



## NORTH CAROLINA REAL ESTATE COMMISSION

# Real Estate Bulletin

Volume 27

Summer 1996

Number 2

### Commission employs new Licensing Officer



The Real Estate Commission recently filled the Licensing Officer position in its Education Division.

**Pamela R. Milligan** comes to the Commission from a Raleigh real estate firm, having been a licensed salesman since 1993. Now a broker, Pam received a BA in English and Speech Communications and Secondary Education from UNC-Chapel Hill and an MA in Literature from ECU. A high school English teacher for over 14 years, she also coached high school women's sports.

In her new position, Pam will coordinate the Commission's licensing process and evaluate instruction provided in Commission-approved courses. □

### As we go to press...

Commission Member John D. Bridgeman (Gastonia) has been elected Chairman of the Real Estate Commission for a one-year term beginning August 1.

Wanda J. Proffitt (Burnsville) has been elected Vice-Chairman. □

## Effective January 1, real estate firms must have separate license

**F**or many years, the Real Estate Commission has required a license for any corporation engaged in real estate brokerage in North Carolina. This corporate real estate broker license is separate from - and in addition to - the licenses of individual brokers and salesmen associated with the corporation.

Effective January 1, 1997, *partnerships, limited liability companies and other business entities* (other than sole proprietorships) engaged in the *brokerage business* must also obtain a license - a Real Estate Firm License.

If you currently have a corporation real estate broker license, your corporation license certificate will serve as your firm license. No other application or fee is required.

And if you are doing business as a sole proprietorship - whether by yourself or with other licensees - you are NOT required to have a Real Estate Firm License.

For further information and application forms and materials, contact the North Carolina Real Estate Commission at (919) 733-9580. □

### License Renewal Report

#### Renewal Applications Sent

Brokers & Salesmen	77,628
Corporations	4,008

#### Renewed by June 30 Deadline

60,592	(78%)
3,498	(87%)

The Commission wishes to thank each of you who renewed your license in a timely manner.

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**Attention brokers-in-charge:** Have you checked to be sure that all of the salesmen and brokers in your office have renewed their licenses on active status?

## REAL ESTATE BULLETIN

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

### NORTH CAROLINA REAL ESTATE COMMISSION

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

### COMMISSION MEMBERS

John D. Bridgeman ..... Gastonia  
Chairman  
Wanda J. Proffitt ..... Burnsville  
Vice-Chairman  
Raymond A. Bass, Jr. .... Fayetteville  
Sang J. Hamilton, Sr. .... Winton  
Mona S. Hill ..... Pinehurst  
Billie J. Mercer ..... Wilson  
J. Kemp Sherron, III ..... Raleigh

Phillip T. Fisher  
Executive Director

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Carrie D. Worthington ... Publications Officer

### AUDITS & INVESTIGATIONS

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Anita R. Burt ..... Ed./Exam. Officer  
Pamela R. Milligan .. Licensing/Ed. Officer

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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  
Robin F. Oliver ..... Cons. Prot. Officer  
Rebecca A. Sabel ..... Information Officer

Editor - In - Chief

Phillip T. Fisher

Editor

Carrie D. Worthington

### EXAM RESULTS

	Passed	Failed
March 1996		
Brokers	94	62
Salesmen	517	297
April 1996		
Brokers	128	62
Salesmen	401	244
May 1996		
Brokers	97	59
Salesmen	330	254

## Commission Staff Update

Jason A. Walser has been employed as a Legal Intern on a temporary basis this summer to assist with various projects in the Commission's Legal Services Division. Jason is a second-year law student at UNC-Chapel Hill.

Wanda E. Johnson has transferred to the Commission's Legal Services Division to fill a secretarial position. Her new duties will include serving as receptionist for the legal staff. Wanda has been with the Commission since 1992, when she was employed as License Specialist in the Education Division.

Records Specialist Brenda H. Badger has assumed the position of License Specialist to assist Licensing and Education Officer Pamela R. Milligan. Among Brenda's new responsibilities will be the issuance of reciprocal and firm licenses and license reinstatement. Brenda joined the Commission's Records Section of the Administration Division in 1989.

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(continued on page 3)

### REGISTRATION FORM for BASIC TRUST ACCOUNT PROCEDURES COURSE MONTHLY - RALEIGH

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

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

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

☐ August 13

☐ October 8

☐ September 10

☐ November 5

☐ December 10

Name \_\_\_\_\_ Phone \_\_\_\_\_

(Daytime)

Address \_\_\_\_\_

(Street, P.O. Box, etc.)

(City)

(State)

(Zip)

☐ Broker (License No. \_\_\_\_\_)

☐ Salesman (License No. \_\_\_\_\_)

☐ Bookkeeper

Mail to: **NC REAL ESTATE COMMISSION**

Attention: License Specialist

P. O. Box 17100

Raleigh, NC 27619-7100

Enclose \$35 tuition fee

# Commission Staff Update

(continued from page 2)

The following Commission staff members have made appearances before various real estate industry and related groups since the last issue of the *Bulletin*. Chief Deputy Legal Counsel **Blackwell M. Brogden, Jr.**, talked to the Topsail Island Association of REALTORS® about the new property disclosure form, proposed changes in the Standard Offer to Purchase

form, licensed vs. unlicensed activity, and related subjects. **Marilyn E. Tomei**, the Commission's Assistant Legal Counsel, was in Greensboro to speak at a Broker's Forum of the Greensboro Regional REALTORS® Association. She discussed real estate contracts and related issues...Consumer Protection Officer **Stephen L. Fussell** participated in a panel discussion

at a meeting of the High Point Regional Association of REALTORS®. Steve discussed the Commission's position on "external insulating finishing systems."

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

## It's Your Move... again!

Since 1979, the Real Estate Commission has funded the publication and delivery of *It's Your Move* to North Carolina high school students...and this year is no exception.

During the 1996-97 school year, 7,750 student manuals and 350 teacher guides are scheduled for distribution, bringing the total number of booklets distributed over the years to more than 315,000.

The booklets are designed as an introduction to buying, selling, and renting real estate. □



### REAL ESTATE COMMISSION PUBLICATIONS ORDER FORM

Publication	Send 1 Free Copy <input checked="" type="checkbox"/>	No. Copies Requested	Price Per Copy	Subtotal
<i>Res. Property Disclosure Statement and Guidelines</i>	<input type="checkbox"/>			
<i>Questions and Answers on: Tenant Security Deposits</i>	<input type="checkbox"/>		x \$ .25 =	
<i>Questions and Answers on: Fair Housing</i>	<input type="checkbox"/>		x \$ .25 =	
<i>Questions and Answers on: Condos and Townhouses</i>	<input type="checkbox"/>		x \$ .25 =	
<i>Questions and Answers on: Who Agents Represent</i>	<input type="checkbox"/>		x \$ .25 =	

Total (Includes Postage/Shipping) =

( )

Name

Phone Number (Including Area Code)

Street Address (NOT P.O. BOX)

City

State

Zip

#### Instructions

1. You may request a free copy of each publication by returning this Order Form or calling the Commission office (919) 733-9580, ext.3.
2. The Commission will furnish only one copy of the *Residential Property Disclosure Statement and Guidelines*. It may be duplicated if additional copies are needed.
3. To order multiple copies of these publications, return the completed Order Form with your check made payable to the N.C. Real Estate Commission. (Please do not send cash.)
4. Send to N.C. Real Estate Commission, P.O. Box 17100, Raleigh, N.C. 27619-7100. Attention: Publications.
5. Please allow two weeks for delivery.
6. Space has been provided on the *Questions and Answers* brochures if you wish to add your company name.



# Governor reappoints Bass and Bridgeman to Commission



Mr. Bass



Mr. Bridgeman

Commission Members **Raymond A. "Buddy" Bass, Jr.** of Fayetteville and **John D. Bridgeman** of Gastonia have been reappointed by Governor Hunt to the Real Estate Commission for three-year terms commencing August 1, 1996. Both Mr. Bass and Mr. Bridgeman are licensed real estate brokers. □

## In memoriam

*With deep regret, the Real Estate Commission announces the recent death of former Commission member and Chairman Brantley T. Poole of Raleigh. The Commission extends deepest sympathy to Mr. Poole's family.*

# Commission amends rules

At its January meeting, the Real Estate Commission conducted a hearing to consider the amendment of certain rules. A summary of the proposed amendments was included in the February, 1995 issue of your *Real Estate Bulletin*.

After the hearing, the Commission amended its rules **effective July 1, 1996**. The rule changes affect real estate licensees, license applicants and providers of Commission-approved real estate courses. Following is a summary of the amendments affecting real estate licensees. For a complete text, please contact the Commission office.

1. When acting as a sellers' agent or subagent, in certain circumstances you may now *orally* disclose to prospective purchasers your agency relationship if your "first substantial contact" with the purchaser is by telephone, electronic or means other than an in-person meeting. You must then immediately, but in no event later than three days thereafter, mail or transmit to the purchasers for their signature a copy of the "Disclosure to Buyer From Seller's Agent or Subagent" form. [See article on page 9 of this *Bulletin*.]

2. You are now exempt from the agency disclosure requirements when representing sellers in auction sales transactions.

3. If you manage a property owners' association, you must deposit in your trust account and properly account for monies received in connection with your management of the association.

4. Corporations, partnerships, limited liability companies, and other business entities (other than sole proprietorships) engaged in the real estate brokerage business must obtain a Real Estate Firm License from the Commission beginning January 1, 1997. [See page 1 of this *Bulletin*.]

5. This rule change clarifies that if you let your real estate license lapse for more than twelve months and you want to reinstate it, you must demonstrate to the Commission that you currently possess the requisite moral character in addition to current knowledge, skills and competence.

6. If your real estate license is revoked, suspended or surrendered to the Real Estate Commission, to reinstate it, you must satisfy the same requirements as persons whose licenses have been expired for the same period of time. □

## In appreciation

The Real Estate Commission expresses its appreciation to the following participants in its Real Estate Agency Forum for their valuable insight, comments and suggestions: Brenda Ballard (Newport), John Daniel, III (Sanford), Timothy Gentry (Blowing Rock), Tim Minton (Raleigh), Scott O'Neal (Greensboro), Ross Rhudy (Raleigh), Allen St. Clair (Charlotte), Assistant Attorney General Harriet F. Worley (Raleigh), and Myra Zollinger (Chapel Hill). □

# Educators meet in Raleigh

The continuing success of the annual Real Estate Educators Conference is testimony to the dedication of the Real Estate Commission and the state's real estate educators to excellence in prelicensing and continuing education programs.

Real estate educators from across the state gathered in Raleigh on May 14 and 15 for the seventeenth annual Real Estate Educators Conference. Participating in the conference were prelicensing and continuing education instructors, school directors, course sponsors and representatives of major publishers of real estate education materials - a total of 145 attendees. The conference was co-sponsored by the North Carolina Real Estate Commission and the North Carolina Real Estate Educators Association (NCREEA).

The first day of the conference featured the 1996-97 Continuing Education Update Course Instructor Seminar led by Larry A. Outlaw, the Commission's Director of Education and Licensing, and Special Deputy Attorney General Thomas R. Miller, the Commission's Legal Counsel. Prior to reviewing and discussing the proposed subject matter and materials for the new 1996-97 Update course, instructors reported their experiences in teaching the 1995-96 course. Input offered at the conference by experienced instructors will be reflected in the final course plan for the Commission's new Update course.

A presentation by Joseph Lowman, Professor of Psychology at UNC-Chapel Hill, was a highlight of the second day. Dr. Lowman discussed the attributes of outstanding teachers.

As part of the conference program, NCREEA held its annual meeting, installation of officers and awards ceremony to recognize outstanding contributions to real estate education during the past year.

NCREEA honored Fonville Morisey Center for Real Estate Studies for sponsoring the "Program of the Year" while "Educator of the Year" awards were shared by Cindy Chandler and Vickie Ferneyhough, both holders of the Distinguished Real Estate Instructor (DREI) designation. Outgoing chapter president Ann Bowman was honored for her service to NCREEA, and Peggy Bivins was installed as the new president.

Anita Burt, the Commission's Education and Examination Officer, and Mr. Outlaw reported on the status of the Commission's prelicensing and continuing education programs. They also reviewed proposed rule changes, highlighted areas of consistently poor performance on the licensing examinations, and held an open discussion of teaching difficult prelicensing topics. The educators responded favorably to the introduction at the conference of a new Commission-sponsored service designed to match owners of approved CE courses with prospective course sponsors. Participants were advised of the Commission's recently intensified CE course monitoring activities, conducted by Licensing Officer Pamela Milligan.

Also in attendance and assisting at the conference were the Commission's Applications Specialist Gloria Williams, Education and Examination Clerk Susan Tysor, and Continuing Education Clerk Faye Dunn. Continuing Education Officer Evelyn Johnston and Education Secretary Penny Childress helped with conference arrangements.

## At the conference...



**Dr. Joseph Lowman inspires and entertains participants...**



**...Director of Education and Licensing Larry Outlaw talks about the Update Course...**



**...Education and Examination Officer Anita Burt addresses conference...**



**.....and attendees take notes. ☐**

# Real Estate Agents and the Residential Property Disclosure Act

New law went into effect January 1, 1996.

Under the North Carolina Residential Property Disclosure Act, most residential sellers are required to provide prospective buyers with a "Residential Property Disclosure Statement" prior to receiving offers from them. The new law seems to have been generally well-accepted by both buyers and sellers as well as by real estate agents. Nevertheless, many agents are still somewhat confused about the disclosure law and their duties under it.

## Basic Provisions

The law applies to most transfers of residential one-to-four-unit dwellings by sale, exchange, installment land sales contract or option. It also applies to transfers by a lease with an option to purchase, unless the lessee occupies or intends to occupy the dwelling. The law applies whether or not there is a real estate broker or salesman assisting with the transaction.

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***If an agent is uncertain of the law's applicability in any particular case, the agent should research the matter before advising the seller.***

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There is a long list of specific exemptions, most of which address transfers where real estate licensees are usually not involved. The most significant exemption, however, will

be frequently encountered by real estate agents: no disclosure statement is required for transfers involving the first sale of a dwelling that has never been inhabited, which includes most "new home sales."

The law requires sellers to provide prospective buyers with the disclosure statement and to indicate for each item addressed on the form either "Yes" (along with a description of the problem), "None Known," or "No Representations." If the completed statement is not provided to a prospective buyer until after the buyer makes an offer, the buyer has the right to withdraw the offer or terminate any resulting sales contract within three days after receiving the statement. In order to avoid giving a buyer a three-day right of rescission, sellers and their agents need to ensure that a completed disclosure statement is delivered to the buyer before the buyer submits an offer.

## Basic Duty of Listing Agent

The disclosure law specifically imposes on a real estate licensee acting as agent of the owner (i.e., a listing agent) the duty to inform the owner of the owner's rights and obligations under the law. To fulfill this duty, the listing agent should advise the seller at the time of listing whether or not the disclosure law applies to the particular transaction. This means that agents need to have a good understanding of when the law applies. If an agent is uncertain of the law's applicability in any particular case, the agent should research the matter before advising the seller. If the law ap-

plies, the agent should also advise the seller of the seller's statutory duties and the consequences of noncompliance. Note that the best way for an agent to fulfill this duty is to use the "Guidelines" that appear on the back of the required disclosure statement form that is provided by the Commission.

## Additional Agent Duties

Under the Real Estate License Law, licensees have the duty to comply with and promote compliance with laws governing real estate transactions. Thus, licensees not only have the *specific* duties listed in the Residential Property Disclosure Act, they have the following *additional* duties.

### A listing agent should:

- (1) Provide the seller with a copy of the required "Residential Property Disclosure Statement" form provided by the Commission.
- (2) Explain to the seller at the time of listing that, under the License Law, an agent must disclose to prospective buyers any material fact regarding a listed property which the agent knows or reasonably should know, even if the seller chooses not to disclose the fact or to make no representation about it. (All sellers should be provided this explanation, even if the disclosure law does not apply.)
- (3) Assist the seller in assessing the property. This will include making a detailed property inspection, identifying and discussing with the seller items of possible concern, and reviewing the options for addressing such items.

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# Property Disclosure Act

(continued from page 5)

- (4) Assist the seller with proper completion of the form. Care must be taken to ensure that the completed statement is clear and easy for the reader to understand - especially where a problem is being disclosed for only one item (e.g., a defective air conditioner) in a multi-item category ("plumbing, electrical, heating or cooling systems"). Probably the best option is to check "Yes" and describe the problem, then write in either "Otherwise none known" or "Otherwise no representations" in the space provided. Each of the six categories of items on the form must be separately addressed, and the seller must sign and date the form.
- (5) Assist in delivering the completed disclosure form to prospective buyers (usually through agents working with buyers). It should be a routine practice to immediately provide the completed form (via fax or otherwise) to agents calling for an appointment to show a property.
- (6) Monitor the property and circumstances to help the seller ensure the continuing accuracy of the disclosure statement.
- (7) Be sure the buyer signs the disclosure statement. Keep a copy and return a copy to the seller.

## **A seller's subagent working with a buyer should:**

- (1) Obtain a completed disclosure form from the seller or listing agent and assist in delivering the form to prospective buyers prior to the preparation of any offer.

- (2) Be sure the buyer signs the disclosure statement. Keep a copy and return a copy to the seller or listing agent.

## **A buyer's agent should:**

- (1) Take affirmative steps, if necessary, to obtain a completed disclosure statement and deliver it to the buyer prior to the preparation of any offer.
- (2) Be sure the buyer signs the disclosure statement. Keep a copy and return a copy to the seller or listing agent.
- (3) Assist the buyer in assessing the disclosure statement and the property, identifying items of concern and advising the buyer to have inspections by experts where appropriate.



## **Conclusion**

In order to properly support the Residential Property Disclosure Act, licensees need to have a thorough understanding of the law. To help ensure this, the 1996-97 mandatory Real Estate Update continuing education course includes detailed coverage of this law and its implementation, as well as other important and interesting topics. The Commission suggests you take this course at your earliest convenience. □

# ANNOUNCING... Scholarship winners



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

Sharon H. Muir (Bath) was awarded the Joe Schweidler Memorial Scholarship, and Jacqueline W. Britt (Laurinburg) and Kay S. Hatcher (Winston-Salem) were named as co-winners of the Blanton Little Memorial Scholastic Achievement Award.

The scholarships, which recognize outstanding achievement at the North Carolina REALTORS® Institute, are awarded annually in honor and memory of the Commission's first two Executive Directors. Mr. Schweidler served the Commission as Executive Director from 1960 - 1975. Mr. Little served from 1975 - 1981.

The Commission joins the North Carolina Real Estate Educational Foundation in congratulating the three scholarship recipients. □



# Commission proposes to adopt and amend rules



In recent months, the Commission has spent much time studying the agency disclosure rule to see how it is working and how it might be improved. That rule has been in effect for just over a year, and the Commission is now considering certain adjustments to it and the adoption of a new rule pertaining to the formation, designation and disclosure of agency relationships - particularly dual agency. If adopted, these adjustments will add flexibility to the rule, permit some variety and experimentation in brokerage practice, and still protect the interests of consumers.

## DUAL AND DESIGNATED AGENCY

The rule, if adopted, would clarify that a firm which represents both the buyer and the seller in the same real estate sales transaction is a dual agent and through the brokers and salesmen associated with the firm must disclose its dual agency to the buyer and seller in accordance with Rule A.0104. However, one or more individual brokers or salesmen associated with the firm may be designated to represent only the interests of the seller and one or more other individual brokers and salesmen associated with the firm may be designated to represent only the interests of the buyer in the transaction.

The rule would not permit an individual broker or salesman to be so designated (i.e. to undertake to represent only the interests of one party) if the broker or salesman had received confidential information concerning the other party in connection with the transaction.

The rule would also provide that when a firm acting as a dual agent designates an individual broker or salesman to represent each party, the broker or salesman so designated shall represent only the interest of that party. An agent designated to represent the seller could not disclose without the seller's permission:

- 1) that the seller may agree to a price, terms, or any conditions of sale other than those offered;
- 2) the seller's motivation for engaging in the transaction (unless disclosure is otherwise required by statute or rule); and
- 3) any information identified about the seller which the seller has identified as confidential (unless disclosure of the information is otherwise required by statute or rule).

Similarly, an agent designated to represent the buyer could not disclose without the buyer's permission:

- 1) that the buyer may agree to a price, terms, or any conditions of sale other than those offered by the buyer;
- 2) the buyer's motivation for engaging in the transaction (unless disclosure is otherwise required by statute or rule); and
- 3) any information about the buyer which the buyer has identified as confidential (unless disclosure of the information is otherwise required by statute or rule).

In addition, the rule would require a broker or salesman designated to represent a buyer or seller to disclose the identity of all of the brokers and salesmen so designated to both the buyer and the seller no later than the presentation of the first offer to purchase or sell.

When dual agency occurs and designated agency is not possible or desirable, the rule would allow an individual broker or salesman to represent both the buyer and seller in the same real estate sales transaction pursuant to a written agreement authorizing dual agency. The parties may provide in the written agreement that the broker or salesman shall not disclose:

- (1) the price, terms or conditions either party is willing to accept other than those offered;
- (2) either party's motivation for engaging in the transaction; and
- (3) any information about a party which that party has identified as confidential, unless disclosure is otherwise required by statute or rule.

## COMMENTS

Anyone interested in the Commission's proposals may present comments at a public rulemaking hearing to be held at 9:00 a.m. on September 18, 1996 at the Commission's Raleigh office at 1313 Navaho Drive. Or, mail your written comments by the hearing date to the N.C. Real Estate Commission, P.O. Box 17100, Raleigh, NC 27619-7100. The Commission welcomes your input. □





# Update for seller's agents: First substantial contact - Agency disclosure by phone or E-Mail

By: *Miriam J. Baer, Deputy Legal Counsel*

Last July, the Commission implemented a comprehensive new rule regarding agency agreements and disclosure. The provision of that rule that has perhaps generated the most confusion and concern is the one requiring a seller's agent to disclose to a prospective buyer at the "first substantial contact" that the agent does not represent the buyer. That provision also requires the agent to make the disclosure in writing on the Commission's "Disclosure to Buyer from Seller's Agent or Subagent" form.

*[For a discussion of the meaning of "first substantial contact," see Real Estate Bulletin Vol. 26, No. 3, Fall 1995, page 5: "Agency Law Update: First Substantial Contact."]*

## **When "first substantial contact" occurs in person**

When you are acting as a seller's agent or subagent and your first substantial contact with the buyer will occur in person, compliance with this rule is not difficult. Typically, you will discuss agency issues and options with the buyer at the beginning of the meeting. If the buyer chooses not to be represented by you, then you must work with the buyer as a seller's agent or subagent. In that case, simply give the "Disclosure" form to the buyer, explain that you represent the seller, and ask the buyer to sign it.

## **When "first substantial contact" occurs electronically**

But suppose that a first substantial contact is about to occur over the telephone, the Internet or another form of electronic communication?

Under the original version of the rule, as a selling agent, you were required to break off your discussions with the prospect before that prospect revealed to you any confidential information. You were then required to fax, mail or otherwise deliver a copy of the "Disclosure" form to the buyer. Only after the buyer had received and signed the form could you engage in any conversation during which the prospect revealed confidential information.

## **Commission amends rule**

The Real Estate Commission recognized that in certain circumstances, it is impractical for sellers' agents to provide written disclosure statements to buyers before a "first substantial contact." Therefore, it has amended the pertinent provision of the rule to provide as follows:

If the first substantial contact occurs by telephone or by means of other electronic communication where it is not practical to provide written disclosure, the broker or salesman shall immediately disclose by similar means whom he represents and shall immediately, but in no event later than three days from the date of first substantial contact, mail or otherwise transmit a copy of the form to the buyer.

Oral or electronic disclosure still accomplishes the goals of the rule: it puts the buyer on notice that you, as a seller's agent or subagent, do not represent him. It makes the buyer aware that any information he gives to you may be passed along by

you to your seller-client. Having received this warning, the buyer is then free to tell you anything that he wants you to know, and to keep confidential anything that he does not want you to pass along to the seller.

## **Wording the disclosure**

How detailed should your oral disclosure be? At a minimum, you should disclose to the buyer all the information contained in the box on the front of the "Disclosure" form. Thus, your disclosure essentially would be:

## **AGENCY DISCLOSURE:**

When showing you property and assisting you in the purchase of a property, I and my firm will be representing the interests of the SELLER. As such, I, the firm, and all its agents must work to obtain for the seller the best price and terms possible. I, the firm, and its agents must also furnish the seller any information obtained from you or any other source that is material to the transaction or that might influence the seller's decision to sell. Therefore, as a buyer, you should not give me or other associates of my firm any information that you do not want the seller to know.

If your first substantial contact with the buyer will occur by telephone (and it is not practical to provide a written disclosure to the buyer), read the above "Agency Disclosure" language or the language in the box on the "Disclosure" form to the buyer over the phone.

*(continued on page 10)*

## Agency disclosure by phone or E-mail

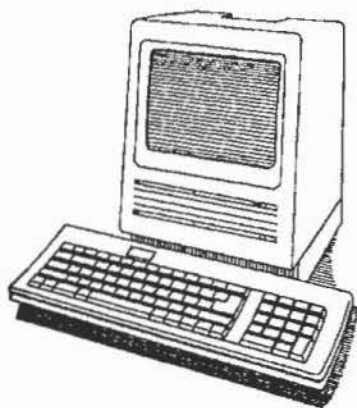
(continued from page 9)

Similarly, if your first substantial contact will occur by electronic mail, then "E-mail" that language to the buyer. But, if your first substantial contact will occur over the fax machine, fax the buyer a copy of the entire form, since it is practical in that situation to provide written disclosure.

### Key to compliance

The key to compliance with the new provision is to disclose orally or electronically that you represent the seller **before** the buyer discloses any confidences to you. Once you have done so, you may solicit from the buyer information such as his price range and financial situation. If the buyer chooses to tell you "confidential" information after disclosure, no violation of the rule will have occurred.

Don't forget to immediately follow up your oral or electronic disclosure with a complete copy of the form. The new provision requires that you do so within three days from the date of your first substantial contact. As always, ask the buyer to sign it. Retain a copy of the signed document for your file. □



## 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.*

**TERESA D. BOYES** (Carolina Beach) - The Commission revoked Ms. Boyes' salesman license effective February 16, 1996. The Commission found that Ms. Boyes had been convicted of the felony offense of attempting to obtain a controlled substance by forgery.

**ELLEN A. CAMPBELL** (Davidson) - By Consent, the Commission revoked Ms. Campbell's salesman license effective April 1, 1996. The Commission found that Ms. Campbell had been convicted of the following federal criminal offenses: making false material statements and representations in order to defraud the United States, aiding and abetting, and failing to file an IRS form 8300.

**VAN M. CARVER** (Durham) - The Commission accepted the voluntary surrender of Mr. Carver's salesman license for one year effective June 1, 1996. The Commission dismissed without prejudice charges that Mr. Carver had violated the Real Estate License Law and the rules of the Commission in the conduct of a real estate brokerage business.

**VAN CARVER REALTY, INC.** (Durham) - The Commission accepted the voluntary surrender of Van Carver Realty, Inc.'s corporate real estate broker license for one year effective June 1, 1996. The Commission dismissed without prejudice charges that Van Carver Realty, Inc. had violated the Real Estate License Law and the rules of the Commission in the conduct of a real estate brokerage business.

**SAMUEL L. CUNNINGHAM** (LaGrange) - The Commission accepted the permanent voluntary surrender of Mr. Cunningham's broker license effective March 21, 1996. The Commission dismissed without prejudice charges that Mr. Cunningham had violated certain provisions of the Real Estate License Law and Commission rules. Mr. Cunningham neither admitted nor denied any misconduct.

**DOROTHY H. ESSEY** (Long Beach) - By Consent, the Commission suspended Ms. Essey's broker license for one year effective April 1, 1996. Three months of the suspension are to be active and the remaining period stayed for a probationary term of one year upon certain conditions. The Commission found that Ms. Essey, as broker-in-charge and principal broker of a licensed real estate corporation, had failed to maintain proper trust account records and that consequently, her corporation's trust accounts sometimes contained too much money and at other times contained too little money, and that she had been unable to correctly account for the funds of others in her care. The Commission noted that this matter did not arise from a complaint by Ms. Essey's clients or customers.

**DOROTHY ESSEY & ASSOCIATES, INC.** (Long Beach) - By Consent, the Commission suspended Dorothy Essey & Associates, Inc.'s corporate real estate broker license for one year effective April 1, 1996. The Commission then stayed the suspension for a probationary term of one year upon certain conditions. The Commission found that Dorothy Essey & Associates, Inc. had failed to maintain proper trust account records and that consequently, the corporation's trust accounts sometimes contained too much money and at other times contained too little money, and that Dorothy Essey & Associates, Inc.

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# Disciplinary action

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had been unable to correctly account for the funds of others in its care. The Commission noted that this matter did not arise from a complaint by the corporation's clients or customers.

**LARRY M. FORD (Charlotte)** - By Consent, the Commission suspended Mr. Ford's salesman license for one year effective June 1, 1996. Three months of the suspension are to be active and the remaining period stayed for a probationary term of nine months. The Commission found that Mr. Ford, as the listing agent for a residential property, had failed to disclose to the buyer a foreclosure on the property that he knew was imminent. Mr. Ford did not admit any misconduct.

**MARGUERITE M. GARDNER (Nags Head)** - By Consent, the Commission revoked Ms. Gardner's broker license effective April 1, 1996 and reinstated the salesman license previously issued to her. The Commission found that Ms. Gardner, while acting as broker-in-charge, had failed for over two years to institute a trust account recordkeeping system as required by Commission rules and had used interest-bearing escrow accounts without written authority.

**GARDNER REALTY, INC. (Nags Head)** - By Consent, the Commission revoked Gardner Realty, Inc.'s corporate real estate broker license effective April 1, 1996. The Commission found that Gardner Realty, Inc. had failed for over two years to institute a trust account recordkeeping system as required by Commission rules and had used interest-bearing escrow accounts without written authority.

**HARBORGATE REALTY, INC. (Cornelius)** - The Commission revoked Harborage Realty, Inc.'s corporate real estate broker license effective January 15, 1996. The Commission found that Harborage Realty, Inc. had failed to disclose to parties in a real estate transaction

its conflicting roles as seller subagent and as a co-brokering firm under the control of the principal of the corporate purchaser.

**EMMA N. JACKSON [HAYNES] (Durham)** - The Commission accepted the voluntary surrender of Ms. Jackson [Haynes'] broker license for three years effective April 15, 1996. The Commission dismissed without prejudice charges that Ms. Jackson [Haynes] had violated provisions of the Real Estate License Law and Commission rules in the conduct of her real estate brokerage business. Ms. Jackson [Haynes] neither admitted nor denied any misconduct.

**JO ANN H. LONG (Wilmington)** - The Commission reprimanded Ms. Long effective May 1, 1996. The Commission found that Ms. Long, relying on inaccurate information supplied by others which she failed to confirm, had made false representations of material facts in advertising HVAC features of a property which she had listed for sale.

**RONALD C. MAJOR (Cornelius)** - The Commission revoked Mr. Major's broker license effective January 15, 1996. The Commission found that Mr. Major had failed to disclose to parties in a real estate transaction his conflicting roles as a seller subagent, the principal of the co-brokering firm receiving a commission in the transaction, and the principal of the corporate purchaser.

**DAVID D. MALPHURS, JR. (Charlotte)** By Consent, the Commission suspended Mr. Malphurs' broker license for one year effective June 1, 1996. The Commission then stayed the suspension for a probationary term of three years. The Commission found that in 1992, Mr. Malphurs had been convicted of conspiracy to possess with intent to distribute marijuana and conspiracy to distribute marijuana. The Commission noted that Mr. Malphurs had rendered substantial

assistance to criminal law enforcement authorities.

**MICHAEL W. MCCOOL (Kitty Hawk)** - By Consent, the Commission suspended Mr. McCool's license for one year effective March 21, 1996. The Commission then stayed the suspension for a probationary term of one year. The Commission found that Mr. McCool, on five separate corporate contractor license renewal forms submitted to the North Carolina Licensing Board for General Contractors, had failed to disclose homeowner association liens on property owned by the corporation. Mr. McCool neither admitted nor denied any misconduct.

**JOSEPH L. OATES (Hendersonville)** - By Consent, the Commission suspended Mr. Oates' broker license for three months effective April 1, 1996. The Commission then stayed the suspension for a probationary term of two years. The Commission found that the real estate firm where Mr. Oates was principal broker and broker-in-charge had falsely advertised that lots which it had listed for sale were served by city water, were "ready for building," and were ½ acre in size; in fact, the lots were served by a community water system, were not ready for building because further connections to the community system were temporarily prohibited, and were not all ½ acre in size.

**LOUIS J. PELLEGRINO (Wilmington)** - The Commission accepted the permanent voluntary surrender of Mr. Pellegrino's broker license effective April 15, 1996. The Commission dismissed without prejudice charges that Mr. Pellegrino had violated certain provisions of the Real Estate License Law and Commission rules in the conduct of a real estate brokerage business. Mr. Pellegrino neither admitted nor denied any misconduct.

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# Disciplinary action

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**PELLEGRINO PROPERTIES, INC.** (Wilmington) - The Commission accepted the permanent voluntary surrender of Pellegrino Properties, Inc.'s corporate real estate broker license effective April 15, 1996. The Commission dismissed without prejudice charges that Pellegrino Properties, Inc. had violated certain provisions of the Real Estate License Law and Commission rules in the conduct of a real estate brokerage business. Pellegrino Properties, Inc. neither admitted nor denied any misconduct.

**GERALD L. PELLETIER** (Durham) - By Consent, the Commission suspended Mr. Pelletier's salesman license for one month effective February 1, 1996. The Commission

then stayed the suspension for a probationary term of one month. The Commission found that Mr. Pelletier had obtained a loan to purchase a townhouse by representing to the lender that he would occupy the property as his primary residence, but that after closing and as a result of an incident which had occurred at the property, he had decided instead to rent the property to tenants. The Commission further found that Mr. Pelletier had failed to immediately disclose to his lender the decision to rent the property to tenants instead of occupying it himself.

**BRYANT B. ROBERTS** (Durham) - By Consent, the Commission suspended Mr. Roberts' broker license for two years effective April 1, 1996. The Commission found that Mr. Roberts had failed to make any examination of the books, records, accounts, or day-to-day operations of a brokerage operation under his supervision. The Commission fur-

ther found that Mr. Roberts actually had been engaged in the business of residential construction at the time, and had entrusted his responsibilities to family members and employees; as a result, unlicensed persons had routinely engaged in acts for which a real estate license was required, had misapplied trust funds and had used unlawful eviction procedures. The Commission noted that Mr. Roberts had taken steps to bring the escrow accounts and records into compliance with the law and to properly supervise the acts of unlicensed persons associated with the rental management operation.

**PHILIP D. SIZEMORE** (Durham) - By Consent, the Commission reprimanded Mr. Sizemore effective March 29, 1996. The Commission found that Mr. Sizemore had engaged in residential tenant eviction procedures without fully complying with applicable state laws. Mr. Sizemore did not admit any misconduct. □

## *On the inside...*

**Effective January 1, real estate firms must have separate license**

**Commission employs new Licensing Officer**

**Governor reappoints Bass and Bridgeman to Commission**

**Commission amends rules**

**Educators meet in Raleigh**

**Real Estate Agents and the Residential Property Disclosure Act**

**Commission proposes to adopt and amend rules**

**First substantial contact - Agency disclosure by phone or E-Mail**

**Disciplinary action**

*...and more.*

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