



NORTH CAROLINA REAL ESTATE COMMISSION

Real Estate Bulletin

Volume 31

Summer 2000

Number 2

Commission hosts ARELLO mid-year meeting

*By Mary Frances Whitley
Director of Administration*

In April, the North Carolina Real Estate Commission hosted the 2000 mid-year meeting of the Association of Real Estate License Law Officials (ARELLO). Attending the meeting (in addition to North Carolina Commission members and staff), were real estate licensing officials and administrators, industry trade association representatives, and service providers.

Held in Wilmington, this annual Board of Directors and Committees Meeting was attended by almost 200 real estate professionals from 34 states across the country - Hawaii to Florida - as well as Puerto Rico and British Columbia.

The Commission's Director of Audits and Investigations, Emmet R. Wood, is an Alternate Director representing ARELLO's Southern District.

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As we go to press . . .

Members Lanny Wilson, Mona Hill and Wanda Proffitt have been reappointed by Governor Hunt to the Real Estate Commission for three-year terms.

"Straight talk" on "straight-piping"

North Carolina law prohibits the discharging of wastewater from homes or businesses directly into the ground (usually into a ditch or stream). The Real Estate Commission revised its **Residential Property Disclosure Statement** effective July 1 to address this practice, known as "straight-piping."

By Janet B. Thoren, Deputy Legal Counsel

Under the rules of the North Carolina Environmental Management Commission, "any person owning or controlling a residence, place of business, or place of public assembly containing water-using fixtures connected to a water supply source shall discharge all wastewater directly to an approved wastewater system for that specific use." Private wastewater treatment and disposal systems must be approved and permitted by an authorized Environmental Health Specialist from the local county health

department or health district in which the property is located.

Wastewater Defined

Wastewater includes "grey water" from sinks, showers, or washing machine drains, and "black water" from toilets. Nutrients in wastewater nourish algae that deplete oxygen in our streams, rivers and lakes and produce high levels of toxins which cause fish and other aquatic animals to die en masse. Wastewater may contain disease-causing bacteria and viruses

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Commission elects officers



Sang J. Hamilton, Sr.
Chairman



Lanny T. Wilson
Vice-Chairman

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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 919/875-3700

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Lanny T. Wilson Wilmington
Vice-Chairman

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Editor

Carrie D. Worthington

Commission Staff Update

Members of the Commission's Audits and Investigations Division and Legal Services Division participated in recent National Certified Investigator/Inspector Training programs conducted by the Council on Licensure, Enforcement and Regulation (CLEAR). Director of Audits and Investigations Emmet R. Wood, Deputy Legal Counsel Janet B. Thoren, Associate Legal Counsel Pamela V. Millward, Consumer Protection Officer Joan H.

Floyd, and Auditor/Investigators Brian G. Thomas and William F. Dowd attended the CLEAR Basic Program held in Raleigh May 15 - 17.

Auditor/Investigator Elizabeth M. Redeker attended the CLEAR Specialized Program, which was also held in Raleigh during the same dates in May. The programs provide investigators hands-on-training and a certification program in investigation and inspection techniques and procedures.

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REGISTRATION FORM

for

2000 BASIC TRUST ACCOUNT PROCEDURES COURSE MONTHLY - RALEIGH

Four (4) hours continuing education elective credit will be awarded for completion of the course. The course begins at 1:00 p.m. and ends at 5:00 p.m. It is held at the McKimmon Center.

The course is intended for brokers and trust account bookkeepers. Salespersons 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.

☐ September 5

☐ October 3

☐ November 8

☐ December 5

Name _____ Phone _____
(Daytime)

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

☐ Broker (License No. _____) Mail to: NC REAL ESTATE COMMISSION

Attention: Audits and Investigations Division

P. O. Box 17100

Raleigh, NC 27619-7100

☐ Salesperson (License No. _____)

☐ Bookkeeper

Enclose \$35 tuition fee

Commission Staff Update

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The following Commission and 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 was at a meeting of the North Carolina Vacation Rental Managers Association to discuss the North Carolina Vacation Rental Act, and when he addressed the Charlotte Region Commercial Board of REALTORS®, Tom talked about issues of special importance and concern to commercial real estate brokers . . . Assistant Director of Legal Services Miriam J. Baer went to Burnsville, where she spoke to the Yancey-Mitchell Board of REALTORS® about common complaints received by the Commission, and Miriam discussed issues of special interest and concern to the Real Estate Commission when she spoke to the Raleigh Regional Association of REALTORS® at their Owners, Managers, Brokers-in-Charge Meeting... Chief Deputy Legal Counsel Blackwell M. Brogden, Jr., was in Durham where he appeared before the Region V Meeting of the National Association of Real Estate Brokers.

The topic of Black's talk was issues of special interest and concern to real estate practitioners and the Real Estate Commission, which was also the topic when he addressed the High Point Association of REALTORS® and again when he was in Kill Devil Hills appearing before the Outer Banks Board of REALTORS®. Black

discussed the types and frequency of issues which come to the Commission for action, when he addressed the Hendersonville Board of REALTORS®. The most common complaints received by the Commission was the topic of his speech in Shelby

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REAL ESTATE COMMISSION PUBLICATIONS ORDER FORM

No. Copies
Requested

Residential Property Disclosure Statement and Guidelines
(Please limit request to one copy.)

Residential Square Footage Guidelines
(Please limit request to one copy per agent per firm.)

Questions and Answers on: Tenant Security Deposits

Questions and Answers on: Fair Housing

Questions and Answers on: Condos and Townhouses

Questions and Answers on: Who Agents Represent

*Questions and Answers on: Purchasing Coastal Real Estate
in North Carolina*

Questions and Answers on: Renting Residential Real Estate

()

Name

Phone Number (Including Area Code)

Street Address (NOT P.O. BOX)

City

State

Zip

Instructions

1. You may request single copies of these free publications by returning this Order Form or calling the Commission office (919) 875-3700, menu option 0.
2. To order multiple copies of these publications, please complete this Order Form and return it to the N.C. Real Estate Commission, P.O. Box 17100, Raleigh, N.C. 27619-7100. Attention: Publications.
3. Please allow two weeks for delivery.
4. Please understand that orders of more than 50 copies require special consideration.
5. The Residential Property Disclosure Statement and Guidelines may be duplicated as needed.

EXAM RESULTS

	Passed	Failed
March		
Brokers	74	44
Salespersons	425	244
April		
Brokers	58	50
Salespersons	451	197
May		
Brokers	53	85
Salespersons	394	304

Commission Staff Update

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at a meeting of the Cleveland County Board of REALTORS®. Black talked about issues of special interest and concern to the Commission when he addressed the Roxboro Chamber of Commerce. . .Sr. Auditor/Investigator **Gary R. Caddell** participated at a Property Management Seminar of the Jacksonville Board of REALTORS® where he spoke on the laws, rules and guidelines governing trust accounts in property management transactions. . . and Consumer Protection Officer **Joan H. Floyd** talked about legal issues

when she addressed the Sanford Board of REALTORS® and when she went to Waynesville to speak to the Haywood County Board of REALTORS®.



(Individuals and groups requesting a speaker from the Real Estate Commission are reminded that a "Request for Program Presenter" form is available from the Commission Office or by calling (919) 850-2757 for Document No. 510.)



Commission hosts ARELLO mid-year meeting

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[The Southern District includes the Virgin Islands and 13 states - North and South Carolina, Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, Tennessee, Texas, Virginia and West Virginia.]

Professional Development Workshops were conducted by the Administrative Committee, which is co-chaired by the Commission's Director of Administration, Mary Frances Whitley. Sessions included "Ethics for Regulators," presented by Educator Deborah Long, and "Using Technology to Assist Regulators and Licensees." The technology workshop was presented by former State Representative Dennis Reynolds and three staff members from the Colorado Division of Real Estate - Director Michael Gorham, Deputy Director Harry Reagan, and Jeff Foster, who is Chief of License and Education.

All nine Commission members from North Carolina serve on various ARELLO committees. Commission Executive Director Phillip T. Fisher chairs the subcommittee on Organizational Restructuring and Governance. Commission members and staff participated in discussions and programs affecting the real estate industry, including general sessions concerning an international data base of licensees and the New Fair Housing Program.

Other Commission staff members participating in the meeting - along with Director Fisher, Director of Administration Whitley, and Audits and Investigations Director Wood - were Director of Education and Licensing Larry A. Outlaw, Special Deputy Attorney General Thomas R. Miller (the Commission's Legal Counsel), and Assistant Director of Legal Services Miriam J. Baer. ■



For your information...

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

Although advance notice is not required in order for you to attend, you are encouraged, when possible, to please notify the Commission of your plans to attend a scheduled meeting at least ten business days prior to the meeting, in order to ensure adequate parking and seating arrangements.

Please mail your notice to the N.C. Real Estate Commission, P.O. Box 17100, Raleigh, NC 27619-7100, or call the Commission office (919) 875-3700.

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

Commission Calendar

Meeting Dates

September 6

October 10

November 15

December 13

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

Communicating with the Commission

Mail

1313 Navaho Drive
Post Office Box 17100
Raleigh, North Carolina 27619-7100

Fax (Area Code 919)

Admin 877-4217 Ed. & Lic. 877-4216
Audits/Inves. . . 877-4218 Legal Services . . 877-4220
Records 877-4221

Telephone

919/875-3700

You will receive more prompt service if you use this directory when calling the Commission. If the automated telephone attendant answers your call, you may access the section or division shown in the "Access Code" column by dialing on your touchtone phone the number shown parenthetically ().

Subject	Access Codes
• Application form requests	Receptionist (0)
• Real estate license renewals and record changes	Records Section (2)
• Complaints and legal matters (Consumer complaints/inquiries, pending cases/hearings)	Legal Services Division (3)
• Education matters	Education Section (4)
• Real estate license qualifications and examinations	Application Section (5)
• Real estate firm licensing and licensing by reinstatement or reciprocity	Licensing Section (6)
• Complaint investigations and audits	Audits and Investigations Division (8)
• Administration, personnel matters and accounting	Administration Division (9)
• Other matters	Receptionist (0)

Interactive Voice Response

To retrieve licensee data (license status, CE credits, broker-in-charge information, etc.) from the Interactive Voice Response (IVR) system, use a touchtone phone to dial (919) 850-2753.

Internet

"Visit" the Commission on-line at **Web Site:** www.ncrec.state.nc.us - your easy access to Commission information. The Internet brings to your computer screen licensing information including the License Law, Commission Rules, Trust Account Guidelines, State Fair Housing Act, general information and guides, sample forms and real estate licensing forms. Also, exam schedules and review dates as well as Commission publications including the *Bulletin* (and index of *Bulletin* articles), *CE Schedule*, Commission brochure and the complete *Question and Answer Series*.

E-Mail

• Executive exec@ncrec.state.nc.us
• Administration admin@ncrec.state.nc.us
• Education & Licensing educ@ncrec.state.nc.us
• Audits & Investigations ai@ncrec.state.nc.us
• Legal Services legal@ncrec.state.nc.us
• Records records@ncrec.state.nc.us

Fax-on-Demand

The following documents are available from the various Commission Divisions/Sections by dialing on your touchtone phone (919) 850-2757.

Document #	Administration/Records
200	Request to Activate Broker or Salesperson License, Notification of Salesperson Supervision, Notification of Change of Broker's Business Address
210	Broker-in-Charge Declaration
220	Request for Reissuance of Real Estate License Certificate and/or Renewal Pocket Card
	Education/Licensing
300	Continuing Education Course Schedule
310	Publications Order Form
320	License Examination Schedule and License Examination Review Schedule
330	Basic Trust Account Procedures Course Schedule and Registration Form
340	Order Form for License Examination Candidate Roster/Order Form for Register of New Licensees
350	Verification of Salesperson Experience
360	Request for Equivalent Education Credit
	Legal Services
400	Complaint Form
410	Criminal Conviction Reporting Form
420	Residential Property Disclosure Statement
430	Disclosure to Buyer from Seller's Agent or Subagent
	Other
500	2000 Commission Meeting Schedule
510	Request for Program Presenter

Here's a handy list of addresses for you to copy, clip and save for your ready-reference when communicating with the Commission.



Mail
1313 Navaho Drive
Post Office Box 17100
Raleigh, NC 27619-7100



Fax
(Area Code 919)
Admin 877-4217
Audits/Inves. . . 877-4218
Ed. & Lic. 877-4216
Legal Ser. 877-4220
Records 877-4221



Phone
(919) 850-2753



Web Site
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Legal Ser. legal@ncrec.state.nc.us
Records records@ncrec.state.nc.us

Commission elects new officers

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At its June meeting, the Real Estate Commission elected officers for the coming year. The Commission chose Sang J. Hamilton, Sr., of Winton, to be its Chairman and Lanny T. Wilson of Wilmington to be Vice-Chairman. Mr. Hamilton and Mr. Wilson will serve from August 1, 2000 - July 31, 2001.

Mr. Hamilton is a graduate of Roanoke Chowan Community College in Ahoskie and was certified in police science. He is a former member of the Ahoskie Auxiliary Police. Currently, Mr. Hamilton is a Production Engineer at Newport News Shipbuilding in Newport News, Virginia.

A life-member of the NAACP, Mr. Hamilton is also a member of the Eastern North Carolina Civic Group. He serves as president of Tri-County Credit Union. He has served on both the Election Laws Review Commission and the State Professional Educational Committee. Mr. Hamilton was recognized as one of the Outstanding Young Men of America in 1981, and received the Governor's Award for Involvement in Education in 1984.

Mr. Hamilton and his wife Shirley have two sons - Sang, Jr., and Deon - and two daughters - Shaneé and Janeé.

Vice-chairman Wilson graduated magna cum laude from East Carolina

University in Greenville and received his law degree from Wake Forest University School of Law. He is licensed to practice law in Virginia, where he worked as a law clerk and later was in private practice, and also in North Carolina - having worked as a law clerk for the Attorney General's Office prior to becoming General Counsel and Vice-President of Boney Wilson & Sons, Inc.

Mr. Wilson currently is involved in several family-owned businesses, serving in capacities that include President and Managing Partner.

Mr. Wilson is the son of Allan and Laura Wilson of Wilmington. ■

Brokers-in-Charge . . . Beware!

By Mary Frances Whitley, Director of Administration

It's that time of year again: time for the Commission to remind all of you brokers-in-charge of your responsibilities concerning the license status of the agents in your office!

As broker-in-charge, it is your duty to ensure that all licenses are **current** and **active**. (Please understand that your duty includes agents licensed as brokers as well as salespersons who are under your supervision.)

Therefore, you must personally check and verify that all agents in your office have paid their renewal fees for 2000 - 2001. You may check for current licensure by making sure that each agent's pocket card shows an expiration date of June 30, 2001. Any agent whose license has not been renewed is not permitted to engage in real estate brokerage activities. (Brokers-in-charge who renew after the June 30 deadline must complete a new *Broker-in-Charge*

Declaration form and an activation form for each broker and salesperson affiliated with the firm.) [An agent is also prohibited from brokerage activities if he or she failed to meet the continuing education requirements necessary for active status - even if the agent's license is current. Once again, it is your responsibility as broker-in-charge to verify CE credits.]

A license that expired this year may be reinstated prior to June 30, 2001, by paying \$35 (the renewal fee effective July 1) plus a \$5 late filing fee. The Commission requests that applicants for late-renewal please enclose their renewal application with their \$40 check. However, an applicant who does not have a renewal application may late-renew by writing his or her license number on the check and sending it with current address information.

Expired licenses also may be renewed via the Internet, by charging the renewal fee to the applicant's Visa or MasterCard. (Please remember that a \$2 "convenience fee" - to help defray budget impact of handling credit card transactions - will be charged to each licensee who renews by this method.) Internet license renewal is available at the Commission's website, www.ncrec.state.nc.us, by selecting the "Licensee Only" icon and following the computer prompts.

This Internet link allows you to update certain information (residence address, fax number, e-mail address) in your licensee record and to check continuing education credits. Please allow 24 - 48 hours for the Commission's records to reflect your renewal and any record changes.

You also may verify current/active status by calling the Commission's IVR at 919/850-2753. □

2000 Educators Conference held in Raleigh

Attendance sets record at the Commission's twenty-first annual Real Estate Educators Conference.

By Ginger L. Schultz-Lamitie, Licensing and Education Officer

The North Carolina Real Estate Commission held its 2000 Educators Conference on April 3 and 4. A record-setting number of nearly 200 attendees were in Raleigh for the annual conference. Prelicensing and continuing education instructors, school directors, sponsors, publishing company representatives, and guests were in attendance.

The Commission's Director of Education and Licensing, Larry A. Outlaw, opened the conference by welcoming attendees to the Holiday Inn - Research Triangle Park, where the conference was held. Anita R. Burt, Education and Examination Officer, followed Mr. Outlaw with a discussion of the new single licensing examination and examination procedures.

Ms. Burt introduced Tadas Dabsys, a representative of Psychological Services, Inc. (P.S.I.), which is the services provider for the Commission's new computerized examination program. Mr. Dabsys gave a demonstration of the program that will be used by candidates for real estate licensure who elect to take the licensing examination by computer.

Ginger L. Schultz-Lamitie, Licensing and Education Officer, followed the demonstration. Ms. Schultz-Lamitie addressed general education issues and revisions of licensing requirements. She also provided information about the qualification requirements for instructors, which will be effective October 1, 2000. Educators shared suggestions with Commission staff for the *New Instructor Seminar* - currently under development.

Mr. Outlaw then discussed other projects currently in production, which include the development of the new 60-hour broker prelicensing course, creation of the Commission's *North Carolina Real Estate Law and Practice Manual* (which will be used in the broker course), and formulation of the *Broker-In-Charge Course*.

Next on the agenda was Pamela R. Milligan, Continuing Education Officer, who presented continuing education rule revisions, noted developments in "distance education," and reported on the recommendations of the *Specialty Licensing Advisory Committee*. Ms. Milligan asked

attendees for comments on the proposed *Update Course* topics.

Miriam Baer, Assistant Director of Legal Services, shared a few "stranger than fiction" cases that have been handled by the Commission's Legal Services Division, and offered helpful tips for instructors to share with licensees.

During a buffet luncheon hosted by the Commission, the North Carolina Real Estate Educators' Association (NCREEA) held a chapter meeting and elected new officers. NCREEA presented awards of special recognition to educators who had made exceptional contributions to real estate education during the past year.

Patricia M. Sullivan, Legal Education Officer, was available throughout the conference to answer questions and discuss any concerns of the attendees. Also in attendance at the conference and assisting with registration were Penny S. Childress, Assistant to the Director of Education and Licensing, and Vivian A. Sellers, Education and Examination Specialist. □

2000 License Renewal Report

Renewal Applications Sent

Brokers and Salespersons	77,768
Firms	5,001
Renewed by Internet	

Renewed by June 30 Deadline

69,660	(90%)
4,879	(98%)
2,667	(3%)

Streamlining the Examination and Licensing Process

Offering the license examination by computer beginning in October 2000 will allow applicants to be examined and licensed in a much shorter period of time.

By Larry Outlaw, Director of Education and Licensing

The Real Estate Commission is very pleased to announce that persons who file real estate license applications on or after October 1, 2000, will have the option of taking the license examination *by computer* at examination sites in several cities. *Qualified applicants who choose the computerized examination option will be able to schedule and take the examination at a convenient location on a date of their choice, and will receive their examination results immediately upon completion of the examination.* The entire application, examination and licensing process will be much faster and more convenient for applicants choosing this option rather than the traditional "paper and pencil" examination procedure. The Commission expects that a vast majority of applicants will choose the computerized examination option.

In the past, the Commission has been restricted to the traditional procedure because of the expense factor; i.e., the cost of offering the examinations by computer greatly exceeded the \$30 license application fee - which for many years has been the lowest real estate license application fee in the country. Now, however, the General Assembly has authorized the Real Estate Commission to offer its license examination by computer and to have applicants pay the cost of taking the computerized examination directly to the testing company chosen by the Commission to administer such

examinations, which is Psychological Services, Inc. (PSI) of Glendale, California.

The Computerized Examination Option

Applicants for examination by computer will make application directly to the Commission and pay the \$30 application fee - just as applicants do now - but computer examination applicants can file at any time of the month, immediately upon completing their prelicensing courses. Applications will be reviewed on a first come-first served basis, and qualified applicants will be promptly sent a notice of examination eligibility, usually within a few days after an application is received. The Commission will electronically transmit information on eligible applicants to the testing company.

Examination Scheduling and Fee:

Immediately upon receipt of their notice of examination eligibility, applicants may call the testing company's toll-free 800 number to be scheduled for examination at one of six (6) test centers located in Asheville, Charlotte, Greenville, Raleigh, Wilmington and Winston-Salem. (Applicants in the northeastern part of the state may also choose to be tested in Norfolk.) The test

centers in Raleigh and Charlotte will be open daily and the others will be open as needed to meet demand. Saturday testing will be available at all sites.

At the time of scheduling, applicants will pay the **\$57 computerized examination fee** directly to the testing company (PSI). This may be done by credit card. PSI operates an automated voice response system 24 hours a day, 7 days a week, that may be used to schedule examinations. Customer service representatives will be available from 9:00 AM to 8:00 PM, Monday - Friday. If space is available, applicants may be able to take the examination as early as the day after calling PSI. In any event, candidates with the ability to be flexible about their testing date are guaranteed to be provided space at the site of their choice within seven days.

Taking the Examination:

Applicants will be able to take their examinations at private computer workstations using very "user-friendly" computer programs that are quite simple to operate, even for a computer novice. The tutorial program walks the applicant through the process of taking the examination on a step-by-step basis and allows the applicant to practice as long as desired

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Streamlining the Examination and Licensing Process

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before beginning the examination. The applicant only has to follow very clear instructions that appear on the monitor and use several color-coded keys on a keyboard to operate the programs. Test center personnel are also available to assist applicants. Applicants will have **four (4) hours** to complete the examination.

As soon as the applicant has completed the examination, the computer will immediately advise the applicant whether he/she passed or failed.

Getting Licensed:

Examination results will be electronically transmitted by PSI to the Commission, and passing applicants will have their licenses issued within a few days (unless there are character or other issues that must be resolved prior to license issuance).

Exam Review and Retesting:

Unsuccessful applicants will, immediately after learning their examination results, be offered the opportunity to review their examinations to see exactly what questions they missed before they leave the test center. Such applicants will be allowed one hour to perform this review.

Unsuccessful applicants will be provided by test center personnel with a score report that shows their performance by major subject area, and will also be given another license application form for use in reapplying for examination.

Such applicants must repeat the initial application process (except for providing course completion information) by reapplying to the Commission and paying the \$30 application fee before they can be issued another notice of examination eligibility. Applicants may then contact PSI to be rescheduled to take the computerized examination. The examination fee must also be paid each time the applicant is scheduled for examination.

The Paper and Pencil Examination Option

Applicants who are not in a big hurry to get their licenses or who prefer to take their examinations the old-fashioned way — by paper and pencil — may still choose this option by filing a license application with the Commission and paying the \$30 application fee. There is no additional fee for the paper and pencil examination, but there also will be no expedited examination and licensing process.

The paper and pencil examinations will be available only one Saturday each month, just as is presently the case, and it will be offered only in Raleigh and Charlotte. Also, those wanting the paper and pencil option will still have to meet a filing deadline that is about 30 days in advance of the monthly examination date, and will have to wait up to two weeks to receive their examination results and license if they pass the examination.

The Examination

Although there will continue to be separate salesperson and broker licenses, there will be only a single real estate license examination for persons applying for licensure after October 1, 2000 because the requirement for a separate broker examination for applicants who have a North Carolina salesperson license will be eliminated effective October 1, 2000. "The" single examination will be only slightly different from the current salesperson examination and will continue to be drawn from the Commission's own question bank developed specifically for use in North Carolina. ■

In Memoriam

With deep regret the Real Estate Commission announces the death of C.E. Phillips. Mr. Phillips had the distinction of being the recipient of the first license ever issued by the Commission when it was founded in 1957.

The Commission extends deepest sympathy to Mr. Phillips' family. ■

Thank You!

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

2000-2001 *Real Estate Update* Course . . . features Fair Housing issues

The *2000-2001 Update* course, which became available July 1, 2000, is expected to generate substantial discussion and participation. Plan to attend an *Update* course soon!

By Pamela R. Milligan, Continuing Education Officer

The mandatory *Real Estate Update* continuing education course for the 2000-2001 license year has as its primary focus a study and review of federal and state fair housing laws. Other topics include "The Vacation Rental Act Overview," "The Planned Community Act Overview," and "Manufactured and Modular Homes."

Fair Housing

It is the intent of fair housing laws to enable all individuals to make personal decisions on the selection of a family home - without interference or discrimination of any kind. Because real estate licensees are intricately involved in sales and rental housing transactions, and because we live in an increasing diverse society, the Commission has determined that it is both timely and appropriate for the focus of the *2000-2001 Real Estate Update* course to be on fair housing.

The significant role played by real estate licensees in real estate transactions demands that agents have a thorough understanding of the requirements of fair housing laws and any related statutes. Therefore, the new course presents information via case studies which licensees will analyze and discuss.

During these discussions, licensees will examine various fair housing violations and study the case resolutions. Update instructors will also present information on occupancy standards and requirements for new buildings, as well as fair housing investigatory and enforcement procedures. A little over two hours of the four-hour course are devoted to fair housing, with the remaining time equally divided between the other three topics.

Vacation Rental Act

The new *Update* course reviews the background and purpose of the Vacation Rental Act - which went into effect January 1, 2000 and applies to vacation rental transactions commenced after that date. The course also examines the application and exemptions of the Act, and it explains some of the Act's key points, such as landlord and tenant duties and the handling and accounting of funds.

Planned Community Act

The Planned Community Act became effective January 1, 1999. It was enacted in response to the increasing popularity of planned

communities and the subsequent rise in the number of legal problems associated with common interest developments.

The Planned Community Act significantly expands the authority of homeowners' associations in planned communities, giving them powers which might not be available under the traditional subdivision form of development.

The portion of the *Update* course which deals with the Planned Community Act summarizes the Act's purpose and general provisions. Also, the course addresses the responsibilities of real estate agents with regard to buyer awareness of restrictive covenants.

Manufactured and Modular Homes

Finally, this year's *Update* course reviews the current information on manufactured and modular homes. Specifically, licensees will learn the differences between manufactured and modular construction, determine whether each structure is real or personal property, understand financing considerations with regard to manufactured and modular homes, and become aware of restrictive covenant concerns with manufactured and modular structures. □

2000 Trust Account Caravan meets *and beats* expectations!

As promised, the Trust Account Caravan this spring was bigger than ever . . . but it was even *better* than anticipated.

By Gary R. Caddell, Sr. Auditor/Investigator

The Real Estate Commission is pleased to report that a total of 505 course attendees participated in the *Spring 2000 Trust Account Caravan* — making it the best-attended *Caravan* the Commission has ever conducted.

An annual spring event since 1982, the *Caravan* takes trust account courses to cities across the state. The Commission instituted the *Caravan* as a means of providing its courses to people who cannot get to Raleigh for any of the regular sessions, which are held monthly.

This year the *Caravan* added two cities to its schedule — which included stops in Asheville, Banner Elk, Charlotte, Fayetteville, Greensboro, Kill Devil Hills and Wilmington. Nine "Basic Trust Account Procedures" courses and four "Trust Account Procedures for Resort Property Managers" courses were offered, for a total of five more class sessions than were offered during last year's *Caravan*.

The size of the *Caravan* is not the only thing that changed: The *Spring 2000 Caravan* introduced completely revised courses! The "Trust Account

Procedures for Resort Property Managers" course still covers matters specific to resort property management, such as distribution of advanced rent payments and sales taxes, but the revised course also includes extensive discussion on the Vacation Rental Act and the effect this new law has on how resort property managers handle and account for trust funds. It is a very worthwhile course for everyone involved in property management in North Carolina's resort areas.

If you are a broker-in-charge or a trust account bookkeeper, the Commission highly recommends that you attend the "Basic Trust Account Procedures" course, which also has been revised. In addition to providing more instruction in the preparation of trust account ledgers, journals and related records for the proper maintenance and accounting of the funds of others, the course addresses recent changes in the Real Estate License Law governing trust account records. [Note: The revised course is currently being offered at the monthly sessions in Raleigh. To register, please complete the registration form on page 2 of this *Bulletin*.]

Because of the revisions, the Commission strongly recommends that you take the basic course prior to taking the "Trust Account Procedures for Resort Property Managers" course, which is taught only during the *Spring Caravan*. Each course counts as four hours of elective continuing education credit.

Even with the expanded schedule, Commission staff found it hard to meet the incredible demand for these courses; therefore, the Commission is adding even more classes to the schedule for next spring. The *2001 Trust Account Caravan* will return to the same cities as the *2000 Caravan*, but the schedule will include additional "Basic Trust Account Procedures" courses in Asheville, Wilmington and Fayetteville. [See the registration form on page 12 for dates and locations.]

Although we hope that the *2001 Caravan* will have enough room to accommodate everyone who wishes to attend, we remind you that class-size is limited. Please understand that many of the classes in the *2000 Caravan* were sold out, so be sure to register early for 2001. ■

Continuing Education Reminder

The Commission reminds you that continuing education credit is awarded for completion of its trust account courses - "Basic Trust Account Procedures" and "Trust Account Procedures for Resort Property Managers." Each course counts as four hours of elective continuing education credit. The "Trust Account Procedures for Resort Property Managers" course is available only during the *Spring Trust Account Caravan*, but the "Basic Trust Account Procedures" course is also available each month in Raleigh at the McKimmon Center. [Please see article on this page and refer to the registration forms on pages 2 and 12.]

2001 Trust Account Caravan Registration Form

Four (4) hours continuing education elective credit will be awarded for completion of each course. Courses are intended for brokers and trust account bookkeepers. Salespersons will be admitted on a space available basis.

Asheville - Renaissance Asheville Hotel 1 Thomas Wolfe Plaza

- ☐ Basic Trust Account Procedures Course
March 27, 2001 9:00 am - 1:00 pm
- ☐ Basic Trust Account Procedures Course
March 28, 2001 9:00 am - 1:00 pm
- ☐ Trust Account Procedures for Resort Prop. Mgrs.
March 29, 2001 9:00 am - 1:00 pm

Banner Elk - Holiday Inn-Banner Elk NC Highway 184

- ☐ Basic Trust Account Procedures Course
April 3, 2001 9:00 am - 1:00 pm
- ☐ Trust Account Procedures for Resort Prop. Mgrs.
April 4, 2001 9:00 am - 1:00 pm

Charlotte - Hilton Charlotte University Place 8629 J.M. Keynes Dr.

- ☐ Basic Trust Account Procedures Course
April 19, 2001 9:00 am - 1:00 pm
- ☐ Basic Trust Account Procedures Course
April 20, 2001 9:00 am - 1:00 pm

Fayetteville - Holiday Inn Bordeaux 1707 Owen Dr.

- ☐ Basic Trust Account Procedures Course
April 9, 2001 1:00 pm - 5:00 pm
- ☐ Basic Trust Account Procedures Course
April 10, 2001 9:00 am - 1:00 pm

Greensboro - Ramada Inn-Greensboro Airport 7067 Albert Pick Rd.

- ☐ Basic Trust Account Procedures Course
April 17, 2001 9:00 am - 1:00 pm
- ☐ Basic Trust Account Procedures Course
April 18, 2001 9:00 am - 1:00 pm

Kill Devil Hills - Ramada Inn Outer Banks Resort & Conference Center 1701 South Virginia Dare Trail

- ☐ Basic Trust Account Procedures Course
May 1, 2001 9:00 am - 1:00 pm
- ☐ Trust Account Procedures for Resort Prop. Mgrs.
May 2, 2001 9:00 am - 1:00 pm

Wilmington - Coast Line Convention Center 501 Nutt Street

- ☐ Basic Trust Account Procedures Course
April 23, 2001 1:00 pm - 5:00 pm
- ☐ Basic Trust Account Procedures Course
April 24, 2001 9:00 am - 1:00 pm
- ☐ Trust Account Procedures for Resort Prop. Mgrs.
April 25, 2001 9:00 am - 1:00 pm

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 10 working days prior to date of preferred session. Each session is limited to 40 participants, scheduled according to date received. Walk-ins will be accepted on a space available basis only.

Name _____ Phone _____
(Daytime)

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

- ☐ Broker (License No. _____)
- ☐ Salesperson (License No. _____)
- ☐ Bookkeeper

Mail to: NC REAL ESTATE COMMISSION
Attention: Audits and Investigations Division
P. O. Box 17100
Raleigh, NC 27619-7100
Enclose \$35 tuition fee



STATE OF NORTH CAROLINA RESIDENTIAL PROPERTY DISCLOSURE STATEMENT

Instructions to Property Owners

1. North Carolina General Statute 47E requires owners of residential real estate (single-family homes and buildings with up to four dwelling units) to furnish purchasers a property disclosure statement. This form is the only one approved for this purpose. A disclosure statement must be furnished in connection with the sale, exchange, option and sale under a lease with option to purchase (unless the tenant is already occupying or intends to occupy the dwelling). A disclosure statement is not required for some transactions, including the first sale of a dwelling which has never been inhabited and transactions of residential property made pursuant to a lease with option to purchase where the lessee occupies or intends to occupy the dwelling. For a complete list of exemptions, see N.C.G.S. 47E-2.
2. You must check ☐ one of the boxes for each of the 20 questions on the reverse side of this form.
 - a. If you check "Yes" for any question, you must describe the problem or attach a report from an engineer, contractor, pest control operator or other expert or public agency describing it. If you attach a report, you will not be liable for any inaccurate or incomplete information contained in it so long as you were not grossly negligent in obtaining or transmitting the information.
 - b. If you check "No", you are stating that you have no actual knowledge of any problem. If you check "No" and you know there is a problem, you may be liable for making an intentional misstatement.
 - c. If you check "No Representation", you have no duty to disclose the conditions or characteristics of the property, even if you should have known of them.
- * If you check "Yes" or "No" and something happens to the property to make your Statement incorrect or inaccurate (for example, the roof begins to leak), you must promptly give the purchaser a corrected Statement or correct the problem.
3. If you are assisted in the sale of your property by a licensed real estate broker or salesperson, you are still responsible for completing and delivering the Statement to the purchasers; and the broker or salesperson must disclose any material facts about your property which they know or reasonably should know, regardless of your responses on the Statement.
4. You must give the completed Statement to the purchaser no later than the time the purchaser makes an offer to purchase your property. If you do not, the purchaser can, under certain conditions, cancel any resulting contract (See "Note to Purchasers" below). You should give the purchaser a copy of the Statement containing your signature and keep a copy signed by the purchaser for your records.

Note to Purchasers

If the owner does not give you a Residential Property Disclosure Statement by the time you make your offer to purchase the property, you may under certain conditions cancel any resulting contract and be entitled to a refund of any deposit monies you may have paid. To cancel the contract, you must personally deliver or mail written notice of your decision to cancel to the owner or the owner's agent within three calendar days following your receipt of the Statement, or three calendar days following the date of the contract, whichever occurs first. However, in no event does the Disclosure Act permit you to cancel a contract after settlement of the transaction or (in the case of a sale or exchange) after you have occupied the property, whichever occurs first.

5. In the space below, type or print in ink the address of the property (sufficient to identify it) and your name. Then sign and date.

Property Address: _____

Owner's Name(s): _____

Owner(s) acknowledge having examined this Statement before signing and that all information is true and correct as of the date signed.

Owner Signature: _____ Date _____

Owner Signature: _____ Date _____

Purchaser(s) acknowledge receipt of a copy of this disclosure statement; that they have examined it before signing; that they understand that this is not a warranty by owner or owner's agent; that it is not a substitute for any inspections they may wish to obtain; and that the representations are made by the owner and not the owner's agent(s) or subagent(s). Purchaser(s) are encouraged to obtain their own inspection from a licensed home inspector or other professional

Purchaser Signature: _____ Date _____

Purchaser Signature: _____ Date _____

[Note: In this form, "property" refers only to dwelling unit(s) and not sheds, detached garages or other buildings.]

Regarding the property identified above, do you know of any problem (malfunction or defect) with any of the following:

	Yes*	No	Representation
1. FOUNDATION, SLAB, FIREPLACES/CHIMNEYS, FLOORS, WINDOWS (INCLUDING STORM WINDOWS AND SCREENS), DOORS, CEILINGS, INTERIOR AND EXTERIOR WALLS, ATTACHED GARAGE, PATIO, DECK OR OTHER STRUCTURAL COMPONENTS including any modifications to them?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
a. Siding is <input type="checkbox"/> Masonry <input type="checkbox"/> Wood <input type="checkbox"/> Composition/Hardboard <input type="checkbox"/> Vinyl <input type="checkbox"/> Synthetic Stucco <input type="checkbox"/> Other			<input type="checkbox"/>
b. Approximate age of structure?			<input type="checkbox"/>
2. ROOF (leakage or other problem)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
a. Approximate age of roof covering?			<input type="checkbox"/>
3. WATER SEEPAGE, LEAKAGE, DAMPNES OR STANDING WATER in the basement, crawl space or slab?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4. ELECTRICAL SYSTEM (outlets, wiring, panel, switches, fixtures, etc.)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5. PLUMBING SYSTEM (pipes, fixtures, water heater, etc.)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6. HEATING AND/OR AIR CONDITIONING?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
a. Heat Source is: <input type="checkbox"/> Furnace <input type="checkbox"/> Heat Pump <input type="checkbox"/> Baseboard <input type="checkbox"/> Other			<input type="checkbox"/>
b. Cooling Source is: <input type="checkbox"/> Central Forced Air <input type="checkbox"/> Wall/Window Unit(s) <input type="checkbox"/> Other			<input type="checkbox"/>
c. Fuel Source is: <input type="checkbox"/> Electricity <input type="checkbox"/> Natural Gas <input type="checkbox"/> Propane <input type="checkbox"/> Oil <input type="checkbox"/> Other			<input type="checkbox"/>
7. WATER SUPPLY (including water quality, quantity and water pressure)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
a. Water supply is: <input type="checkbox"/> City/County <input type="checkbox"/> Community System <input type="checkbox"/> Private Well <input type="checkbox"/> Other			<input type="checkbox"/>
b. Water pipes are: <input type="checkbox"/> Copper <input type="checkbox"/> Galvanized <input type="checkbox"/> Plastic <input type="checkbox"/> Other <input type="checkbox"/> Unknown			<input type="checkbox"/>
8. SEWER AND/OR SEPTIC SYSTEM?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
a. Sewage disposal system is: <input type="checkbox"/> Septic Tank <input type="checkbox"/> Septic Tank with Pump <input type="checkbox"/> Community System <input type="checkbox"/> Connected to City/County System <input type="checkbox"/> City/County System available <input type="checkbox"/> Straight pipe (wastewater does not go into a septic or other sewer system [note: use of this type of system violates state law]) <input type="checkbox"/> Other			<input type="checkbox"/>
9. BUILT-IN APPLIANCES (RANGE/OVEN, ATTACHED MICROWAVE, HOOD/FAN, DISHWASHER, DISPOSAL, etc)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Also regarding the property identified above, including the lot, other improvements, and fixtures located thereon, do you know of any:

10. PROBLEMS WITH PRESENT INFESTATION, OR DAMAGE FROM PAST INFESTATION OF WOOD DESTROYING INSECTS OR ORGANISMS which has not been repaired?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
11. PROBLEMS WITH DRAINAGE, GRADING OR SOIL STABILITY OF LOT?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
12. OTHER SYSTEMS AND FIXTURES: CENTRAL VACUUM, POOL, HOT TUB, SPA, ATTIC FAN, EXHAUST FAN, CEILING FAN, SUMP PUMP, IRRIGATION SYSTEM, TV CABLE WIRING OR SATELLITE DISH, OR OTHER SYSTEMS?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
13. ROOM ADDITIONS OR OTHER STRUCTURAL CHANGES ?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
14. ENVIRONMENTAL HAZARDS (substances, materials or products) including asbestos, formaldehyde, radon gas, methane gas, lead-based paint, underground storage tank, or other hazardous or toxic material (whether buried or covered), contaminated soil or water, or other environmental contamination?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
15. COMMERCIAL OR INDUSTRIAL NUISANCES (noise, odor, smoke, etc.) affecting the property?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
16. VIOLATIONS OF BUILDING CODES, ZONING ORDINANCES, RESTRICTIVE COVENANTS OR OTHER LAND-USE RESTRICTIONS ?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
17. UTILITY OR OTHER EASEMENTS, SHARED DRIVEWAYS, PARTY WALLS OR ENCROACHMENTS FROM OR ON ADJACENT PROPERTY?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
18. LAWSUITS, FORECLOSURES, BANKRUPTCY, TENANCIES, JUDGMENTS, TAX LIENS, PROPOSED ASSESSMENTS, MECHANICS' LIENS, MATERIALMENS' LIENS, OR NOTICE FROM ANY GOVERNMENTAL AGENCY that could affect title to the property?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
19. OWNERS' ASSOCIATION OR "COMMON AREA" EXPENSES OR ASSESSMENTS?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
20. FLOOD HAZARD or that the property is in a FEDERALLY-DESIGNATED FLOOD PLAIN?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

* If you answered "Yes" to any of the above questions, please explain (Attach additional sheets, if necessary): _____

"Straight talk" on "straight-piping"

(continued from page 1)

that are harmful to humans as well as animals. Because of this potential for health risks, North Carolina law requires that all wastewater (grey or black) receive primary treatment by means of a septic tank or a sewage treatment plant.

State studies Wastewater Problems

In 1995, Governor Hunt created the Year of the Mountains Commission to assess issues affecting North Carolina's western mountain communities. The Commission's recommendations included a request for the state Department of Environment and Natural Resources (DENR) to address the issue of "straight-piping" and to aggressively pursue a state-wide program to eliminate the practice. Although the problem seems to be most prominent in the mountainous areas, it also is prevalent in low-income rural communities across the state.

With strong urging from Governor Hunt, the North Carolina General Assembly in 1996 directed DENR to establish the Wastewater Discharge Elimination (WaDE) Program to identify and eliminate straight-pipes and failing septic systems that spill into the state's waterways.

How WaDE Works

The legislature provided an annual appropriation of \$117,500 to DENR to carry out WaDE - which is the first such program in the nation. Placed under the Department of Environment and Natural Resources and headquartered in Asheville, the WaDE Program conducts door-to-door surveys to locate straight-pipes, seeks funding assistance for low income households and educates the public about the straight-pipe situation.

There are three focal points for WaDE:

- △ the identification and elimination of straight-pipes and failing septic systems that flow into streams proposed to be used or currently used for public water supplies;
- △ an amnesty period during which violations of state rules and laws regarding wastewater discharge identified could be reported and addressed without incurring legal consequences; and
- △ a public education effort regarding the amnesty program.

It is estimated that close to 200,000 households in North Carolina are currently straight-piping wastewater on a daily basis.

WaDE's current "Self-reporting Policy"

Although the amnesty period has ended, the WaDE program now follows a self-reporting policy drafted by DENR. Similar to an amnesty program, the policy allows home and business owners to report their own wastewater discharge violations without fear of legal consequences - as long as the violators continue to work towards getting a permit and installing a proper system. Owners who report themselves will be referred to the local Environmental Health Section of their county health department for applications for improvement permits. WaDE encourages county Environmental Health Sections to waive repair

permit fees in these cases, provides health departments with a list of funding sources, and helps coordinate community-wide initiatives to reduce the cost of repairs. Grants and low-interest loans are available through governmental agencies and other funding sources.

Legislature considers increasing WaDE's Budget

In 1999, the Governor asked that the budget for WaDE be increased, and a House Bill currently being studied in committee addresses the issue. If passed, the bill will appropriate 2.1 million dollars for three years to provide grants and loan programs to eliminate straight-piping, make site repairs, and provide additional staff positions in the Asheville office of DENR. The bill also requests an extension of the amnesty policy for self-reporting violators.

Wastewater Problem in Perspective

It is estimated that close to 200,000 households in North Carolina are currently straight-piping wastewater on a daily basis. A conservative estimate of 100 gallons of wastewater per day for an average household would mean that 2,000,000 gallons of wastewater are being discharged into streams and onto land across the state each day! Many of these homes are sold without the buyer or the lending institution having knowledge that they are investing in an illegal system.

Madison County has taken the lead in eliminating straight-piping by surveying every building in the county not connected to a municipal system. By September, 1999, 945 noncompliant systems had been identified.

Most people identified in Madison County knew they had problems but had no idea how to correct them. Some people thought they were on septic

The "Top 10 Complaints" Received by the Real Estate Commission

By Pamela V. Millward, Associate Legal Counsel

Every year, the North Carolina Real Estate Commission investigates approximately 1,000 complaints filed against its licensees. Some cases are closed without action because the Commission determines that the complaints are without merit. Many are settled through Consent Orders signed by licensees who agree to accept the disciplinary action imposed by the Commission. Others result in a hearing before the Commission.

Each time a complaint is filed against an agent, the agent's real estate license and reputation are at stake. It is hoped that a discussion of the most common causes of complaints received by the Commission will help you as a real estate agent avoid making the mistakes that can lead to Commission investigations and possible disciplinary action.

1. Misrepresentation

The License Law requires agents to refrain from misrepresenting material facts - either affirmatively or by willful or negligent omission. What is a material fact? Generally speaking, it is any information which the parties need to know in order to make an informed decision (i.e., which might affect the parties' decision to purchase or sell, or which has the potential to put the contract or interests of the parties at risk).

Material facts fall into three broad categories: facts *about* the property (leaky roof, synthetic stucco siding, presence of asbestos, etc.); facts *relating* to the property, including zoning changes and plans for a major highway nearby; and facts which relate to a principal's ability to complete the transaction, such as a bank foreclosure. Typical complaints of misrepresentation

involve material facts that include hidden defects, changes in land use, whether a piece of land "percs," square footage and lot-size errors.

A recent complaint came from a condominium-buyer who discovered after closing that the condominium was smaller than she had been led to believe. In fact, the unit measured 200 square feet LESS than the figures in the listing agreement! The listing agent admitted to having used tax records to obtain the square footage.

To avoid this type of complaint, disciplinary action by the Commission and the potential for civil liability, *do your homework!* Don't rely on the work of others. Measure each piece of property yourself.

Be aware that your duty to properly disclose includes oral representations and representations made in print, so check your MLS listings and advertisements for accuracy. Also be aware of your duty to disclose material facts **to all parties involved in the transaction**, not just to the party you represent.

2. Mishandling Trust Accounts

The broker-in-charge is responsible for the proper handling and accounting of trust account monies. Although he or she may delegate duties to another broker or bookkeeper, the broker-in-charge retains the ultimate responsibility for the handling of the monies entrusted to the firm and can incur liability for any of the bookkeeper's errors or dishonest actions. Precautions against possible problems include bonding the bookkeeper.

As broker-in-charge, you should reconcile your trust account records to

your bank statements on a monthly basis, keep running balances and establish a set of controls and use them. If you assign these functions to a bookkeeper, be sure to check the bookkeeper's work. The failure to properly supervise a bookkeeper can lead to disaster.

It is interesting to note that most Commission complaints in the area of trust account violations come from concerned employees (or former employees).

3. Disputed

Earnest Money Deposits

Under Commission rules, in the event of a dispute, the earnest money must be maintained in a trust account until the disputing parties agree in writing as to the disposition of the funds OR until a court order or judgment determines their disposition. These rules apply even if it is clear to you as a real estate agent that one party has no lawful claim to the funds.

For instance, suppose you are the listing agent for the sale of a home and your seller has a binding contract with a buyer who has a financing contingency in the contract. Although the buyer makes a good faith effort to secure a loan, she cannot qualify. When she asks for a termination of the contract, she also requests the return of her earnest money, but your client refuses her request. Even though under the contract the buyer may be entitled to the earnest money, Commission rules require that you hold the earnest money in escrow until the parties agree or until they get a judgment as to its disposition.

An important distinction needs to be made between earnest money deposits and tenant security deposits held by

The "Top 10 Complaints" received by the Real Estate Commission

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property management companies. Because security deposits are governed by the Tenant Security Deposit Act, disputed tenant security deposits are handled in an entirely different manner than earnest monies. When a dispute arises between a tenant and landlord, the property management company should follow the instructions of its client as to the disposition of the tenant's security deposit.

As a property manager, you are an agent for the landlord. You are bound by your duty to be loyal and obedient to your principal, so do as your client requests. Do account to the tenant for the money within 30 days as required by the Tenant Security Deposit Act. If a tenant takes issue with the handling of the deposit, the tenant can take the landlord to small claims court.

4. Drafting Legal Instruments

Commission rules prohibit real estate agents from drafting contracts, contract provisions, or any other legal document. You can assist your clients in filling out the standard forms recommended by the N.C. Bar Association/Association of REALTORS®, but avoid inserting complex contingencies. If your clients' needs go beyond the standard forms, it is important that you refer them to an attorney and thus protect your client — and your real estate license.

5. Disputes over Contract Acceptance

The Statute of Frauds requires that all contracts for the sale of land be in writing to be enforceable. Furthermore, all negotiated terms must be in writing, any changes must be initialed by the parties, and the contract must be signed by all parties.

A typical complaint occurs when agents negotiate for their clients orally; e.g., an oral counteroffer is relayed to

the buyers and they agree to the new terms; their agent calls and informs the sellers' agent, who tells the sellers. The sellers think that they have a binding contract, *but they don't*. While the oral acceptance is an indication that a contract will soon be formed, it is not itself legally binding.

To avoid creating conflict between the parties and to ensure that your clients have an enforceable contract, don't tell them that they have a contract until you have the contract signed by all parties.

6. Loan Fraud

Allegations of loan fraud usually result from an agent trying to help a buyer who is really not qualified for a loan. The agent wants to help the deal close, so he lends the buyer some closing money or pays some expenses for the buyer without telling the lender. Or perhaps the seller is asked to "give" some money to the buyer without disclosing it on the settlement statement, since the lender has refused to allow any seller financing. Sometimes, even mortgage company representatives ask parties to pass money as a "gift" to the buyer outside of closing.

The rule of thumb is that ANY monies which pass between the parties and their agents MUST be disclosed on the settlement statement (even "extras" paid for by the buyer to the builder over-and-above the contract price), because the monies change the income-to-debt ratio used by the bank to determine the buyer's credit-worthiness. If you fail to disclose information to the lender, you are committing loan fraud, which is a federal offense.

When in doubt as to whether a loan is being handled correctly, contact an attorney or the Real Estate Commission.

7. Conflict of Interest

The License Law prohibits agents in a transaction from acting for more than one party without the knowledge of all parties. Complaints in this area usually deal with dual agency, seller subagency, and special relationships between the parties.

With dual agency, there is an inherent conflict of interest because the agent is representing both the buyer and seller, who have different and competing interests. To avoid this type of complaint, you as a dual agent must be sure to disclose the duties that you owe to each party. Thoroughly review the agency forms and explain how your responsibilities as a dual agent differ from those in an exclusive agency arrangement. Finally, be sure to have the parties sign the *Dual Agency Contract* or *Dual Agency Addendum*, whichever is appropriate.

As a seller's subagent, keep in mind that although you are working with the buyer, your primary obligation is to the seller. Don't advise the buyer on strategy or advocate on his or her behalf.

Finally, if you have a special relationship with any party to the transaction (e.g., you are a relative of the buyer), disclose it to all parties to avoid the appearance of impropriety.

8. Discrimination

Recently the Commission received a complaint alleging discrimination at an open house. The matter ultimately was resolved, but not before an investigation by both the Real Estate Commission and the North Carolina Human Relations Commission.

The Fair Housing Act makes it unlawful to discriminate in the sale or rental of dwellings of four or more units on the basis of race, color, religion, sex,

"Top 10 Complaints"

(continued from page 17)

national origin, familial status (the presence of children under 18 years old) or handicapping conditions (including AIDS). Therefore, if you discover that the landlord, tenant, seller, or buyer that you represent intends to discriminate on the basis of any of these protected classes, you must immediately terminate your agency agreement with that party, or risk violating the law and losing your license to sell real estate in this state.

9. Records Violations

When the Commission receives a complaint, the first thing Commission staff requests is a copy of the firm's records, including bank statements, canceled checks referencing a ledger sheet, deposit tickets, separate ledgers, general journal or check stubs identify-

ing each transaction, copies of contracts, leases, management agreements, closing statements, property management statements, and other relevant documents.

Commission rules require that agents retain records for three years; however, because complaints filed after the three-year limit for record retention are investigated, the Commission recommends that agents retain their records for longer than three years. Be aware that your documents indicating proper record-keeping can be used in your defense in the event that a complaint is filed against you.

10. Lack of Communication

Many complaints to the Commission come from disgruntled clients. Com-

plainants state that their agents will not return their phone calls or keep them updated on their transactions.

Try to avoid this situation by communicating with your clients. Return their phone calls. Keep them informed about what you are doing for them and how the transaction is going. An informed client is less likely to complain to the Commission.

In Conclusion

Space allows for only a brief overview of the top 10 areas of complaint, which were not listed in order of frequency in which the Commission receives them. If you have questions about these 10 or others of concern, please contact the Commission's Legal Services Division. □

"Straight talk" on "straight-piping"

(continued from page 15)

systems but later learned they had purchased property with straight-piping. By the end of this year, Madison County hopes to have replaced 130 straight-pipe systems.

Commission receives Straight-Piping Complaints

The Real Estate Commission periodically investigates complaints which allege that licensees have falsely advertised properties as being on either city sewer or private septic systems when, in fact, wastewater from the residence has been "straight-piped." In one such complaint, the complainants observed that a hole in their yard contained the water that had been used to wash their dishes after breakfast that morning.

How did the complainants know that it was the morning dishwater? Floating on top of the gray water

were the leftover "Cheerios"® which the complainants had poured down the kitchen drain! Although the local health department recommends using a dye test, they confirmed with the Commission's investigator for the case that the "Cheerio test" would work just as well!

Commission revises Residential Property Disclosure Statement

Effective July 1, 2000, the Real Estate Commission revised its *Residential Property Disclosure Statement* to include a space for owners to indicate whether sewage is disposed of through a straight-pipe system. The *Statement* includes a notation putting both buyers and sellers on notice that the use of such a system is in violation of state law. [The revised *Residential Property Disclosure Statement* is printed on

pages 13 and 14 of this Bulletin. You may request a single copy of the *Statement* by completing the order form on page 3.]

Commission Reminder

The Real Estate Commission reminds licensees that the existence of a straight-pipe system is a material fact which must be disclosed. The discovery of any straight-pipe situation should be reported immediately to all the parties in the transaction and should be resolved prior to closing. As a real estate agent, you should be aware of the potential for straight-piping situations and advise your clients accordingly.

For further information about straight pipes, failing septic systems and initiatives of the WaDE program, call 1-800-9-SEWAGE (1-800-973-9243) in Raleigh. □

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.

MANLY A. BOYKIN (Fayetteville) - By Consent, the Commission suspended Mr. Boykin's broker license for thirty days effective April 1, 2000. The Commission then stayed the suspension for a probationary term of thirty days. The Commission found that in late November 1996, Mr. Boykin discovered that a permit to repair a septic system had been issued but could not tell from available records if the repair had been made. Mr. Boykin made no further inquiries. The Commission further found that Mr. Boykin's buyer-clients learned after closing that the system had been failing since 1993, and they had to repair the system at a total cost of \$1,561. The Commission noted that Mr. Boykin reimbursed the buyers in full for the cost of the repair.

JENNIFER J. FROST (Kitty Hawk) - The Commission accepted the permanent voluntary surrender of Ms. Frost's broker license effective May 22, 2000. The Commission dismissed without prejudice charges that Ms. Frost had engaged in conduct that violated provisions of the Real Estate License Law. Ms. Frost did not admit any misconduct.

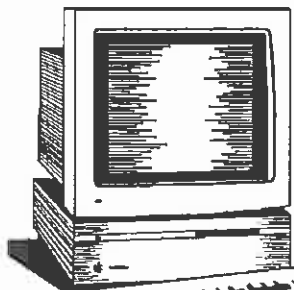
EDWARD M. GALLAGHER (Fayetteville) - By Consent, the Commission revoked Mr. Gallagher's broker license effective March 23, 2000. The Commission found that Mr. Gallagher could not account for rents and tenant security deposits which he received while acting as broker-in-charge of an office. The Commission further found that Mr. Gallagher was not licensed as

a general contractor when he entered into a construction contract which required a general contractor's license.

GALLAGHER PROPERTIES, INC. (Fayetteville) - By Consent, the Commission revoked Gallagher Properties, Inc.'s broker license effective March 23, 2000. The Commission found that Gallagher Properties, Inc. could not account for rents and tenant security deposits which it received.

JOSEPH D. GRAHAM (Jacksonville) - The Commission accepted the voluntary surrender of Mr. Graham's salesperson license for two years effective April 1, 2000. The Commission dismissed without prejudice charges that Mr. Graham had violated the Real Estate License Law and the rules of the Commission.

"Visit" the Commission on-line!



www.ncrec.state.nc.us

BILLY R. HENDERSON (Wilmington) - The Commission accepted the permanent voluntary surrender of Mr. Henderson's broker license effective March 22, 2000. The Commission dismissed without prejudice charges that Mr. Henderson violated provisions of the Real Estate License Law. Mr. Henderson did not admit any misconduct.

ELIZABETH HOPEWELL JAMES (Hampstead) - By Consent, the Commission revoked Ms. James' broker license effective May 18, 2000. The Commission found that Ms. James' trust account liabilities exceeded the money on deposit in the account. The

Commission further found that Ms. James failed to maintain, retain, and produce trust account records in accordance with the License Law and Commission rules.

GRANVILLE R. JONES (Durham) - The Commission accepted the voluntary surrender of Mr. Jones' salesperson license for 30 days effective March 27, 2000. The Commission dismissed without prejudice charges that Mr. Jones had violated a provision of the Real Estate License Law. Mr. Jones neither admitted nor denied any misconduct.

DAVID T. JUNGERS (Chapel Hill) - By Consent, the Commission revoked Mr. Jungers' broker license effective April 14, 2000. The Commission found that while acting as a broker and rental agent for owners of certain residential rental properties during 1997 and 1998, Mr. Jungers had collected rents and deposit monies in an amount exceeding \$10,000, but that he had failed to properly account for the monies to his landlord clients. The Commission further found that Mr. Jungers had refused to make his trust account records available for inspection by the Commission's auditors. Mr. Jungers neither admitted nor denied any misconduct.

JUNGERS ENTERPRISES, INC. (Chapel Hill) - By Consent, the Commission revoked Jungers Enterprises, Inc.'s broker license effective April 14, 2000. The Commission found that while acting as a broker and rental agent for owners of certain residential rental properties during 1997 and 1998, Jungers Enterprises, Inc. had collected rents and deposit monies in an amount

(continued on page 20)

Be prepared!

The Commission reminds you that its Audits and Investigations Division conducts "spot" inspections. Are YOUR records ready for review?

Disciplinary action

(continued from page 19)



exceeding \$10,000, but that the firm had failed to properly account for the monies to its landlord clients. The Commission further found that Jungers Enterprises, Inc. had refused to make its trust account records available for inspection by the Commission's auditors. Jungers Enterprises, Inc. neither admitted nor denied any misconduct.

STEVEN A. KARCH (Raleigh) - By Consent, the Commission reprimanded Mr. Karch effective March 1, 2000. The Commission found that while acting as listing agent for real property during 1996, Mr. Karch had been aware that the seller and buyers had arranged to make a \$7,750 payment between them outside of closing in violation of guidelines governing VA loans and inconsistent with the loan closing instructions, and that he had even delivered to the seller a check from the buyer representing part of the money. The Commission further found

that Mr. Karch, a salesperson, had not turned the money over to his supervising broker and that he had failed to have the payment recorded on the settlement statement.

SANDRA A. LANFORD (Archdale) - By Consent, the Commission reprimanded Ms. Lanford effective July 1, 2000. The Commission found that Ms. Lanford had mistakenly shown to her buyer-clients a property which was already under contract to another buyer. The property she intended to show was still available. Ms. Lanford's clients made an offer and went under contract to purchase the property Ms. Lanford meant to show them, believing it was

the property they had seen. The Commission noted that the error was discovered before closing and that Ms. Lanford assisted her clients in locating a different property.

PAMELA C. REDFEARN (Swansboro) - The Commission accepted the voluntary surrender of Ms. Redfearn's salesperson license for one year effective June 1, 2000. The Commission dismissed without prejudice charges that Ms. Redfearn had misrepresented the condition of real property to a purchaser in violation of the Real Estate License Law. Ms. Redfearn neither admitted nor denied any misconduct. □

On the inside...

New Commission Officers

"Straight talk" on
"Straight-piping"

Commission hosts
ARELLO Meeting

"Top 10 Complaints"
received by the
Commission

Trust Account Caravan

Educators Conference
held in Raleigh

2000 - 2001 Update Course
features Fair Housing

Streamlining the
Examination and
Licensing Process

Revised Residential
Property Disclosure
Statement

...and more.

Please check your label

The Commission reminds you that your license status as "ACTIVE" or "INACTIVE" appears on the mailing label affixed below. (Look at the top line directly to the right of the date.) Please check your label each time you receive your quarterly *Real Estate Bulletin* to be sure that you are in agreement with the Commission's records of your status. ■

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