



# NORTH CAROLINA REAL ESTATE COMMISSION

# Real Estate Bulletin

Volume 23

Summer 1992

Number 2

## Commission elects Chairman, Vice-Chairman

At its July meeting, the North Carolina Real Estate Commission elected its Chairman and Vice-Chairman for the coming year.



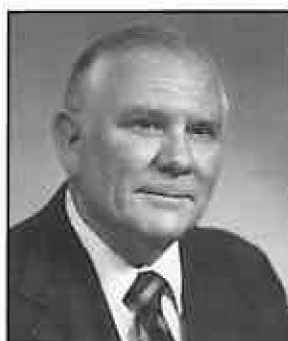
**Gilbert L. Boger**

Gilbert L. Boger has been elected Chairman of the Commission for a one-year term commencing August 1, 1992.

A resident of Mocksville, Mr. Boger is owner of Boger Real Estate in Advance. He is a member of the Davie County Board of REALTORS® and the National Association of Master Appraisers.

Mr. Boger is a former member of the North Carolina General Assembly, having served three terms in the House of Representatives and one term in the Senate.

He was first appointed to the Commission by Governor Martin in 1985 and is now serving his third term which will expire July 31, 1994. □



**Brantley T. Poole**

Brantley T. Poole has been elected Vice-Chairman of the Commission.

He is a resident of Raleigh where he owned and operated Poole Realty Company for 32 years, and is now affiliated with Prudential Carolina Realty Company. A former REALTOR® of the Year in Raleigh, Mr. Poole has held numerous offices in both the local Board and N.C. Association of REALTORS® as well as the National Association of Real Estate License Law Officials (NARELLO).

Mr. Poole previously served on the Commission from 1970 to 1973 and again from 1977 to 1986. His current term commenced last year. □

## Mel Black named new Real Estate Education and Examination Officer

The Real Estate Commission announces the addition of a new employee to its staff. A. Melton Black, Jr., has been employed as



the Commission's Real Estate Education and Examination Officer. He succeeds Ann R. Britt who left the Commission's employ to accept the vice-presidency

of an out-of-state college.

Mel earned his Bachelor's degree at the University of New York in Albany, his Masters degree in Education from Winthrop College, and his Education Specialist degree from Appalachian State University.

*(Continued on page 3)*

## In Sorrow

With deep regret, the North Carolina Real Estate Commission announces the death of former investigator Everette H. Jenkins. He was a resident of Candler.



Everette retired effective April 1, 1992, after serving the Commission for almost 20

years as an investigator in the western part of North Carolina. Prior to employment with the Commission, he was employed by the State Highway Patrol.

The members of the Real Estate Commission and staff extend their deepest sympathy to Everette's wife Jo, their son David, and the other members of his family. □

## LICENSE RENEWAL REPORT

Renewal Applications Sent		Renewed by June 30 Deadline	
Brokers & Salesmen	79,029	67,510	(85.4%)
Corporations	3,709	3,227	(87.0%)

The Commission would like to thank all of you who renewed your licenses in a timely manner.

**ATTENTION BROKERS-IN-CHARGE:** Have you checked to be sure all the salesmen and brokers in your office have renewed their licenses?

## 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

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Raleigh, North Carolina 27619-7100  
Phone 919/733-9580  
James G. Martin, Governor

### COMMISSION MEMBERS

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

Phillip T. Fisher  
Executive Director

### ADMINISTRATION

Mary Frances Whitley .....Director  
Paula L. Lassiter .....Financial Officer

### APPRAISER LICENSING & CERTIFICATION

James E. Poole, Jr. ....Director  
Earl H. Grubbs .....Appraiser Ed./Exam 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

### LEGAL

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

Editor-in-Chief  
Phillip T. Fisher

Editor  
Carrie D. Worthington

### EXAM RESULTS

	Passed	Failed
<b>April 1992</b>		
Brokers	78	37
Salesmen	235	180
<b>May 1992</b>		
Brokers	73	58
Salesmen	298	184
<b>June 1992</b>		
Brokers	102	45
Salesmen	378	220

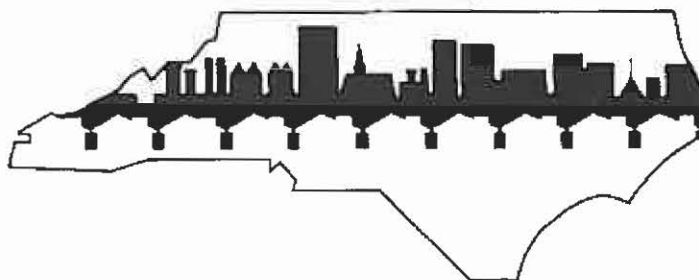
## COMMISSION STAFF UPDATE



Charles L. Evans was employed on a temporary basis this summer to assist the Commission's Legal Division with the completion of various information publications. Chuck is a law student at the University of North Carolina at Chapel Hill.

The following Commission staff members have made appearances before various real estate industry and related groups since the last issue of the *Bulletin*. Special Deputy Attorney General Thomas R. Miller, the Commission's Legal Counsel, spoke at a seminar held by the Wilson Board of REALTORS®. He discussed real estate contracts and other issues of concern

to licensees . . . Consumer Protection Officer Anita R. Burt spoke to the New Bern Board of REALTORS® about violations of the Real Estate License Laws and Rules and related topics . . . Stephen L. Fussell, the Commission's Information Officer, appeared before the Wilmington Board of REALTORS® and discussed "Completion of Offers to Purchase and Contracts." . . . Director of Appraiser Licensing and Certification James E. Poole, Jr., addressed the International Education Conference sponsored by the International Right of Way Association...and Appraiser Education and Examination Officer Earl H. Grubbs spoke at a meeting of the Johnston County Board of REALTORS® in Smithfield and participated in a meeting of the North Carolina Chapter of the Appraisal Institute. (*Individuals and groups requesting a speaker from the Real Estate Commission are reminded that a "Speaker Request Form" is available from the Commission Office.*) □



## 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.)

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

Also available in bulk to coastal and western N.C. real estate firms to distribute to clients and customers.  
(Orders of more than 50 copies require special consideration.)

Firm Name

Phone

Street Address (NOT P.O. Box)

City

State

Zip

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

# EDUCATION AND LICENSING NEWS

## **"It's Your Move" Sent to N.C. High Schools**

The Real Estate Commission has again this year funded the publication and distribution of "It's Your Move" booklets to North Carolina high school students.

The booklets are designed as an introduction to the basic real estate concepts of buying, selling and renting.

With the printing of 10,500 Student Manuals and 420 Teachers' Guides this year, the number of booklets distributed is now over 311,000.

## **Real Estate Educators Honored**

At the annual Real Estate Educators Conference in Greensboro, co-sponsored by the North Carolina Educators Association and the Real Estate Commission, the Educators Association conferred awards for outstanding contributions to real estate education during the past year.

The "Most Outstanding Program of the Year Award" went to Sharon Montague, owner and director of a real estate school in Asheville.

Lois Hobbs, director and instructor at a Charlotte real estate school, was named "Educator of the Year."

Instructor and textbook author David Hagen was posthumously granted the "Award Emeritus."

The North Carolina Real Estate Educators Association is an organization of real estate educators, primarily instructors of real estate prelicensing courses.

## **Mel Black named to staff** *(continued from page 1)*

A licensed real estate broker and licensed residential appraiser, Mel comes to the Commission with seven years' teaching experience, as well as experience in real estate brokerage and appraising. In his new position, he will be responsible for coordinating the Commission's real estate education and examination programs. □

## **ANNOUNCING...**

### **Scholarship Recipients Named**

The North Carolina Real Estate Educational Foundation recently announced this year's winners of scholarships sponsored by the Real Estate Commission.

In recognition of outstanding achievements at the North Carolina REALTORS® Institute, Mary Lou Conklin was awarded the "Joe Schweidler Memorial Scholarship," and Rosemarie Bannigan was named recipient of the "Blanton Little Scholastic Achievement Award."

The scholarships are awarded annually in honor and memory of Mr. Schweidler and Mr. Little, who served as Executive Directors of the Commission.

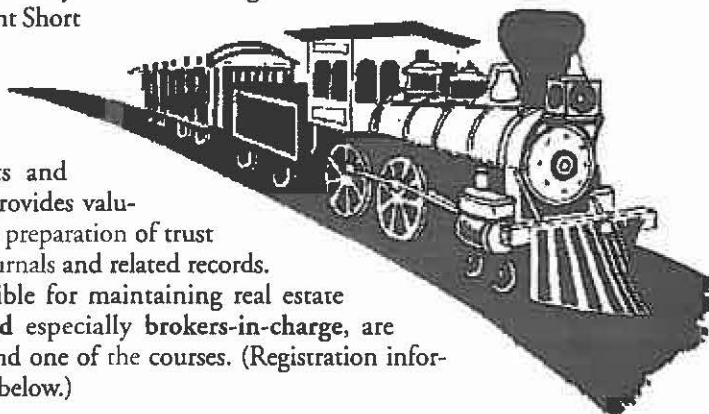
### **Trust Account Caravan Completes Tour**

Evelyn Johnston, Education Officer, took the Commission's "Trust Account Short Course" on its state-wide tour this year in April and May.

Classes were held in Asheville, Charlotte, Fayetteville, New Bern, Wilmington, and Winston-Salem. Evelyn reports total attendance of 308, a 10% increase over last year. Once again, the Caravan was well-received and appreciated by people who are unable to attend one of the monthly courses in Raleigh.

The Trust Account Short Course was designed by L. Ted Gayle, the Commission's Director of Audits and Investigations. It provides valuable training in the preparation of trust account ledgers, journals and related records.

Anyone responsible for maintaining real estate trust accounts, and especially brokers-in-charge, are encouraged to attend one of the courses. (Registration information is available below.)



## **MONTHLY TRUST ACCOUNT SHORT COURSE IN RALEIGH**

### *DATES*

September 15  
November 10

October 13  
December 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.

# BEWARE: Bonus Lotteries are Unlawful

North Carolina real estate brokers and salesmen should be aware that sales promotion programs which award bonus fees or prizes to agents through drawings may constitute unlawful lotteries.

Although they go by a variety of names, the programs in question all share certain basic elements. Typically, a real estate broker or firm advertises that agents who procure buyers for selected listed properties will become eligible to win a prize or bonus. After a certain number of the designated properties have been sold, or perhaps after a specified period of time, the listing broker or firm draws a winner from the names of all the eligible agents. The bonus or prize awarded to the winner is usually cash, but may be a trip or anything else of value. The prize or bonus is over-and-above the fee customarily paid to the selling agent.

The Attorney General's office has advised the Real Estate Commission that real estate sales promotional programs like the one described constitute unlawful lot-

teries under the General Statutes of North Carolina. By definition, a lottery is any program or scheme which awards a prize to one or more persons selected from a larger number of people by means of chance.

A lottery is unlawful when each entrant in the lottery either pays money or gives a thing of value in order to participate. In a real estate sales bonus lottery, selling agents give a thing of value - their professional services as brokers and salesmen - to become eligible for a chance to win.

Under North Carolina law, it is a misdemeanor criminal offense to set up, operate, advertise, promote or even participate in an unlawful lottery. In addition to possible criminal penalties, North Carolina brokers and salesmen who participate in a sales promotion determined to be an unlawful lottery also may face license suspension or revocation.

Can a selling agent who procures a buyer for a property included in a lottery-type sales promotion avoid criminal liability by refusing to participate in the draw-

ing and renouncing any chance to win? The answer depends upon whether the courts will recognize the real estate sales transaction and the conduct of the selling agent to be separate from the lottery. Our courts have not yet been called upon to answer this question; it is possible that a court could find that the lottery taints the whole real estate transaction and those who participate in it.

Not all sales promotional programs involving bonuses are unlawful lotteries. Real estate salesmen are reminded, however, that when bonuses are to be paid to salesmen from other firms who are acting as selling agents, the bonus should be paid to the salesman only through his or her broker-in-charge.

Before developing or using any program which includes a drawing, lottery or other chance selection of awarding a bonus or other payment, a prudent real estate licensee will consult with his or her attorney. In fact, the safest course is to avoid such programs and properties altogether. □

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## ATTENTION SALESMEN: Have you notified the Commission of your active status?

If you are a real estate salesman, ask yourself this question: Is my real estate license status properly recorded with the Commission?

Look at the mailing label on this *Bulletin*. "Inactive" licensees receive the *Bulletin* and all other regular mailings from the Commission at their residence addresses, and the word "Inactive" appears on the labels.

Please be aware of the difference in the terms "inactive" and "expired" as they apply to your salesman license. Although a person in either category is ineligible to engage in any real estate activity that requires a license, the reasons for ineligibility are different.

"Inactive" means you are licensed but do not have a broker-in-charge. "Expired" means your license is invalid due to nonpayment of renewal fees; i.e., you are no longer licensed.

To remain licensed, either active or inactive, you must renew your license annually. This is true for brokers as well as salesmen.

All salesman licenses are initially issued on inactive status. They remain inactive

any time the salesman is not engaging in real estate under the direct supervision of the broker-in-charge of an office. A Supervision of Salesman Notification Form - properly completed and sent to the Commission - will activate your license, and your broker will receive written acknowledgement. (It is strongly recommended that you retain a copy of the submitted form and that you check with your broker-in-charge to make sure your license was activated.)

Although you may begin working as soon as the properly completed form is sent to the Commission, you must stop working if your broker has not received the acknowledgement within 30 days.

Incomplete or improperly completed forms are returned to the broker, or more information is requested. Therefore, if there has been no response within 25 days, you or your broker should contact the Commission's Records Section to be sure the form was received.

If you are an active salesman whose properly completed form was received and recorded at the Commission office, you received this *Bulletin* at your business

address and the word "Inactive" did not appear on the mailing label.

In addition to legal ramifications, failure to notify the Commission of your active status can be cause for denial of your application if you later apply for a broker license.

If your broker application is based upon two years' full-time experience as a licensed salesman, that experience must be verified by comparing letters from your broker(s)-in-charge with the Commission's records. Naturally, verification is impossible if you failed to notify the Records Section of your changes in employment or broker(s)-in-charge.

"That does happen," said Senior Records Specialist Naomi Cottle, referring to discrepancies in information submitted by broker applicants and records in the salesmen's files.

According to Gloria Williams, Applications Specialist, "More and more salesmen are applying for broker examinations based upon licensed experience." If you plan to be one of them, be aware of the importance of properly and promptly notifying the Commission of changes in your status. □



# Selling Lots in Unapproved Subdivisions

by Marilyn E. Tomei, Associate Legal Counsel

Agents should beware of requests to sell lots in unapproved subdivisions. As either a seller or seller's agent, you should know that the sale of property in a subdivision that has not been approved by the city or county prior to the time the contract is executed may be a violation of State criminal law.

In any city or county which has a subdivision ordinance, it is a misdemeanor under the General Statutes of North Carolina to *sell* or *transfer* a lot in a subdivision prior to subdivision approval. It is also a misdemeanor to subdivide property in a manner not permitted by the local subdivision ordinance.

The applicable statutes apply to a sale or transfer by the owner *or the owner's agent*. Not only do they impose criminal penalties, but they also allow the county or municipality to obtain a civil injunction against the offender, and limit a register of deeds' authority to record plats which have not been approved or verified as exempt.

These same statutes prohibit the sale of property in an unapproved subdivision even where the description of the property is by reference to a preliminary plat of the subdivision, or by a metes and bounds description of the lot.

Likewise, a contract which describes a lot in an unapproved subdivision may be invalid under general contract law principles as well as by operation of the statutes. The description of the land is an essential term of any contract to sell land. If the lot is described in the contract by reference to a preliminary plat or by a metes and bounds description before final subdivision approval has been granted, the lot may have completely different boundaries when the final subdivision plat is approved. Locations of roads, easements and landmarks of interest to the buyer may change as well. This may mean that the contract is no longer legally enforceable since the lot described in it may no longer exist and the seller will therefore be unable to deliver title to it at closing. Furthermore, the buyer may lose interest in the lot if its dimensions, size or shape has changed since the contract was executed.

When does a property become a "subdivision" subject to state and local regulation? The state statutes define "subdivision" as:

all divisions of a parcel of land into two or more lots, building sites, or other divisions for the purpose of sale or building development (whether immediate or future)...

Certain divisions of land are specifically excluded from the definition of subdivision, and the subdivision ordinance would not apply to them. The most notable of the exclusions is a division of property into lots larger than ten acres, when no street right-of-way dedication is involved.

Some licensees may believe that contracting to sell a lot in an unapproved subdivision is not a violation of the law if the sale does not close prior to subdivision approval. Their rationale is that although the statute prohibits "sale" or "transfer" of a lot prior to subdivision approval, the term "sale" indicates a closed transaction, and the "transfer" of title does not actually occur until the closing.

The same reasoning is used in an installment sale (land-sale contract), i.e., that the "transfer" of title does not take place and the "sale" is not complete until the last payment has been made by the buyer.

Although no North Carolina appellate court has specifically ruled on the meaning of the terms "sale" and "transfer," as used in the subdivision statutes, the North Carolina Supreme Court has implied that "sale or transfer" encompasses *contracting* to sell.

Many local governments take that same position. They assert that the actual land division occurs when the parties contract for the sale of the property and describe it in the contract as a portion of a larger tract. The Commission's legal staff agrees with that interpretation of the subdivision statutes.

Be mindful of potential subdivision problems. If, for example, the purchase contract in a transaction in which you act as an agent provides for closing "within 30



days after subdivision approval," this should alert you that the subdivision may be unapproved. If a seller of undeveloped land wants to divide the land into lots and approaches you to sell them, or if you as a seller or developer are contemplating dividing land into smaller lots for sale, you should check with your local planning department. If you learn that your county or city has a subdivision ordinance, find out whether the proposed division of land is subject to that ordinance. If it is, do not contract to sell the lots until the county or city has approved the subdivision and the seller has recorded the final subdivision plat with the county register of deeds. Do likewise when acting as the seller or agent of the seller in an installment sale contract.

Contact the planning department even if you believe the division is exempt from subdivision regulation. A county or city with a subdivision ordinance will usually require the department to review the plat of the division to verify that it is exempt. The department will stamp a notation to that effect on the plat so that the register of deeds can record it.

The subdivision approval process involves a commitment of time and expense. Nonetheless, going through the process will save you and your seller the added time, greater expense, and embarrassment of having violated a county or city ordinance.

**CAVEAT:** *Although criminal prosecutions for illegally subdividing land or selling lots in unapproved subdivisions are rare, the Real Estate Commission might consider a licensee's violation of these statutes as improper conduct which could subject the licensee to discipline under the License Law. Therefore, familiarity with the requirements imposed by these laws and compliance with them is well-advised.*

# 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.*

**EDYTHE L. ALLISON (Durham)** – By Consent, the Commission reprimanded Ms. Allison effective March 16, 1992, for failing to deposit earnest money into her firm's trust account within three banking days following acceptance of an offer, as required by Commission rule.

**BARRIER ISLAND STATION, INC. (Duck)** – By Consent, the Commission fined Barrier Island Station, Inc., developer of the time share project Barrier Island Station, \$30,000 effective April 10, 1992. The Commission found that the developer had conducted a sales promotion program in which inaccurate odds of winning the prize were published, had not awarded the prize on the date advertised, and had not properly supervised the employees and agents who administered the contest and related advertising. The Commission noted that Barrier Island Station, Inc., subsequently awarded the prize and reformed its procedures to avoid a repetition of these problems.

**SUSAN M. BATTON (Carolina Beach)** – By Consent, the Commission suspended Ms. Batton's broker license for two years effective June 1, 1992. The Commission found that Ms. Batton, while employed by an unlicensed corporation, had failed to properly manage rental funds as required by law and Commission rule. Ms. Batton neither admitted nor denied any misconduct.

**NORMAN F. BECK (Whiteville)** – By Consent, the Commission reprimanded Mr. Beck effective May 15, 1992, for using an offer to purchase and contract form which did not comply with Commission rule and for failing to obtain the buyer's signature on the purchase contract.

**BETTY J. BURKETT (Fayetteville)** – By Consent, the Commission suspended Ms. Burkett's salesman license for 90 days effective June 1, 1992. The Commission then stayed its Order for a probationary term of one year. The Commission found that Ms. Burkett had obtained a notary public's acknowledgement of a seller's signature on two documents which she knew had not been signed in the presence of the notary public. The seller subsequently repudiated the signature on both documents.

**BETTY H. CARTER (Greensboro)** – By Consent, the Commission reprimanded Ms. Carter effective March 16, 1992, for allowing a salesman under her supervision to act as a real estate salesman and receive commissions after his license had expired.

**CAREY L. CHAPPELL (Goldsboro)** – By Consent, the Commission suspended Mr. Chappell's broker license for 18 months effective April 15, 1992. The Commission then stayed its Order for a probationary term of 18 months on the condition that he complete the Trust Account Short Course by July 1, 1992. The Commission found that Mr. Chappell had failed to deposit trust monies in a trust or escrow account, had failed to keep accurate records of funds he collected, and had allowed a shortage to accrue in his trust account.

**COASTAL HORIZONS REALTY & CONSTRUCTION, INC. (Kitty Hawk)** – The Commission accepted the voluntary surrender of the corporate real estate broker license of Coastal Horizons Realty & Construction, Inc., for a period of three years effective June 1, 1992. The Commission dismissed without prejudice charges that the corporation had converted trust monies to its own use.

**DAVID A. COOK (Chapel Hill)** – By Consent, the Commission revoked Mr. Cook's salesman license effective March 26, 1992. The Commission found that Mr. Cook, while engaging in property management, had failed to deposit and maintain trust monies in a trust or escrow account, had failed to keep adequate records of the funds he collected, and had converted trust monies to his own use.

**THOMAS C. COOPER (Wilmington)** – By Consent, the Commission revoked Mr. Cooper's broker license effective April 1, 1992. The Commission found that Mr. Cooper had failed to deposit and maintain trust monies in a trust or escrow account and had failed to account for and remit the funds collected in his real estate brokerage business. Mr. Cooper neither admitted nor denied any misconduct.

**DUNBAR REALTY & INSURANCE CO. (Durham)** – By Consent, the Commission suspended the corporate real estate broker license of Dunbar Realty & Insurance Co. for three years effective April 15, 1992. The Commission then stayed its Order for a probationary term of three years on condition that it correct the trust account violations and bookkeeping practices which led to suspension of its license. The Commission found that Dunbar Realty & Insurance Co. had failed to keep adequate records of trust monies and had commingled those monies with corporate funds, but noted that no shortage or misapplication of trust monies was discovered.

**LESLIE D. FERGUSON (Waynesville)** – By Consent, the Commission suspended Mr. Ferguson's broker license for 18 months effective May 1, 1992. The Commission then stayed its Order for a probationary term

of 18 months. The Commission found that Mr. Ferguson had prepared a contract which did not accurately reflect the agreement between the parties in a real estate transaction and also had defaulted on his promise to pay a portion of the buyer's interest on a purchase money note to the seller until the buyers sued Mr. Ferguson and obtained a judgment. Mr. Ferguson subsequently paid the judgment and resolved his dispute with the seller.

**FLUHART, INC. (Carolina Beach)** – By Consent, the Commission revoked the corporate real estate broker license of Fluhart, Inc., effective April 1, 1992. The Commission found that the corporation had failed to deposit and maintain in a trust or escrow account all rents received on properties that it managed for others and had failed to keep adequate records of the receipt and disbursement of those funds. The Commission also found that Fluhart, Inc., had issued checks drawn on its trust account which were returned unpaid due to insufficient funds and had failed to make complete trust account and transaction records available for inspection by the Commission's auditor.

**JOHN G. FLUHART (Carolina Beach)** – By Consent, the Commission suspended Mr. Fluhart's broker license for two years effective April 1, 1992. The Commission found that Mr. Fluhart, as a property manager, had failed to deposit and maintain all trust monies in a trust or escrow account and had failed to account for and remit the trust funds he collected. The Commission also found that Mr. Fluhart had issued checks drawn on his corporation's trust account which were returned unpaid due to insufficient funds, and had failed to make complete trust account and transaction records available for inspection by the Commission's auditor.

**WILLIAM TED GOSSETT (Raleigh)** – The Commission accepted the voluntary surrender of Mr. Gossett's broker license for three years effective April 1, 1992. The Commission dismissed without prejudice charges that Mr. Gossett had failed to deposit and maintain trust monies in a trust or escrow account and had converted trust monies to his own use. Mr. Gossett neither admitted nor denied any misconduct.

**MARK P. GUSTAFSON (Chapel Hill)** – By Consent, the Commission suspended Mr. Gustafson's broker license for two years effective June 1, 1992. The Commission found that Mr. Gustafson, as a property manager, had failed to deposit and maintain trust monies in a trust or escrow account, had failed to account for and remit collected funds to the property owner, and had failed to make available adequate records of his handling and accounting of trust funds for



inspection by the Commission's auditor. Mr. Gustafson subsequently paid to the property owner all unremitted funds.

**EDWARD M. HARRINGTON** (Greensboro) – By Consent, the Commission suspended Mr. Harrington's broker license for three years effective April 15, 1992. Eighteen months of the suspension are to be active and the remaining period stayed for a probationary term of 18 months. The Commission found that Mr. Harrington had been convicted of the federal offense of bank fraud.

**JACK A. HELTON, II** (Morganton) – By Consent, the Commission suspended Mr. Helton's broker license for 18 months effective June 1, 1992. Nine 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. Helton, while employed as broker-in-charge of a rental management firm, had failed to adequately supervise unlicensed bookkeeping employees which resulted in trust account violations including failure to properly remit trust monies, failure to keep adequate trust account records, and apparent shortages in the firm's escrow account.

**LEIGH E. HOBBS** (Wrightsville Beach) – By Consent, the Commission suspended Ms. Hobbs' broker license for six months effective May 12, 1992. Forty-five days of the suspension are to be active and the remaining period stayed for a probationary term of one year. The Commission found that Ms. Hobbs, while acting as the purchaser in two real estate transactions, had used a sales contract and closing statements in which the sales prices of the properties were inflated and had falsely indicated that earnest money deposits and cash payments had been made to the seller outside of the closings.

**ARTHUR R. HOLLOMAN** (Greenville) – By Consent, the Commission revoked Mr. Holloman's broker license effective May 18, 1992. The Commission found that Mr. Holloman had failed to deposit and maintain trust monies from his property management business in a trust or escrow account, had commingled the funds of others with his firm's funds, and had converted trust monies to his own use. The Commission also found that Mr. Holloman had failed to properly account for and remit trust monies within a reasonable time, had failed to maintain adequate records, and had issued a security deposit refund check that was returned unpaid due to insufficient funds.

**PEGGY S. HOLLOWAY** (Durham) – By Consent, the Commission suspended Ms. Holloway's broker license for six months effective May 15, 1992. The Commission then stayed its Order for a proba-

tionary term of six months on the condition that Ms. Holloway replace the \$2000 earnest money which she had removed from her trust account without authorization when a real estate transaction had failed to close. The Commission found that Ms. Holloway, who was acting as both real estate agent and seller, had failed to deposit the earnest money into her trust account within three banking days following acceptance of the offer as required by Commission rule, and had failed to maintain adequate records of the transaction.

**BERNICE H. INGRAM** (Durham) – The Commission accepted the voluntary surrender of Ms. Ingram's broker license for one year effective April 15, 1992, and dismissed without prejudice charges that Ms. Ingram had failed to maintain trust account records as required by Commission rule.

**KENWYN N. JOHNSON** (Laurinburg) – By Consent, the Commission reprimanded Mr. Johnson effective March 26, 1992, for failing to provide the purchaser of a subdivision lot developed by Mr. Johnson with a street disclosure statement as required by law.

**JERRY W. JOLLY** (Banner Elk) – The Commission revoked Mr. Jolly's time share project registration effective March 15, 1992. The Commission found that Mr. Jolly, developer of Beech Manor, had contracted to sell time shares after the expiration of his time share registration. The Commission also found that Mr. Jolly had failed to record lien-free time share instruments and to deliver titles to buyers in two transactions as required by law.

**SUE A. KEMPER** (Charlotte) – By Consent, the Commission revoked Ms. Kemper's broker license effective April 1, 1992. The Commission granted a real estate salesman license to her effective May 1, 1992. On May 1, 1993, Ms. Kemper may apply to the Commission for reinstatement of her broker license without examination, but subject to Commission review. The Commission found that Ms. Kemper had induced a purchaser to buy property by promising to buy the purchaser's property. After the transaction closed, Ms. Kemper defaulted on her obligations to make payments on the loan she assumed from the purchaser, and on a second loan made by the same purchaser. The Commission noted that Ms. Kemper subsequently paid off the second loan, but the purchaser remains liable for the repayment of the first loan.

**ELLIOT L. LAMBERT** (Greensboro) – By Consent, the Commission suspended Mr. Lambert's broker license for one year effective August 1, 1992. Thirty days of the suspension are to be active with the remaining period stayed for a probationary term of

11 months. The Commission found that Mr. Lambert, while engaging in property management, had failed to deposit and maintain a tenant security deposit in a trust or escrow account, had failed to refund or account for the security deposit and had failed to pay a court-ordered judgment for the return of the security deposit. The Commission also found that Mr. Lambert had failed to maintain records sufficient to verify the adequacy and proper use of his trust account and had allowed a shortage to accrue in his account. The Commission noted that Mr. Lambert has subsequently established trust account records that comply with Commission rules and has placed funds in the account to equal his liability for the funds of others.

**LAMBERT REALTY COMPANY, INC.** (Greensboro) – By Consent, the Commission suspended the corporate real estate broker license of Lambert Realty Company, Inc., for one year effective August 1, 1992. Thirty days of the suspension are to be active and the remaining period stayed for a probationary term of 11 months. The Commission found that the corporation had failed to keep adequate trust account records, including ledgers and journals, and had allowed a shortage to accrue in its trust account. The Commission noted that Lambert Realty Company, Inc., has subsequently established trust account records which comply with Commission rule and has placed funds in the trust account to equal its liability for the funds of others.

**MARGARET S. MAHAFFEY** (Greensboro) – The Commission suspended Ms. Mahaffey's broker license for four years effective May 11, 1992. The Commission found that Ms. Mahaffey had failed to deposit and maintain trust monies in a trust or escrow account, had failed to account for and remit trust monies in her possession, and had commingled trust monies with her own funds. The Commission also found that Ms. Mahaffey had failed to adequately supervise an unlicensed employee and had failed to make records available for inspection by the Commission's auditor.

**ANITA G. MCBRIDE** (Fayetteville) – The Commission revoked Ms. McBride's broker license effective May 11, 1992, for misrepresenting the monies she received and remitted in connection with her management of rental property. The Commission found that Ms. McBride had failed to deposit and maintain trust monies in a trust or escrow account, had failed to provide copies of a lease agreement to all parties in the transaction, had failed to make and retain adequate trust account records, and had failed to make those records available for inspection by the Commission's auditor.

*(Continued on page 8)*

# Disciplinary Action

(Continued from page 7)

**SANDRA B. MCMILLAN** (Whiteville) – By Consent, the Commission reprimanded Ms. McMillan effective May 15, 1992, for preparing an offer to purchase on a form which did not comply with Commission rule and for failing to obtain all necessary signatures on the form.

**WILLIAM J. MOORE** (Charlotte) – The Commission revoked Mr. Moore's broker license effective February 28, 1992. The Commission found that Mr. Moore had failed to deposit and maintain trust monies in a trust or escrow account, had failed to account for and remit security deposits within a reasonable time, and had failed to notify the Commission in writing of his change of business and residence addresses.

**ROBERT S. NEAL** (Chapel Hill) – By Consent, the Commission suspended Mr. Neal's broker license for 50 days effective June 15, 1992, followed by two years' probation for acting as a real estate broker while his real estate license was under active suspension. The Commission also found that Mr. Neal had allowed an employee of his firm to engage in real estate brokerage sales after her salesman license had expired.

**OCKULY ENTERPRISES, INC.** (Jacksonville) – By Consent, the Commission reprimanded Ockuly Enterprises, Inc., effective June 1, 1992. The Commission found that the corporation had failed to promptly post trust account transaction entries to individual ledgers or to the general journal, and had accumulated an overage of funds in its trust account. The Commission noted that the corporation subsequently traced the overage and disbursed it.

**NORA J. OCKULY** (Jacksonville) – By Consent, the Commission reprimanded Ms. Ockuly effective June 1, 1992. The Commission found that Ms. Ockuly, as principal

broker and broker-in-charge of a corporation, had failed to post trust account transaction entries to individual ledgers or to the general journal promptly, and had accumulated an overage of funds in the corporation's trust account. The Commission noted that Ms. Ockuly subsequently traced the overage and disbursed it.

**PIEDMONT HOMES, INC.** (Greensboro) – The Commission revoked the corporate real estate broker license of Piedmont Homes, Inc., effective May 11, 1992. The Commission found that the corporation had failed to deposit and maintain trust monies in a trust or escrow account, had failed to account for and remit trust monies in its possession, and had commingled trust monies with the corporation's funds. The Commission also found that the corporation had failed to adequately supervise an unlicensed employee, and had failed to make records available for inspection by the Commission's auditor.

**JAMES A. POLLARD** (Benson) – By Consent, the Commission reprimanded Mr. Pollard effective March 12, 1992. The Commission found that Mr. Pollard, while acting as the buyer in a real estate transaction, had failed to advise the seller that his purchase-money deed of trust had not been recorded. Mr. Pollard subsequently recorded other deeds of trust which also used the property as security and which took priority over his obligation to the seller. When Mr. Pollard's personal residence on the property subsequently burned, he used his insurance proceeds to pay the other indebtedness against the property, but did not pay any further monies to the seller.

**BONNIE J. ROUSSEAU** (Cary) – By Consent, the Commission reprimanded Ms. Rousseau effective May 14, 1992. The

Commission found that Ms. Rousseau had used a standard offer to purchase and contract form as a "lease/purchase option," a purpose for which the form was not designed, had prepared an addendum which constituted the drafting of a legal instrument and, therefore, the unauthorized practice of law, and had failed to sign the document to signify her receipt of the earnest money from the buyers.

**SUGAR SKI RESORT, INC.** (Banner Elk) – The Commission accepted the permanent voluntary surrender of the corporate real estate broker license of Sugar Ski Resort, Inc., effective March 1, 1992. The Commission dismissed without prejudice charges that Sugar Ski Resort, Inc., had failed to supervise unlicensed bookkeeping employees, had failed to maintain trust account records in compliance with Commission rule, had failed to remit trust monies within a reasonable time, and had apparently allowed shortages to accrue in the corporation's trust account.

**ANNA B. WHITENER** (Raleigh) – By Consent, the Commission reprimanded Ms. Whitener effective April 10, 1992, for depositing earnest money into an account which was not properly designated as a trust or escrow account and for commingling trust monies with her own funds.

**BOBBY G. WRENN** (Fayetteville) – By Consent, the Commission suspended Mr. Wrenn's salesman license for 90 days effective June 1, 1992. The Commission then stayed its Order for a probationary term of one year. The Commission found that Mr. Wrenn, while acting as a notary public, acknowledged a seller's signature on documents which were not signed in his presence. The seller subsequently repudiated the signature on both documents. ☐

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## As we go to press . . .

Governor Martin has reappointed **J. Edward Poole** to the Commission for a three-year term which commenced August 1, 1992.

**James K. Polk** has been appointed to the Commission for a three-year term which will end July 31, 1995.

**NORTH CAROLINA  
REAL ESTATE COMMISSION  
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