot get to Raleigh for any of the regular sessions which are held monthly. □



Commission Staff Update

Financial Officer **Paula L. Lassiter** has been licensed as a Certified Public Accountant...**Reneé P. Weaver**, an Assistant Records Specialist in the Commission's Records Department, has assumed the newly created position of Continuing Education Clerk in the Education and Licensing Division.

Due to the separation of the Appraisal Board from the Real Estate Commission (See page 8 of this *Bulletin*), Appraiser Education and Examination Officer **Earl H. Grubbs** and Secretary **Sylvia Samsel** are no longer associated with the Real Estate Commission. The Commission thanks Earl and Sylvia for their valuable contributions to the appraiser licensing and regulatory program during their employment with the Commission.



Larry A. Outlaw, Director of Education and Licensing, spoke to the Brunswick Islands Board of REALTORS® about real estate continuing education at a meeting in Holden Beach...Continuing Education Officer **Anita R. Burt** updated the Region IV Officers and Executive Officers of the North Carolina Association of REALTORS® on the continuing education program when they met in Raleigh...**L. Ted Gayle**, Director of Audits and Investigations, was in Albemarle to speak about issues of special interest and concern to the Real Estate

Commission at a meeting of the Stanly County Association of REALTORS®...Special Deputy Attorney General **Thomas R. Miller**, the Commission's Legal Counsel, discussed disclosure of material facts concerning properties offered for sale, especially as they relate to proposed highway construction, when he met with the Durham Association of REALTORS®...Chief Deputy Legal Counsel **Blackwell M. Brogden, Jr.**, addressed the Dare County Board of REALTORS® and discussed property management issues and related matters...Deputy Legal Counsel **Miriam J. Baer** was at a meeting of the Kerr Lake Board of REALTORS® to talk about real estate agency...**Marilyn E. Tomei**, the Commission's Assistant Legal Counsel, spoke on offers to purchase and agency disclosure, including buyer agency, when she addressed the Goldsboro-Wayne County Board of REALTORS®. Marilyn participated in a meeting of the Community Housing Resource Board of the Greensboro Regional REALTORS® Association by speaking on Fair Housing laws...**Stephen L. Fussell**, Consumer Protection Officer, spoke to the New Bern Board of REALTORS® concerning contract preparation and agency disclosure.

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

MONTHLY TRUST ACCOUNT SHORT COURSE IN RALEIGH DATES

August 9
October 11*

September 13
November 8

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.

*Resort Property Management Recordkeeping Course is scheduled for this date. The regular Trust Account Short Course will not be held in October.

Have you renewed?

By Mary Frances Whitley
Director of Administration

If you haven't renewed your real estate license for 1994-95, your license has expired! June 30 was the deadline for renewing without a late penalty.

The fact that you received this *Bulletin* is not an indication of renewal; *Bulletin* labels were printed before June 30.

Agents with expired licenses are reminded that they may not engage in any brokerage activity including listing, selling, leasing and showing real estate or making referrals. Brokers-in-charge are responsible for verifying that all licensees under their supervision - brokers as well as salesmen - have current licenses; failure to do so is a violation of Commission rule.

Expired licenses may be reinstated any time within the twelve months following expiration upon the payment of the renewal fee plus a late filing fee. If you wish to reinstate your license, please return your re-

newal application with your fee for exactly \$30. (Do not send a photocopy or keep the application.)

Renewal applications were sent to the Commission's 84,236 broker, salesman and corporation licensees. However, if you did not receive yours, please send a check for exactly \$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 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.

Real estate license renewal should not be confused with the renewal of your *privilege license*. Privilege license fees are paid to the North Carolina Department of Revenue.

For further information or if you have questions about the renewal of your real estate license, please contact the Commission's Records Department. □

N.C. General Assembly enacts License Forfeiture Law

If you were convicted of a serious crime and given the choice of prison or probation, which would you choose?

While it might be an easy choice for most of us, believe it or not, many persons today are choosing prison over probation.

Why? Because they anticipate early-release! A limited number of prison cells and an ever-increasing prison population has forced North Carolina and other states to release prisoners well before the end of their imposed sentences. Some convicted felons reason that it's better to serve a little time in confinement than a lot of time on probation.

To provide additional incentive for persons convicted of felonies to ac-

cept and comply with the terms of their probation, The North Carolina General Assembly has enacted a law whereby convicted felons automatically forfeit their drivers licenses, hunting and fishing licenses, and occupational licenses if they refuse probation or violate the terms of their probation. The law became effective May 1.

Consequently, if a licensed real estate broker or salesman is convicted of a felony and refuses probation or has his/her probation revoked or suspended, the licensee's real estate license will be automatically forfeited for the full term of the maximum sentence imposed by the court. □



Brokers-in-charge, check those renewal cards!

By Gary R. Caddell, Investigator

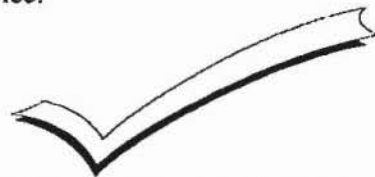
Attention brokers-in-charge! Do all of the agents in your office have current real estate licenses? Are you sure?

As broker-in-charge, you are responsible for determining that each licensee under your supervision has properly renewed his or her license. To fulfill your responsibility as required by Commission rule, you must do more than simply remind the agents under your supervision to send in their renewal fees: You must personally verify the current status of each license.

Ask to see each licensee's renewal "pocket card," which the Commission sends - usually within seven to ten days after receipt of payment. Check the expiration date to make sure it is marked "6/30/95." If a licensee tells you that the pocket card has been lost or was never received, contact the Commission's Records Department to confirm that the license was in fact renewed.

A broker or salesman's failure to renew means that the agent is no longer licensed. If you are that agent's broker-in-charge, you must make certain that he or she does not engage in any real estate sales, property management, or other activity which requires a license until the license has been properly reinstated.

The Real Estate Commission has disciplined brokers-in-charge for allowing brokers and salesmen under their supervision to continue to act in a brokerage capacity after the expiration of their licenses. You can easily avoid being disciplined on these grounds by checking the renewal card of each licensee employed in your office. □



Continuing Education; the time is *Now!*



In compliance with state legislation which made North Carolina the 47th state to mandate continuing education for real estate licensees, the Commission has finalized rules for implementation of its continuing education program. The basic requirement is **eight (8) classroom hours of Commission-approved continuing education per year** to renew a license on active status.

You must obtain four (4) of the required eight (8) classroom hours each year by completing the Commission's *Real Estate Update* course. You may obtain the remaining four (4) hours of the required eight (8) classroom hours by completing one or more *elective* courses approved by the Commission.

The education must be completed within the twelve-month period immediately preceding license expiration on June 30. (Sponsors will not be allowed to offer approved courses between June 11 and June 30 of any year.) Therefore, in order to renew on active status next June, you must obtain the required continuing education before June 10, 1995. Now is the time to make your plans for meeting the requirement.

Course Availability, Fees, and Schedules

Course sponsors are currently seeking Commission approval of their courses and planning their schedules. Eventually, there should be hundreds of continuing education course sponsors and several hundred courses throughout the state. Course and sponsor approval will be a gradual process, however, so the Commission requests your patience during the next few months.

The first approved courses are expected to be available in **late August or early September of 1994.**

The number should then steadily increase throughout the fall and winter, and there should be courses available within a reasonable driving distance for all licensees.

Approved continuing education sponsors will market their courses through direct mailings to licensees and by other means. In addition, each future edition of the *Real Estate Bulletin* will include addresses and phone numbers of approved sponsors. Course schedules, listed alphabetically by city, will be published for the upcoming 3-4 months from information that will be provided to the Commission by course sponsors. All real estate firms and boards of REALTORS® are urged to post these schedules on their bulletin boards and to remind licensees of this information at their meetings. Please contact the sponsors if you wish to verify schedules or for information on fees and registration.

All approved continuing education courses will be open to all licensees on a first-come/first-served basis, even if the sponsor is a trade association or a real estate firm or franchise. However, the association/firm/franchise may charge a higher course registration fee to a licensee who is **not** affiliated with the sponsor than to one who is affiliated.

Although sponsors are allowed to set their own registration fees, it is expected that competition among sponsors will keep fees at a reasonable level. However, you may wish to compare costs if you have a choice of several courses in your area. The fact that the fees charged for courses near the end of the annual license period may be higher than those charged for the same courses that are conducted earlier in the period is an added incentive to obtain your continuing education credit as early as possible. Each *Bulletin* will also

feature another article in the series on continuing education, to keep you updated on the program and to address your questions and concerns.

The purpose of the article in this edition is to give an overview of the program and to highlight and restate particularly important aspects which were discussed in detail in the last *Bulletin*. [See *Real Estate Bulletin*, Vol. 24, No. 4 (Winter 1994).]

Active vs. Inactive

If you are one of the many real estate licensees who will NOT be actively engaged in real estate practice, you may renew your license on inactive status without satisfying the continuing education requirement. Inactive status means you may not engage in any real estate activity that requires a license, including a referral for which you will receive compensation, not even on an occasional basis.

You may retain your license on **inactive** status indefinitely and you will **not** have to satisfy the continuing education requirement as long as your license remains inactive. However, *in order to change your license from inactive status to active status, you must show that you have obtained continuing education specified by the Commission.* The specified amount could range from 0 to 20 hours, depending on the length of time your license has been inactive, any continuing education you may have completed since the beginning of the preceding license period, and whether such education is creditable toward the continuing education requirement for the current license period.

Some licensees who are not actively engaged in real estate brokerage may ask, "Why not let my license expire and just reinstate it later if I need it?"

The reason is that the requirements to **reinstate** a license that has been

(continued on page 6)

Continuing Education; the time is *Now!*

(continued from page 5)

expired for more than one year will be considerably more stringent than the requirements to **activate** a license that has been **inactive** for more than one year. The Real Estate Commission is authorized to hold applicants for reinstatement of a license that has been expired for over a year to the same requirements - **including the license examination** - as applicants for original licensure!

Because only active licensees are required to satisfy the continuing education requirement as a condition of license renewal, you must indicate whether you are renewing your license on active status or inactive status beginning with license renewal in June 1995. **Active status is required if you wish to engage in any real estate activity requiring a license, including a referral for which you will receive compensation.**

If you plan to renew your license on active status, you must obtain four (4) of the required eight (8) classroom hours each year by completing the Commission's *Real Estate Update* course.

Update Course

The four-hour *Update* course will be available through sponsors and instructors who have been approved by the Commission. It is expected that sponsors will include community colleges, private schools, private individuals, the North Carolina Association of REALTORS® and various local boards of REALTORS®.

The course will address recent changes in real estate related laws and practices and topics determined by the Commission to be special problem areas. The Commission will completely change the subject matter for the course annually, so each year's *Update* course will be different.

The 1994 - 95 *Real Estate Update* course will cover the following topics:

- Review of Continuing Education Requirements and Procedures
- Real Estate Agency Relationships, including the new rules on agency contracts and disclosure recently adopted by the Commission. (See page 1 of this *Bulletin*).
- Review of Recent Law Changes and Court Decisions Affecting Real Estate Practice

Elective Courses

You may obtain the remaining four (4) hours of the required eight (8) classroom hours by completing one or more *elective* courses approved by the Commission and available through sponsors and instructors who also have been approved by the Commission. Each elective course must be at least two (2) hours in length. (Note that a maximum of four hours credit will be awarded for any single elective course even if the course exceeds four hours.)

All elective courses must address a real estate topic that directly contributes to the goal of ensuring that licensees possess the knowledge, skill and competence necessary to function in the real estate business in a manner that protects and serves the public interest.

Acceptable topics include: real estate law; agency law; real estate contracts; land use controls; environmental hazards and protection; real estate economics and markets; real estate finance, investment or appraisal; property management; construction; commercial brokerage; and similar topics.

Unacceptable topics include those not directly related to real estate practice (e.g., general business administration or management or personal skills training) and those where the primary focus is on improving the licensee's ability to be financially successful (e.g., sales, motivational

or success training and brokerage management).

Requirement for Nonresidents

Because many nonresident licensees may find it difficult and costly to come to North Carolina to take the *Update* course, they may fully satisfy the continuing education requirement by completing eight hours in *elective* courses approved for continuing education credit by the real estate licensing agency in their resident state.

Attendance Requirement

Licensees must attend at least **90% of the scheduled classroom hours** for a course in order to receive credit. Even if an elective course exceeds four hours in length, the 90% attendance requirement must still be satisfied. For example, if an approved elective course is scheduled for 15 hours, you must attend at least 13½ hours in order to receive any continuing education credit. Sponsors and instructors are prohibited from making any exceptions to the 90% attendance requirement. *Therefore, it is important that you be on time for a scheduled continuing education course and that you not leave early or take extended breaks.*

Your cooperation in assuring compliance with the attendance requirement will be appreciated. Attendance abuse can not be tolerated if we are to have an effective and respected continuing education program.

Student Participation Standards

One of the harshest criticisms of mandatory continuing education programs in the various professions has come where students are allowed to completely ignore the instruction being presented and still get credit for the course. The Commission's rules require that licensee-students be attentive to the continuing education instruction, and prohibit distractive or

disruptive conduct such as sleeping, reading books and newspapers, talking to classmates or on cellular phones, and performing office or personal work during class. Students must also comply with instructions related to providing information needed to properly report completion of a course.

Sponsors and instructors are required to enforce these standards. Instructors are authorized to dismiss students who are in violation or to report their conduct to the Commission which can deny continuing education credit for such violations.

Reporting Credit to the Commission

To receive credit for a continuing education course, you must provide the course sponsor/instructor with your real estate **license number** at registration or when you check in for the course, *so be sure to take your license "pocket card" with you.*

The sponsor/instructor will give you a **course completion report** form, which will include an evaluation section for your use in rating the course and instructor at the end of the course. Please take the time to complete it carefully. Your evaluation will assist the Commission in ensuring high quality courses.

This course completion report for each licensee-student will be promptly submitted to the Commission following the course by the course sponsor and will be used by the Commission to credit the licensee's computer record after being checked against the class roster also submitted by the sponsor.

Within 15 days after the course, sponsors also must provide each licensee who completed the course with a **course completion certificate**. This certificate is the licensee's personal record of course completion. *It should NOT be submitted to the Commission unless the Commission specifically requests it.*

Equivalent Credit

It is sometimes possible, under very special circumstances, for a licensee to request elective course credit for a course **not** approved by the Commission or for some real estate education activity such as developing an elective course or writing a text or scholarly article. Detailed information is necessary for Commission evaluation, and a \$50 nonrefundable evaluation fee is required. Credit will be awarded only if the course or activity is found to be equivalent to the elective course component.

Instructors of either the *Update* course or an approved elective course may receive credit for teaching such course and are not subject to the evaluation fee.

Licensees requesting equivalent credit should do so as far in advance of license expiration as possible to allow the Commission ample time to process the request and to allow time for the licensee to complete an approved elective course prior to license expiration if the request is denied. Any request for equivalent credit must be received by April 30.

Carry-Over Credit

The carrying over of continuing education elective course credit from one year to the next is permitted only on a very limited basis. When a licensee completes an "extra" elective course that is not needed to satisfy the elective requirement for the current license period, the credit hours earned in the "extra" course may be carried over to satisfy the elective requirement for the next license period.

The Commission automatically will credit the licensee's extra course to the next license period. No special request by the licensee is necessary. However, please understand that only entire courses of at least two classroom hours qualify for carry-over credit. *Extra hours in a single course may not be carried over.*

Extensions of Time

In cases of *extreme hardship*, the Commission may grant additional time for you to complete your continuing education. But to receive this additional time, you must show that you were unable to obtain the required continuing education due to an incapacitating illness or other circumstance which existed for a substantial portion of the license year. You must show that satisfying the continuing education requirement prior to license renewal would therefore have caused you a severe and verifiable hardship. Business or personal inconvenience and your procrastination in taking courses are not grounds for an extension. The fact that you may be forced to go on inactive status until you have obtained your continuing education will not be considered a hardship. A last minute emergency will **not** entitle you to an extension of time where you had most of the license year to obtain the required education.

Penalty for Noncompliance

If you have not fully satisfied the continuing education requirement as of June 30 of any year, your license will be automatically converted to **inactive** status effective the next day (July 1) and *you must immediately cease all real estate brokerage activity until your license has been returned to active status.*

Any licensee who continues to engage in real estate brokerage after his or her license has been placed on inactive status will be subject to disciplinary action. In addition, the licensee's broker-in-charge will also be subject to disciplinary action for failure to determine that all licensees at the office have current, active licenses.

Your early compliance with the continuing education requirement will help the Commission to have a successful continuing education program - one which will benefit licensees as well as real estate consumers. □

Appraisal Board separates from Commission

It's official! The North Carolina Appraisal Board became a separate, autonomous agency on July 1, 1994. Since 1989, it had received technical and administrative support from the Real Estate Commission, and had been staffed by Commission employees.

Now the Board has its own staff, headed by Executive Director James E. Poole, Jr. Mr. Poole was formerly Director of the Commission's Appraiser Licensing and Certification Division.

Barbara S. Perryman has been employed by the Board as the new Appraiser Secretary. The clerical position has been filled by Lynn P.

Crawford, who had temporarily served as Appraiser Clerk for the Appraiser Division.

The Commission appreciates the efforts of Mr. Poole, Mrs. Crawford, and the two other former employees of the Appraiser Division - Appraiser Education and Examination Officer Earl H. Grubbs and Appraiser Secretary Sylvia Samsel - during their service to the Commission over the past several years, and wishes them and the Appraisal Board much success in the future.

All inquiries about appraiser licensing and certification and regulatory matters should now be directed to the

North Carolina Appraisal Board at 3900 Barrett Drive, Suite 101, Post Office Box 20500, Raleigh, North Carolina 27619 (919) 420-7920.



Commission says goodbye to the Board. North Carolina Appraisal Board, from left to right: Beryl J. Stevenson; Henry E. Faircloth, Vice-Chairman; Robert L. Byrd, Jr.; William G. Brown, Sr.; John P. Robinson, Jr.; Tom J. Keith; and Dana E. Outlaw, Chairman. □

Handling multiple offers

By Stephen L. Fussell, Consumer Protection Officer

Like most real estate agents, you are probably confident in your ability to handle the negotiation of a single offer to purchase. However, you may feel less certain when presented with more than one offer for the same property. To answer your questions and address your concerns, here are some guidelines for the proper handling of multiple offers.

Listing agents must promptly present each offer to their seller-clients, whether there is only one offer or several offers on the same property. In no event may an agent wait more than five days to present any offer. If multiple offers arrive at the agent's office before he or she has had a chance to deliver any of them, the agent should present all of the offers to the seller at the same time.

There is no "first come, first served" rule: just because an offer is the first to arrive does not mean that it has priority over an offer that arrives later. The seller may accept any offer, without regard to the order in which the offers were made and received. Alternatively, the seller may choose to negotiate with any

prospective purchaser, so long as the choice is not made for a reason that would violate Fair Housing laws.

The listing agent should inform the agent working with each prospect that other offers have been made on the property, so that all of the competing buyers can be encouraged to make their best offer. However, a listing agent is **not** permitted to disclose the terms of competing offers to one or more of the buyers, which is called "shopping" offers to purchase. The law requires that real estate agents treat prospective buyers honestly and fairly. An agent who discloses the terms of competing offers to one buyer gives that buyer an advantage over the others and thereby breaches the duty of fairness owed to the other buyers. An agent who informs each buyer that there are competing offers for the property, without disclosing the terms of the other offers, keeps all the buyers on an even playing field, and thereby fulfills the duty of fairness.

Once offers are presented to the seller, the listing agent may then assist the seller in determining which

offer is best for the seller and whether or not the best offer should be accepted. If none of the offers is acceptable, the seller may reject all of them. In that case, the listing agent should advise the agents working with the prospective purchasers to invite those prospects to make new, better offers. The listing agent may orally outline what price and terms the seller would be willing to consider.

Alternatively, the seller could make a counteroffer to one of the prospective buyers. However, listing agents should be careful not to allow the seller to make written counteroffers to more than one buyer and thereby run the risk that each will be accepted.

In Summary

To handle multiple offers successfully, you must (1) promptly present all offers to the seller; (2) inform all buyers that more than one offer has been made without disclosing the terms of the competing offers; and (3) assist the seller in choosing the best offer. □

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.

JAMES C. ADAMS, JR. (Hickory) - By Consent, the Commission suspended Mr. Adams' broker license for 12 months effective February 16, 1994. The Commission then stayed its Order for a probationary term of 12 months. The Commission found that Mr. Adams had engaged in commercial real estate brokerage for three and a half years after his real estate license had expired. The Commission noted that Mr. Adams had applied for reinstatement of his license upon discovering that it had expired, and that he had cooperated fully with the Commission's inquiry into the matter.

BERKELEY RESORTS MANAGEMENT CORP. (Banner Elk) - By Consent, the Commission reprimanded Berkeley Resorts Management Corp. effective April 1, 1994. The Commission found that the corporation had conducted its real estate brokerage operations for over four years without the actual supervision of a designated broker-in-charge at all times and had operated at times when there was no principal broker. Berkeley Resorts Management Corp. neither admitted nor denied any misconduct. The Commission noted that the corporation had cooperated with the Commission's investigation.

ERICK R. BOWEN (Gastonia) - By Consent, the Commission suspended Mr. Bowen's salesman license for three years and six months effective April 3, 1994. Two years and five months of the suspension are to be active and the remaining period stayed for a probationary term of one year and one month upon condition that, by the end of his active suspension, he has been released from supervised probation in connection with his criminal convictions. The Commission found that Mr. Bowen had been convicted of assault.

JOSEPH J. CHESSON (Wilson) - By Consent, the Commission suspended Mr. Chesson's broker license for one year effective February 10, 1994. Two months of the suspension are to be active and the remaining period stayed for a probationary term of one year. The Commission found that Mr. Chesson, while broker-in-charge of a real estate firm, had purchased a property listed by the firm at a price significantly below the list price and subsequently resold the property at a profit without adequately disclosing his role in the transaction to the firm's seller-client. The Commission noted that Mr. Chesson also entered into a settlement of the client's civil claims against him.

THE CHESSON AGENCY, INC. (Wilson) - By Consent, the Commission suspended the corporate real estate broker license of The Chesson Agency, Inc. for one year effective February 10, 1994. The Commission then stayed its Order for a probationary term of one year. The Commission found that representatives of The Chesson Agency, Inc. had failed to disclose to the firm's seller-client that the broker-in-charge, with the assistance of other agents in the firm, had purchased a property listed by the firm at a price significantly below the list price and subsequently resold the property at a profit without adequately disclosing his role in the transaction to the firm's seller-client. The Commission noted that the parties also entered into a settlement of the client's civil claims against them.

DEBRA A. COHEN (Banner Elk) - By Consent, the Commission reprimanded Ms. Cohen effective April 1, 1994. The Commission found that Ms. Cohen had signed forms designating herself as project broker and broker-in-charge of a North Carolina time share project with two salesmen under her supervision while residing in Florida. The Commission further found that Ms. Cohen had no intention of being physically present in North Carolina and that while she remained in Florida, three time share sales were made at the North Carolina project by salesmen who were supposed to be under her personal supervision.

TED M. DAVIS (Wilmington) - By Consent, the Commission revoked Mr. Davis' broker license effective April 1, 1994. The Commission found that Mr. Davis, as broker-in-charge of a licensed real estate corporation, had failed to maintain all trust monies in a trust or escrow account. Mr. Davis neither admitted nor denied any misconduct.

TED M. DAVIS & ASSOCIATES, INC. (Wilmington) - By Consent, the Commission revoked the corporate real estate broker license of Ted M. Davis & Associates, Inc. effective April 1, 1994. The Commission found that the corporation had failed to maintain all trust monies in a trust or escrow account. Ted M. Davis & Associates, Inc. neither admitted nor denied any misconduct.

TERRY E. GARRISON (Henderson) - By Consent, the Commission suspended Mr. Garrison's broker license for six months effective April 15, 1994. The Commission then stayed its Order for a probationary term of two years. The Commission found that Mr. Garrison had allowed a shortage to occur in his trust account due to the failure of his unlicensed bookkeeper to collect the rent and to deposit rental funds into the trust account, and that although Mr. Garrison became aware of the shortage within six months after it occurred, he took no steps to rectify it for another year. The Commission further found that Mr. Garrison, as broker-in-charge of a property management company, had failed to cause the funds of others to be deposited and maintained in a trust or escrow account, had failed to reconcile ledgers, journals and check stubs to bank statements on a monthly basis, and had failed to maintain adequate trust account records. The Commission noted that no property owner suffered any monetary loss as a result of the shortage, that Mr. Garrison subsequently covered the shortage in full by making a deposit into the trust account, and that he cooperated fully with the Commission's investigation.

HARVEY W. GOUCH (Charlotte) - By Consent, the Commission reprimanded Mr. Gouch effective March

(continued on page 10)

Disciplinary Action

(continued from page 9)

9, 1994. The Commission found that Mr. Gouch, in the operation of a mobile home park which he owned, had failed to maintain tenant security deposits in a trust or escrow account.

ALYCE FAYE GRANT (New Bern) - By Consent, the Commission reprimanded Ms. Grant effective March 10, 1994. The Commission found that Ms. Grant, as a real estate salesman, had advertised the square footage of a house inaccurately when she listed it for sale in the local Multiple Listing Service.

HASSELL M. HAIRSTON (Charlotte) - By Consent, the Commission suspended Mr. Hairston's broker license for 30 days effective January 1, 1994. The Commission found that Mr. Hairston, as a former partner and broker-in-charge of a real estate partnership, had failed, when the partnership dissolved, to transfer funds held by him in escrow to the company which was taking over the management of property owned by one of his former clients, even though the owner-client had requested the transfer in writing. The Commission noted that Mr. Hairston had transferred the escrow monies within two weeks after the owner-client had filed a complaint against him, but that he had failed to make his property management records available for inspection by the Commission. Mr. Hairston contended that the records inadvertently had been discarded when the partnership's office furniture was sold.

DAVID L. HARMAN (Graham) - By Consent, the Commission suspended Mr. Harman's broker license for three years effective February 15, 1994. Eighteen months of the suspension are to be active and the remaining period stayed for a probationary term of eighteen months. The Commission found that Mr. Harman had failed to disclose to certain purchasers of properties in a subdivision which his firm had listed that a major thoroughfare was proposed to be built directly abutting the subdivision which would extend over a nearby interstate. The Commission further found that Mr. Harman had

answered inquiries about plans for the proposed road construction and extension by falsely representing that he was unaware of future road plans. Mr. Harman neither admitted nor denied any misconduct.

JOHN I. HARRIS (Cary) - By Consent, the Commission suspended Mr. Harris' broker license for one year effective January 7, 1994. One month of the suspension is to be active and the remaining period stayed for a probationary term of eleven months. The Commission found that Mr. Harris had misrepresented the terms and conditions of a VA loan to a party in a 1983 real estate transaction in Kinston, North Carolina, and that as a result, the party was held liable when subsequent owners of the parties' property defaulted on the loan.

THE HIGHLANDS AT SUGAR RESORT, INC. (Banner Elk) - By Consent, the Commission fined The Highlands at Sugar Resort, Inc. \$1,500 effective April 1, 1994. The Commission found that The Highlands at Sugar Resort, Inc. had allowed three time share sales at its registered time share project after the project broker had left the state of North Carolina. The Highlands at Sugar Resort, Inc. neither admitted nor denied any misconduct.

THOMAS G. HOLIAN (Kitty Hawk) - By Consent, the Commission suspended Mr. Holian's salesman license for two years effective March 15, 1994. The Commission then stayed its Order for a probationary term of two years. The Commission found that Mr. Holian had been disciplined by the North Carolina Licensing Board for General Contractors for numerous violations of state law, including obtaining building permits upon the false representation to county officials that he was a licensed contractor at times when his contractor license was expired. The Commission further found that Mr. Holian had admitted giving false statements, under oath, to the Board concerning judgments and liens against him on three separate license renewal applications.

THOMAS B. HUMINIK (Charlotte) - By Consent, the Commission suspended Mr. Huminik's salesman license for twelve months effective June 1, 1994. Six months of the

suspension are to be active and the remaining period stayed for a probationary term of one year. The Commission found that Mr. Huminik had made a false statement on his application for real estate licensure; namely, Mr. Huminik answered "no" to the application question regarding criminal convictions when, in fact, he had been convicted of the crime of smuggling goods into the United States.

SHERRY C. JONES (Asheville) - By Consent, the Commission reprimanded Ms. Jones effective April 15, 1994. The Commission found that as broker-in-charge of a real estate firm, Ms. Jones had failed to ascertain that a broker associated with the firm had not renewed his license. As a result, the broker engaged in real estate brokerage for a 14-month period after the broker's license had expired.

THOMAS A. JONES (Asheville) - By Consent, the Commission reprimanded Mr. Jones effective April 15, 1994. The Commission found that Mr. Jones had continued to engage in real estate brokerage for approximately 14 months after his license had expired.

ELLIOT L. LAMBERT (Greensboro) - By Consent, the Commission suspended Mr. Lambert's broker license for three years effective March 15, 1994. Nine months of the suspension are to be active and the remaining period stayed for a probationary term of two years and three months. The Commission found that Mr. Lambert had engaged in the unauthorized practice of law by drafting additional terms to a standard lease form, combining it with an option contract form, and using the forms for a purpose for which they were not designed and for which they are not properly used. The Commission further found that the option form contained a provision concerning payment of a commission on the transaction to Mr. Lambert's licensed real estate corporation. The Commission also found that Mr. Lambert had accepted from the tenants/buyers in the transaction approximately \$2,500 which he falsely represented to them would be used to pay off their debts, had failed to deposit and maintain those funds in a trust or escrow account, and had failed to keep records of the receipt of the funds. The Commission noted that Mr. Lambert

eventually repaid the funds to the tenants/buyers.

LAMBERT REALTY COMPANY, INC. (Greensboro) - By Consent, the Commission suspended the corporate real estate broker license of Lambert Realty Company, Inc. for three years effective March 15, 1994. Nine months of the suspension are to be active and the remaining period stayed for a probationary term of two years and three months. The Commission found that the corporation, through its president and principal broker, had engaged in the unauthorized practice of law by drafting additional terms to a standard lease form, combining it with an option contract form, and using the forms for a purpose for which they were not designed and for which they are not properly used. The Commission further found that the option form contained a provision concerning payment of a commission on the transaction to Lambert Realty Company, Inc. The Commission also found that the corporation's president and principal broker had accepted approximately \$2,500 from the tenants/buyers in the transaction and that he had represented to them that he would use the funds to pay off their debts.

LARRY E. MCCORKLE (Charlotte) - By Consent, the Commission reprimanded Mr. McCorkle effective December 16, 1993. The Commission found that Mr. McCorkle, as a broker and a partner in a real estate partnership, had drafted a legal instrument by preparing a lease-purchase contract in which he adopted the standard "offer to purchase and contract" form and attached an addendum on which he drafted terms affecting the rights of the owners.

MARICIA T. MUSTIAN (Raleigh) - By Consent, the Commission reprimanded Ms. Mustian effective April 18, 1994. The Commission found that Ms. Mustian, while licensed as a real estate salesman, had participated in collecting rent for property which she did not own and without the supervision of a broker-in-charge. The Commission noted that Ms. Mustian cooperated with its investigation and has since obtained her real estate broker license.

IVAN K. OWENS (Durham) - By Consent, the Commission suspended Mr. Owens' broker license for 18

months effective March 8, 1994. The Commission then stayed its Order for a probationary term of three years. The Commission found that in 1983, Mr. Owens had been convicted of a criminal offense; namely, the sale and delivery of cocaine.

JACK A. RAMSEY, JR. (Salisbury) - The Commission accepted the permanent voluntary surrender of Mr. Ramsey's broker license effective January 1, 1994. The Commission found that Mr. Ramsey had been accused of conduct which, if proved, would provide the legal and factual basis for disciplinary action against him. The Commission dismissed without prejudice charges that Mr. Ramsey had violated provisions of the Real Estate License Law. Mr. Ramsey neither admitted nor denied any misconduct.

REALIZED VALUE, INC. (Graham) - By Consent, the Commission suspended the corporate real estate broker license of Realized Value, Inc. for three years effective February 15, 1994. Eighteen months of the suspension are to be active and the remaining period stayed for a probationary term of eighteen months. The Commission found that the corporation and its owner had failed to disclose to certain purchasers of properties in a subdivision which the corporation had listed for sale that a major thoroughfare was proposed to be built directly abutting the subdivision which would extend over a nearby interstate. The Commission further found that the corporation's representative had answered inquiries about plans for the proposed road construction and extension by falsely representing that he was unaware of future road plans. Realized Value, Inc. neither admitted nor denied any misconduct.

DAVID T. ROWE (Havelock) - By Consent, the Commission revoked Mr. Rowe's broker license effective April 15, 1994. The Commission found that Mr. Rowe, on certain occasions, had failed to deposit and maintain trust monies in a trust or escrow account and had instead deposited those funds into his operating account or otherwise converted them to his own use; had failed to keep records of all transactions or of receipts and disbursements of trust monies, including failure to keep

transaction ledgers or journals; and had allowed a shortage to occur in his trust account. The Commission further found that a lack of knowledge regarding trust accounting procedures and disputes contributed to his improper disbursement of earnest monies to himself. Mr. Rowe neither admitted nor denied any misconduct.

THOMAS W. RUSSELL (Research Triangle Park) - By Consent, the Commission revoked Mr. Russell's broker license effective December 16, 1993. On March 15, 1994, Mr. Russell was issued a salesman license; on March 15, 1995, Mr. Russell will be eligible to apply for a broker's license without examination. The Commission found that Mr. Russell, as a broker associated with a licensed real estate corporation, had engaged in real estate brokerage and received commissions for a three-year period after his licensed had expired.

WOODROW S. SAFRIT (Calabash) - The Commission accepted the permanent voluntary surrender of Mr. Safrit's broker license effective March 9, 1994. The Commission dismissed without prejudice charges that Mr. Safrit had violated the provisions of the Real Estate License Law and Commission rules pertaining to the handling of trust monies and trust account recordkeeping in various real estate transactions. Mr. Safrit neither admitted nor denied any misconduct.

ERIC J. SWANSON (Wilmington) - The Commission revoked Mr. Swanson's broker license effective January 1, 1994. The Commission found that Mr. Swanson had been convicted of criminal offenses involving moral turpitude which could reasonably affect his performance in the real estate business; namely, conspiracy to distribute and possess with intent to distribute marijuana.

DAVID L. TURNER (Harrisburg) - By Consent, the Commission suspended Mr. Turner's broker license for 90 days effective February 21, 1994. The Commission then stayed its Order for a probationary term of one year. The Commission found that Mr. Turner had agreed in his signed written contract of association with a real estate company that all listings were the property of the company and would remain there if

(continued on page 12)

Disciplinary Action

(continued from page 11)

he left the company. The Commission further found that he had subsequently advised nine sellers by letter that he was leaving the company, had advised them that the company would not have access to the local MLS system, and had offered them the opportunity to transfer their listings to his new firm. The Commission further found that Mr. Turner had received requests for transfer from all nine sellers and that he had prepared and submitted transfer forms to the MLS, all without the knowledge or consent of the owner of his former employing company. The Commission noted that Mr. Turner's new employer subsequently returned the listings to the former company.

GARY P. VICK (Wilson) - By Consent, the Commission revoked Mr. Vick's salesman license effective March 1, 1994. The Commission found that Mr. Vick had failed to disclose to the seller of property which he had listed that his broker-in-charge had agreed to purchase the property in the stead of another salesman associated with the firm whose offer the seller had already accepted. The Commission also found that the broker-in-charge had entered into a contract to sell the property to a third party for more than the list price and failed to disclose this agreement to the seller. The Commission further found that at the urging of the salesman, Mr. Vick had induced the seller to reduce the price which the corporation had previously helped the seller establish. The Commission noted that after the seller filed a complaint, the parties had agreed to a settlement of her claims.

GAY D. WALDROP (Greenville) - By Consent, the Commission suspended Ms. Waldrop's broker license for sixty days effective February 10, 1994. The Commission then stayed its Order for a probationary term of one year. The Commission found that Ms. Waldrop had engaged in the unauthorized practice of law by preparing an offer to purchase and contract which she attempted to modify for use as an option contract. The Commission further found that Ms. Waldrop had attached to the contract an addendum including seven separate paragraphs in which she addressed certain lease provisions, option provi-

sions, use and refund of certain "option money," inspections, insurance, and taxes. The document which Ms. Waldrop prepared was subject to different interpretations and was not clearly drafted in its entirety.

WILTON M. WARNER, JR. (Elizabethtown) - By Consent, the Commission revoked Mr. Warner's broker license effective December 16, 1993. The Commission found that Mr. Warner, as principal broker and broker-in-charge of a licensed real estate corporation, had allowed a shortage to occur in the corporation's property management trust account. The Commission further found that the corporation's sales escrow account was overdrawn and that checks for client funds drawn on the account had therefore been returned unpaid by the bank due to insufficient funds. Mr. Warner neither admitted nor denied any misconduct.

WARNER INSURANCE AND REALTY (Elizabethtown) - By Consent, the Commission revoked the corporate real estate broker license of Warner Insurance and Realty effective December 16, 1993. The Commission found that Warner Insurance and Realty, through its principal broker and broker-in-charge, had allowed a shortage to occur in its property management trust account. The Commission further found that the corporation's sales escrow account

was overdrawn and that checks for client funds drawn on the account had therefore been returned unpaid by the bank due to insufficient funds. Warner Insurance and Realty neither admitted nor denied any misconduct.

JEFFREY B. WILLIAMS (Clayton) - The Commission revoked Mr. Williams' salesman license effective February 1, 1994. The Commission found that Mr. Williams had been convicted of a criminal offense involving moral turpitude which could reasonably affect his performance in the real estate business; namely, second degree murder. The Commission found that Mr. Williams had been driving a car at a high rate of speed while being pursued by police. The Commission further found that a passenger in Mr. Williams' car had shot and killed an innocent bystander while shooting at the police.

CLAYTON J. WOMACK (Greensboro) - The Commission revoked Mr. Womack's salesman license effective April 1, 1994. The Commission found that Mr. Womack had acted as a real estate salesman while his license was inactive due to his failure to file a Supervision of Salesman Notification form with the Commission and had continued to act as a salesman after his license had expired. The Commission further found that Mr. Womack had made false promises to refund monies collected in a real estate transaction. □

Commission adopts rules

(continued from page 1)

Agency Disclosure

In all real estate sales transactions where you are acting as agent (or subagent) of a seller, you must disclose this fact to prospective buyers at your first substantial contact with them. This disclosure must be made using a form prescribed by the Com-

mission which the buyer will sign as acknowledgement of receipt.

Likewise, when you are acting as agent of a buyer, you must disclose this fact to the seller or the seller's agent upon your initial contact with them. You must then follow up with written confirmation to the seller (or agent) which may be included in the buyer's offer to purchase. □

82,500 copies of this document were printed at a cost of \$.1373 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