



# NORTH CAROLINA REAL ESTATE COMMISSION Real Estate Bulletin

Volume 22

Winter 1992

Number 4

## STEVENSON APPOINTED TO APPRAISAL BOARD



**Beryl J. Stevenson**

Beryl J. Stevenson, Charlotte, has been appointed by Governor Martin to the N.C. Real Estate Appraisal Board. She is one of two "public members" on the seven-member Board.

North Carolina Court of Appeals Judge Ralph A. Walker administered the oath of office to Ms. Stevenson at a ceremony held on December 17 at the Real Estate Commission's office in Raleigh.

Other members of the current Board are Chairman Tom J. Keith, Vice-Chairman Robert L. Byrd, Jr., William G. Brown, Sr., Henry E. Faircloth, Dana E. Outlaw, and John P. Robinson, Jr.

A Washington, D.C. native, Ms. Stevenson is a graduate of Miners Teachers College and Temple Business School in Washington, and American Airlines Travel Academy in Dallas, Texas. She is President of New Adventure Travel in Charlotte.

Ms. Stevenson is a member of the Charlotte Chamber of Commerce, and is on the Carolinas Minority Suppliers Development Council and the Charlotte Area Business League. A Past-President of Business and Professional Women, Executive Chapter, Ms. Stevenson is currently President of the Charlotte-Mecklenburg Urban League Guild. □

## NORTH CAROLINA ENTERS RECIPROCAL LICENSING ARRANGEMENT WITH SOUTH CAROLINA

The North Carolina Real Estate Commission has entered into a reciprocal licensing arrangement with South Carolina, effective January 1, 1992. Under the terms of the arrangement, qualified North Carolina real estate brokers and salesmen may obtain a South Carolina nonresident real estate license with no additional requirements of education or experience. The South Carolina real estate license examination will be waived and a nonresident license will be issued to qualified applicants.

To qualify, you must be of good character, be a legal resident of North Carolina at the time the application is filed, and hold an active North Carolina license that was issued by examination and is currently in good standing according to records on file at the North Carolina Real Estate Commission. You are required to submit verification in the form of a Cer-

tificate of License History which should be requested in writing from the Records Division of the North Carolina Real Estate Commission, Post Office Box 17100, Raleigh, North Carolina 27619-7100. A \$10 fee is required for each certificate at the time of request. Please make your check payable to the North Carolina Real Estate Commission.

A salesman applying for a nonresident license must, at the time of the application and at all times thereafter when engaging in real estate activities, demonstrate that he/she will be supervised by a resident or nonresident licensed South Carolina real estate broker who has been designated as the broker-in-charge of the office that is the salesman's primary place of business. Designation of the salesman's supervising

*(Continued on page 5)*

## COMMISSION STAFF UPDATE

The Real Estate Commission announces the addition of two new members to its staff, due to vacancies created in the Audits and Investigations section by the upcoming retirement of Investigator **Everette H. Jenkins** and the departure of Auditor/Investigator Gloria Winston.



**Jennifer Kee** has been employed as an auditor/investigator to audit trust accounts and investigate complaints against licensees in the western part of the state (Charlotte west). A graduate of

Wingate College with a major in accounting, Jennifer has passed the C.P.A. examination. She comes to the Commission from a private construction company where she was project accounting manager. Jennifer is a native of Charlotte.



Also a Charlotte native employed by the Commission as an auditor/investigator, **Richard Tomberlin** will audit real estate trust accounts and investigate complaints against licensees on a statewide basis. Richard has eleven years of experience as an auditor, having served in that capacity in the insurance industry. He is a graduate of Queens College in Charlotte.

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Examination and Licensing Officer **Ann R. Britt** has been named by the Council on Licensing, Enforcement, and Regulation (CLEAR) to a Focus Group for a project funded by the Department of Justice. The funding makes possible a joint effort by

*(Continued on page 3)*

## REAL ESTATE BULLETIN

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

### NORTH CAROLINA REAL ESTATE COMMISSION

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

### COMMISSION MEMBERS

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Counsel  
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Stephen L. Fussell ..... Information  
Officer

Editor-in-Chief  
Phillip T. Fisher

Editor  
Carrie D. Worthington

## EXAM RESULTS

|                | Passed | Failed |
|----------------|--------|--------|
| October, 1991  |        |        |
| Brokers        | 51     | 59     |
| Salesmen       | 181    | 131    |
| November, 1991 |        |        |
| Brokers        | 55     | 37     |
| Salesmen       | 241    | 181    |
| December, 1991 |        |        |
| Brokers        | 76     | 43     |
| Salesmen       | 290    | 161    |

## REAL ESTATE EDUCATORS CONFERENCE SCHEDULED FOR APRIL

The North Carolina Real Estate Educators Conference, sponsored by the Real Estate Commission in cooperation with the North Carolina Real Estate Educators Association (NCREEA), is scheduled for April 2 and 3 in Greensboro.

This annual conference is intended for the benefit of instructors of Commission-approved preclicensing courses; however, other persons involved with real estate education are invited to attend on a space-available basis.

Conference sessions will focus on topics that have shown poor results on the real estate licensing examination, and veteran instructors will lead round-table discussions for exchange of teaching ideas and information.

Registration forms with more specific information will be sent to schools and instructors. ☐

## TRUST ACCOUNT SHORT COURSE CARAVAN

### Registration Form

1. The Trust Account Short Course is designed to bring participants up to date on current laws, rules and procedures governing the handling of client funds and to assist real estate firms in developing good bookkeeping and recordkeeping practices.
2. Participation is limited to real estate licensees and trust account bookkeepers. (No unlicensed preclicensing students, please.)
3. These courses are FREE. All the caravan courses listed below will start at 9:30 a.m. and will involve approximately 3 1/2 hours of instruction.
4. Registration forms must be received in the Commission Office at least 10 days prior to the course. Registrations will be confirmed in writing giving registrants more detailed information concerning the location of this course.

I wish to attend the following Trust Account Short Course:

- ☐ Wilmington (April 28) ☐ Asheville (May 5)  
☐ New Bern (April 29) ☐ Charlotte (May 6)  
☐ Fayetteville (April 30) ☐ Winston-Salem (May 7)

Name: \_\_\_\_\_ Bus. Phone \_\_\_\_\_

Address: \_\_\_\_\_ City \_\_\_\_\_ Zip \_\_\_\_\_

I am a: ☐ real estate licensee ☐ trust account bookkeeper

☐ other \_\_\_\_\_

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

## MONTHLY TRUST ACCOUNT SHORT COURSE IN RALEIGH

### DATES

March 10 April 14  
May 12 June 9

All Raleigh courses start at 1:00 p.m. and end at approximately 4:30 p.m.

To register for the course, telephone the Real Estate Commission Office (919-733-9580) at least 10 days prior to the course and ask for the Education Division. Please have your real estate license number (if any) handy! Registrations will be confirmed in writing, giving registrants more detailed information concerning the location of the course. ☐

# UNLICENSED EMPLOYEES

The use of unlicensed assistants and other clerical personnel in the real estate industry is a growing trend, and explains why the North Carolina Real Estate Commission receives so many inquiries from brokers asking what their unlicensed office employees may and may not do.

To provide guidance to brokers, the Commission has prepared the following list of acts an unlicensed person may perform. Licensees should be advised that additional facts in any of these scenarios could change the result.

A broker's unlicensed, salaried employee **MAY:**

1. Receive and forward phone calls to his or her employing broker or another licensee in the firm.
2. Submit listings and changes to a multiple listing service, but only if the listings or changes are based upon data compiled and provided by a licensed broker or salesman.
3. Assist a broker or salesman in assembling documents for closing.
4. Secure copies of public records from the register of deeds, clerk of court, or tax office.
5. Have keys made for the firm's listings.
6. Record and deposit earnest money, security deposits, and other trust monies under the close supervision of the office broker-in-charge.
7. Type offers, contracts, and leases from drafts prepared by a broker or salesman with the firm.
8. Check license renewal and personnel files for the brokers and salesmen with the firm.
9. Compute commission checks and act as bookkeeper for the firm's operating bank accounts.
10. Place "for sale" or "for rent" signs on property at the direction

of a broker or salesman with the firm.

11. Order and supervise routine and minor repairs at the direction of a broker or salesman with the firm.
12. Act as a courier to deliver or pick up documents, keys, etc.
13. Make routine phone calls to coordinate or confirm appointments between brokers, salesmen, and other persons.
14. Schedule appointments for showing property for sale or lease.
15. Show rental properties managed by the firm to prospective tenants.
16. Complete and execute preprinted form leases for rental property managed by the firm.

An unlicensed employee **MAY NOT:**

1. Show properties for sale to prospective purchasers.
2. Solicit listings or management contracts from prospective clients.
3. Answer questions concerning properties listed with the firm, except to confirm that the property is listed, to identify the listing broker or salesman, and to provide such information as would normally appear in a simple, classified newspaper advertisement (e.g., location, price, number of rooms).
4. Prepare promotional material or advertising of properties for sale or lease without the office broker-in-charge's review and approval.
5. Discuss or explain listings, management agreements, offers, contracts, or other similar matters with persons outside the firm.
6. Negotiate the amount of rent, security deposit or other lease provisions in connection with rental properties managed by the firm.

Brokers are cautioned to carefully supervise their unlicensed employees. The Real Estate License Law makes it unlawful for persons not licensed as brokers or salesmen to perform any act for which licensure is required or to hold themselves out to be licensed. Under G.S. 93A-6(a)(9), the Real Estate Commission may take disciplinary action against brokers when their unlicensed employees perform any acts or services in violation of the License Law.

Brokers-in-charge who employ unlicensed bookkeepers to assist in handling trust monies should have such persons bonded and should establish and follow strict accounting controls. Commission Rules A.0107 and .0110 make the broker-in-charge responsible for the firm's trust accounts. The broker-in-charge may delegate to others some of the work, but none of the responsibility, of trust account bookkeeping.

Likewise, the License Law allows brokers in the rental property management business to employ unlicensed persons as leasing agents. The law makes the broker strictly accountable for such employees, however, and the Real Estate Commission may discipline a broker for the misconduct of an unlicensed employee in a rental transaction.

This list is not meant to be comprehensive, but addresses many of the situations faced by real estate brokers, salesmen, and their unlicensed co-workers in daily practice.

*This article was adapted for North Carolina licensees from a similar article, "Commission Position on Activities of Unlicensed Assistants," which appeared in Vol. 126 of the Missouri Real Estate Commission Newsletter, October, 1991.* □

## COMMISSION STAFF UPDATE

*(Continued from page 1)*

CLEAR and the Association on Handicapped Student Service Programs in Postsecondary Education (AHSSPPE).

The purpose of this project is to offer a blueprint for compliance with the Americans with Disabilities Act (ADA), federal civil rights legislation passed in 1990, as it relates to agencies that administer examinations.

Ann is one of a select group of educators, regulators, and other professionals who serve on this Focus Group.

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Commission Investigator **Charles S. Carter** has completed the National Cer-

tified Investigator/Inspector Training Program, offered by The Council on Licensing, Enforcement, and Regulation, and has been designated a "Certified Investigator" by that organization. Charles has also been awarded the designation of "Certified Investigator" by the National Association of Real Estate License Law Officials (NARELLO).

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Several Commission staff members have made appearances before various real estate industry and related groups since the last issue of the *Bulletin*. Special Deputy Attorney General **Thomas R. Miller**, the Commission's Legal Counsel, addressed the North Carolina Association of REALTORS® Leadership Conference in Greensboro, where he discussed various subjects of in-

terest to persons recently elected as officers of the local Boards...**Miriam J. Baer**, Assistant Legal Counsel, accepted an invitation to speak at an Education Committee Seminar of the Wilmington Board of REALTORS®, where she discussed the law of agency and related topics, and also spoke to the Brunswick Islands Board of REALTORS® in Shallotte...and **Anita R. Burt**, Consumer Protection Officer, appeared before the Washington/Beaufort County Board of REALTORS® to discuss issues related to North Carolina's Real Estate License Law and Commission Rules. *(Individuals and groups requesting a speaker from the Real Estate Commission are reminded that a "Speaker Request Form" is available from the Commission Office.)* □

# WHEN IS TIME OF THE ESSENCE?

by Marilyn E. Tomei  
Associate Legal Counsel

Is a party in breach of the purchase contract if closing does not occur by the date stated in the purchase contract? This question is one that is frequently asked by licensees as well as by members of the general public, who wonder if a buyer or seller of property can consider the other party in breach of the purchase contract under those conditions. The answer depends upon the wording of the contract: Does the contract have a "time is of the essence" provision?

The standard offer to purchase and contract form (Standard Form No. 2 jointly approved by the N.C. Association of REALTORS® and the N.C. Bar Association), provides a blank in which the parties may insert the projected date on which the transaction should close. Unless the words "time is of the essence" are added to the contract, the law implies that the parties intend for the contract to be viable for a reasonable period of time after this date. Therefore, in the absence of such a provision, neither party can automatically consider the other party to be in breach of the contract simply because a closing has not occurred by the stated date.

Real estate brokers and salesmen who represent sellers may feel that in order to protect their clients, they should insert a "time is of the essence" provision in every

contract they complete. However, in some situations, this provision may, instead, serve to benefit the buyer or may not benefit either party. For example, assume that the parties have agreed to a contract written on the standard form. Pursuant to Standard Provision 8 of the form, the buyer has the property inspected, and the inspection report indicates that the air conditioning unit is in need of major repair. Although the seller agrees to have the repair made, he is told that the unit cannot be repaired for at least two weeks, which is beyond the closing date stated in the contract. If the contract contains a "time is of the essence" provision, the seller may lose the sale due to his inability to have the repair completed by the closing date.

Likewise, a buyer may feel protected with a "time is of the essence" provision when, in fact, it works to the seller's advantage. Case in point: A buyer's offer to purchase contains a loan contingency providing that the buyer must obtain a loan commitment by a given date, and "time is of the essence," but the lender is unable to process the buyer's loan application by such date. Meanwhile, another buyer who is willing to pay a higher price submits a "back-up offer." The first buyer loses the contract.

In each of these examples, if the real estate agent had not included a "time is of the essence" provision in the offer to purchase, the respective party would have had a reasonable period of time beyond the projected closing date to comply with the requirements of the contract. The question then arises, "What is a reasonable time?" The answer depends upon the particular circumstances of each transaction. Perhaps a shorter period of time would be reasonable in cash and non-qualifying loan assumption transactions, with a longer time-frame being reasonable in transactions where the buyers must obtain financing from a government-backed loan program requiring numerous inspections and documents.

The Real Estate Commission recommends that agents use caution with regard to "time is of the essence" provisions. Sometimes, such provisions are both appropriate and advisable, such as when it is essential to either the buyer or seller to close the transaction rapidly. The Commission further cautions, however, that if either party requesting the "time is of the essence" provision has any questions about the pros and cons of including it in the contract, that party should be referred to a private attorney. □

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## AGENTS MUST NOTIFY LENDERS OF FHA LOAN PAYOFFS

by Stephen L. Fussell  
Information Officer

Congratulations! One of your listings just went under contract. Now you can sit back and relax!...Or can you?

Although the selling agent usually assists the buyer with the loan application, inspections and related arrangements, you as the listing agent have at least one very important obligation **if the property under contract is financed by an FHA-insured loan: You must notify the lender that the loan will be paid off.**

HUD regulations allow mortgages insured by the FHA prior to August 12, 1985, to be prepaid "in full on the first day of any month in the term of the mortgage (i.e., on an installment due date) without penalty provided the mortgagee receives 30-day prior written notice of intent to prepay." The 30-day period begins on the date the lender receives the notice, and the notice is valid for a minimum of 90 days after receipt.

When prepayment is offered on any date other than the installment due-date, HUD regulations allow the mortgagee the option

of refusing "prepaying until the first day of the month following expiration of the 30-day notice period as provided in the mortgage or requiring the payment of interest to that date, but only if the mortgagee so advises the mortgagor in a form approved by HUD."

For example, when a listing goes under contract on February 15, the lender must receive written notice by March 1 to pay off the loan on April 1; otherwise, the lender may be able to charge interest for the entire month of April and pay off the loan on May 1. The interest will be charged on the actual unpaid principal balance of the debt.

Mortgages insured by the FHA on or after August 2, 1985, do not require a 30-day written notice when prepayment is offered on the first of any month. However, when prepayment is offered on any date other than the installment due-date, the mortgagee may refuse prepayment until the next due-date or may require the payment of interest to the next due-date, but only if the

mortgagee so advises the mortgagor on a HUD-approved form. Upon notification, the lender must send a copy of the FHA payoff terms to the mortgagor even though the lender has been dealing with an agent of the mortgagor.

The best time to notify the lender is immediately after the property is listed for sale. A written notification that includes the seller's name, address, mortgage loan number, and the seller's signature is sufficient. For the purpose of verification, you are wise to request the lender to provide the mortgage balance, monthly payment amount, escrow balance, type of loan, assumption requirements, and prepayment terms.

By promptly notifying the lender of an FHA loan payoff, you are preventing unnecessary interest charges (thereby protecting the seller's interest) and are thus eliminating a potential conflict between yourself and the seller. □

## ANSWERLINE

by **Blackwell M. Brogden, Jr.**  
Deputy Legal Counsel

- Q. I am a real estate agent, and I have a transaction pending in which I represent the seller. In order to close, I have agreed to give the seller part of my commission. I have further agreed that I will not show this payment on the closing statement, so that his employer, or the relocation contractor, will reimburse the full amount of the commission to the seller — making closing profitable and therefore worthwhile to the seller. How do I do this legally and within the Commission's Rules?
- A. **You don't!** Assisting the seller in furnishing incorrect information which results in another party's paying money that otherwise would not be due is engaging in a misrepresentation of material fact. Such action may make you liable for criminal or civil fraud against the party obligated to reimburse the seller. Any misrepresentation of fact is considered a violation of the Real Estate License Law and the Commission's Rules. ☐

## RECIPROCITY WITH SOUTH CAROLINA

(Continued from page 1)

broker as broker-in-charge must be made prior to or simultaneously with the license by reciprocity of the salesman.

The reciprocal licensing arrangement permits the conversion of the nonresident license to resident status upon the licensee's establishment of legal residency in South Carolina.

You may apply for a nonresident South Carolina real estate license under the terms of the reciprocal arrangement by submitting a completed application along with the required filing fee to the South Carolina Real Estate Commission. For further information and/or application materials, contact the Real Estate Reciprocity Division of the South Carolina Real Estate Commission, 1201 Main Street, Suite 1500, Columbia, South Carolina 29201. (Phone 803/737-0700) ☐

## BUYERS MUST REPORT REAL ESTATE PURCHASES FROM NONRESIDENT SELLERS

Did you know that if you buy North Carolina real estate owned by a resident of another state or country, you must report the sale to the North Carolina Department of Revenue?

Under rules recently adopted by the N.C. Department of Revenue, persons (individuals, fiduciaries, partnerships, corporations, etc.) who purchase North Carolina real estate from nonresidents after January 1, 1992, must complete and file with the Department of Revenue (within 15 days after the closing of the sale) Form NC-1099 NRS giving the seller's name, address and social security (or federal identification) number; the location of the property; the date of closing; and the gross sales price of the real property and any associated personal property. The buyer also must furnish

the seller a copy of the completed form.

The purpose of this new rule is to assure that nonresident sellers file an income tax return reporting any gain that they may have realized from the sale of property located in North Carolina. For forms and information,

contact any office of the N.C. Department of Revenue or call the Department toll-free at 1-800-222-9965.

### CAVEAT

Anytime you as a real estate agent are involved in the sale of North Carolina property which is owned by a nonresident, you should inform the buyer, seller and settlement officer of this new reporting requirement, and you should make every effort to assure that they are in compliance. ☐

Copy A: Mail this original to the North Carolina Department of Revenue

| NORTH CAROLINA DEPARTMENT OF REVENUE<br>NONRESIDENT PROPERTY SALES<br>P.O. BOX 871, RALEIGH, N.C. 27602-0871  |   |
|---|---|
| <p>Report of Sale of Real Property by Nonresident</p> <p>Buyer's Name, Address and Zip Code</p> <p>Buyer's Social Security Number or Federal ID Number</p> <p>Enter the name of the property, including the location of the property, as shown on the deed or other instrument.</p> <p>Block number</p> <p>Page number</p> <p>Gross sales price</p> | <p>Report of Sale of Real Property by Nonresident</p> <p>Buyer's Name, Address and Zip Code</p> <p>Buyer's Social Security Number or Federal ID Number</p> <p>Enter the name of the property, including the location of the property, as shown on the deed or other instrument.</p> <p>Block number</p> <p>Page number</p> <p>Gross sales price</p> |

## PUBLICATIONS ORDER FORM

Publication

No. Copies  
Requested

**"Questions and Answers on: Tenant Security Deposits"** (Free Brochure)

Also available in bulk to property managers to distribute to tenants and landlords. (Orders of more than 100 copies require special consideration.)

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

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

Firm Name

Phone

Street Address (NOT P.O. BOX)

City

State

Zip

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

# DISCIPLINARY ACTION

*Penalties for violations of the Real Estate License Law and Commission Rules and Regulations 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.*

**MARTHA E. ANDERSON (Winterville)** - By Consent, the Commission revoked Ms. Anderson's salesman's license effective December 12, 1991. The Commission found that Ms. Anderson, while employed as the bookkeeper for a property management firm, had used monies belonging to the firm for her own personal use. The Commission noted that Ms. Anderson subsequently repaid these funds. Ms. Anderson neither admitted nor denied any misconduct.

**ATLANTIC HOTELS, INC. (Roanoke, VA)** - By Consent, the Commission reprimanded the corporate real estate broker Atlantic Hotels, Inc., effective December 1, 1991. The Commission found that while the corporation was managing a condominium project, rental monies had been deposited into the bank accounts of the homeowners' association, rather than a trust account. The Commission noted that the persons conducting the rental operations were not employees of Atlantic Hotels, Inc., but were unlicensed, salaried employees of the unlicensed homeowners' association. The Commission further noted that the corporation had taken the necessary steps to correct these problems.

**GEORGE M. BARRETT (Banner Elk)** - By Consent, the Commission reprimanded Mr. Barrett effective November 19, 1991, for operating a real estate corporation without the required broker's license.

**HULDA G. BASISTA (Fayetteville)** - By Consent, the Commission suspended Ms. Basista's broker's license for one year effective February 1, 1992. The Commission then stayed its Order and placed Ms. Basista on probation for one year on the condition that she complete the Real Estate Commission's Trust Account Course. The Commission found that Ms. Basista had listed a property for sale and then, without the owner's written permission, leased the property. The Commission also found that Ms. Basista had failed to deposit funds belonging to her customers and clients into a trust account and failed to maintain ledgers and journals, or perform monthly reconciliations. The Commission noted that Ms. Basista had corrected her trust accounting procedures.

**JOHN M. BRANTLEY (Carolina Beach)** - The Commission suspended Mr. Brantley's broker's license effective January 1, 1992.

Two months of the suspension are to be active and the remaining period stayed for a probationary term of ten months. The Commission found that Mr. Brantley, while a partner in a construction partnership, had held himself and the partnership out as being a licensed general contractor and had entered into a construction agreement without first obtaining the license required by law.

**ROBERT BRUCE BRIGGS (Maggie Valley)** - By Consent, the Commission revoked Mr. Briggs' broker's license effective December 1, 1991, but permitted him to apply for licensure as a real estate salesman after December 1, 1993. The Commission found that Mr. Briggs had failed to disclose a criminal conviction on his applications for salesman and broker licensure, and that he had subsequently been convicted of conspiracy to sell cocaine. Mr. Briggs neither admitted nor denied any misconduct.

**BILLY R. DARROW (Washington)** - By Consent, the Commission suspended Mr. Darrow's broker's license for one year effective January 1, 1991. The Commission then stayed its Order and placed Mr. Darrow on probation for one year on certain conditions. The Commission found that while acting as the broker-in-charge for a property management firm, Mr. Darrow had delegated his responsibility for maintaining the trust accounts to another licensee who had allowed the account balances to fall below the trust liabilities. The Commission also found that Mr. Darrow had failed to keep complete and accurate trust account records and to reconcile his trust and bank records, and had failed to adequately supervise the licensee to whom he had delegated the bookkeeping responsibility. Furthermore, the Commission found that Mr. Darrow had used trust account funds to pay expenses on his personally-owned real estate. The Commission noted that, when he discovered the shortage, Mr. Darrow employed an accountant, repaid the shortage from his own funds, and reported the shortage to the Commission.

**GARY L. DOYENS (Winston-Salem)** - By Consent, the Commission suspended Mr. Doyens' broker's license for 60 days effective June 1, 1992. The Commission then stayed its Order and placed Mr. Doyens on probation for one year on the condition that he complete the Real Estate Commission's Trust Account Course and Brokerage Operations Course. The Commission found that Mr. Doyens had engaged in the property management business as a corporation without first obtaining a corporate real estate broker's license. The Commission also found that Mr. Doyens and his corporation had failed to maintain trust ac-

count journals with running balances and did not reconcile internal trust account records to those of his bank on a monthly basis. However, the Commission found no evidence that funds belonging to Mr. Doyens' clients were missing from his accounts.

**FRANKLIN T. EDWARDS (Fayetteville)** - By Consent, the Commission suspended Mr. Edwards' broker's license for six months effective February 1, 1992. The Commission then stayed its Order and placed Mr. Edwards on probation for six months on the condition that he complete the Real Estate Commission's Trust Account Course. The Commission found that Mr. Edwards had maintained an account into which the funds of others were deposited, but that this account had not been designated as a "trust" or "escrow" account. The Commission also found that Mr. Edwards did not maintain a trust account journal or individual transaction ledgers.

**NANCY L. EDWARDS (Washington)** - By Consent, the Commission accepted the permanent voluntary surrender of Ms. Edwards' salesman's license effective November 27, 1991, and dismissed without prejudice certain charges against her alleging that she had improperly handled the funds of others and had not kept complete and accurate records of funds in various real estate transactions. Ms. Edwards neither admitted nor denied any misconduct.

**EXECUTIVE RENTALS T/A EXECUTIVE PROPERTIES (Fayetteville)** - The Commission suspended the corporate real estate broker's license of Executive Rentals for three years effective January 1, 1992. The Commission found that Executive Rentals had failed to account for and remit to its principals funds received on their behalf, had misappropriated and commingled trust funds, and had failed to properly maintain trust account records and perform monthly reconciliations. The Commission also found that trust funds had been used to pay operating expenses for another business, and that the Commission's auditor had been refused access to the records.

**MAX G. GLOVER (Robbinsville)** - The Commission revoked Mr. Glover's salesman's license effective November 25, 1991. The Commission found that Mr. Glover had been convicted of the criminal offense of embezzlement and obtaining money by false pretenses and had subsequently failed to surrender his real estate license as ordered by the Court.

**GREER N. GOODMAN (Salisbury)** - By Consent, the Commission reprimanded Mr. Goodman effective November 15, 1991. The Commission found that Mr. Goodman had failed to discover and disclose an

owner financing provision in an offer to purchase which he had presented to the seller. The Commission noted, however, that Mr. Goodman provided the seller financial assistance so that she could close the transaction.

**CHARLIE W. GUY (Swansboro)** - The Commission revoked Mr. Guy's broker's license effective November 25, 1991. The Commission found that Mr. Guy had failed to maintain the funds of others in an insured North Carolina trust or escrow account and to account for or remit trust funds.

**H.E. HARDING & SON, INC. (Washington)** - By Consent, the Commission suspended the corporate real estate broker's license of H.E. Harding & Son, Inc., for two years effective January 1, 1992. The Commission then stayed its Order and placed the corporation on probation for two years on certain conditions. The Commission found a shortage in the corporation's trust accounts. The Commission also found that complete and accurate trust account records had not been maintained, that trust funds had been used to pay expenses on properties owned by one of the firm's broker associates, and that the firm's bookkeeping personnel had been inadequately supervised. The Commission noted that, when the firm discovered the trust account shortage, it had employed an accountant, repaid the shortage, and reported the shortage to the Commission.

**MARY LYNN HARDISON (Carolina Beach)** - By Consent, the Commission suspended Ms. Hardison's broker's license for one year effective January 1, 1992. The Commission found that Ms. Hardison, while designated as broker-in-charge, allowed a salesman supervised by another broker to control the firm's trust accounts. The Commission found that this salesman had failed to keep proper trust account records, had converted trust funds to her own use, and had commingled the firm's funds with trust funds.

**BETTE W. HUDSON (Charlotte)** - By Consent, the Commission suspended Ms. Hudson's broker's license for eighteen months effective December 1, 1991. The Commission then suspended its Order and placed Ms. Hudson on probation for one year. The Commission found that Ms. Hudson had failed to disclose to buyers that the rear portion of the lot that they had purchased had been previously sold to another party. The Commission noted that the division of the lot had not been discovered by either the closing attorney or the surveyor. Ms. Hudson neither admitted nor denied any misconduct.

**PATRICIA W. HUNTER (Asheboro)** - The Commission accepted the voluntary surrender of Ms. Hunter's salesman's license for two years effective January 1, 1992, and dismissed without prejudice certain

charges against her alleging that she had operated a property management business without a supervising broker. Ms. Hunter neither admitted nor denied any misconduct.

**MONIQUE A. KOENIG (Fayetteville)** - The Commission suspended Ms. Koenig's salesman's license for 45 days effective January 1, 1992. The Commission then stayed its Order. The Commission found that Ms. Koenig had failed to deliver to the sellers in a transaction a detailed and complete closing statement showing all receipts and disbursements handled by Ms. Koenig in connection with the transaction.

**STEPHEN A. LEE (Raleigh)** - By Consent, the Commission reprimanded Mr. Lee effective November 15, 1991. The Commission found that Mr. Lee and a friend had entered a vacant house listed for sale by his previous real estate firm and had used the house without authority for reasons unrelated to any real estate brokerage transaction.

**MHM, INC. (Topsail Island)** - The Commission accepted the voluntary surrender of MHM, Inc.'s corporate real estate broker's license for a period of three years effective December 1, 1991, and dismissed without prejudice certain charges against it alleging that it had allowed its unlicensed general manager to control trust funds, had transferred funds out of North Carolina, and had deposited trust funds in a general account of the corporation.

**JOHN J. MEHAN (Stone Harbor, New Jersey)** - The Commission accepted the voluntary surrender of Mr. Mehan's broker's license for a period of three years effective January 1, 1992, and dismissed without prejudice certain charges against him alleging that he had converted trust funds to his personal use, had failed to perform monthly bank reconciliations or maintain owner ledgers, and had failed to supervise salesmen in his charge. Mr. Mehan neither admitted nor denied any misconduct.

**ANNE S. MORRIS (Brevard)** - By Consent, the Commission revoked Ms. Morris' broker's license effective February 1, 1992. The Commission found that Ms. Morris had not maintained trust account transaction ledgers and a running balance on a general journal. The Commission also found that she had written a check from her trust account which was returned due to insufficient funds, and had diverted trust funds to pay expenses for a company in which she was a principal. Furthermore, the Commission found that a shortage existed in Ms. Morris' trust account. Ms. Morris neither admitted nor denied any misconduct.

**WALID J. NICOLA (Burlington)** - By Consent, the Commission suspended Mr. Nicola's broker's license for six months effective December 10, 1991. One month of

the suspension is to be active, and the remaining period stayed for a probationary term of five months on the condition that he complete the Commission's Trust Account Course. The Commission found that Mr. Nicola, while managing rental property, had failed to use a trust account or to maintain proper trust account records.

**JERRY J. ROSEN (Durham)** - By Consent, the Commission suspended Mr. Rosen's broker's license for one year effective November 10, 1991. The Commission then suspended its Order and placed Mr. Rosen on probation for one year. The Commission found that Mr. Rosen had not adequately informed a landlord and a tenant that he was receiving a commission from both.

**LYNNE E. SAWYER (New Bern)** - The Commission accepted the permanent surrender of Ms. Sawyer's salesman's license effective November 19, 1991, and dismissed without prejudice certain charges against her alleging that she had failed to properly handle trust funds in various real estate transactions. Ms. Sawyer neither admitted nor denied any misconduct.

**SHELTER HAVEN REALTY, INC. (Stone Harbor, New Jersey)** - The Commission accepted the voluntary surrender of the corporate real estate license of Shelter Haven Realty, Inc., for a period of three years effective January 1, 1992, and dismissed without prejudice certain charges against it alleging that it had converted trust funds of its principals to its personal use, had failed to perform monthly bank reconciliations and maintain owner ledgers, and had failed to supervise salesmen. Shelter Haven Realty, Inc., neither admitted nor denied any misconduct.

**MELVIN A. SLAWIK, JR. (Stone Harbor, New Jersey)** - By Consent, the Commission revoked Mr. Slawik's broker's license effective January 1, 1992. The Commission found that Mr. Slawik, while licensed by the Commission pursuant to a reciprocity arrangement with the State of New Jersey, had engaged in a regular course of business in North Carolina in violation of the terms of the reciprocal arrangement. The Commission also found that he had improperly used the trust accounts of his employer and had failed to keep proper records of his transactions.

**BOBBY SMITH (Greensboro)** - By Consent, the Commission suspended Mr. Smith's salesman's license for one year effective December 1, 1991. The Commission found that Mr. Smith had been convicted of a criminal offense involving moral turpitude which would reasonably affect his performance in the real estate business; namely, failing to remit funds to the North Carolina Commissioner of Banks for the

*(Continued on page 8)*

## DISCIPLINARY ACTION

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establishment of a pre-need funeral contract, and failing to deposit pre-need funds in a financial institution.

**GEORGE T. SMITH (Winterville)** - By Consent, the Commission suspended Mr. Smith's broker's license for one year effective April 1, 1992. The Commission then suspended its Order and placed Mr. Smith on probation for two years on the condition that he complete the Real Estate Commission's Brokerage Operations Course. The Commission found that Mr. Smith, as the principal broker of a property management corporation, failed to adequately supervise bookkeeping personnel which led to a trust account shortage. The Commission also found that reconciliations of monthly bank statements with trust account records had not been performed, but noted that the trust account shortage had been repaid.

**HUBERT W. SMITH (Roanoke, Virginia)** - By Consent, the Commission reprimanded Mr. Smith effective December 1, 1991. The Commission found that while Mr. Smith was broker-in-charge of a licensed real estate corporation which was managing the rentals of a condominium project, rental monies had been deposited into the bank accounts of the homeowners' association rather than a trust account. The Commission found that the persons conducting the rental operations under the direction of Mr. Smith were not his employees or the employees of his corporation, but were the unlicensed, salaried employees of the

unlicensed homeowners' association. The Commission further noted that Mr. Smith had taken the necessary steps to correct these problems.

**RICHARD W. STOCKNER (Asheboro)** - By Consent, the Commission reprimanded Mr. Stockner effective January 1, 1992. The Commission found that Mr. Stockner, while the only broker at a property management firm, had failed to execute a Broker-in-Charge Declaration form or a Supervision of Salesman Notification form certifying that he would supervise a licensed salesman associated with the firm. The Commission also found that he had failed to actively and personally supervise a salesman associated with the firm.

**TRICAR, INC. T/A CENTURY 21 TRIANGLE (Sanford)** - The Commission accepted the permanent voluntary surrender of the corporate real estate license of Tricar, Inc., effective November 19, 1991, and dismissed without prejudice certain charges against it alleging that it had improperly handled the funds of others in various real estate transactions. Tricar, Inc., neither admitted nor denied any misconduct.

**JAMES S. WAGONER (Sneads Ferry)** - By Consent, the Commission suspended Mr. Wagoner's broker's license for one year effective November 10, 1991. The Commission then stayed its Order and placed Mr. Wagoner on probation for one year on the condition that he complete the Real Estate Commission's Trust Account Course. The Commission found that Mr. Wagoner, while acting as the broker-in-charge of his own real estate company, had failed to oversee the proper maintenance of the trust ac-

count and the trust account records, and allowed a shortage to exist in his trust account. The Commission noted that Mr. Wagoner had immediately replaced the missing trust funds upon learning of the shortage.

**JAMES L. WALLER, JR. (Fayetteville)** - The Commission suspended Mr. Waller's broker's license for three years effective January 1, 1992. The Commission found that Mr. Waller had failed to account for and remit to his principals funds received on their behalf, had commingled and misappropriated trust account funds to his own uses, and had failed to properly maintain trust account records and perform monthly reconciliations. The Commission also found that Mr. Waller had willfully used trust funds to pay operating expenses for another business and had refused the Commission's auditor access to his trust account records.

**ERVIN S. WARD (Chapel Hill)** - By Consent, the Commission suspended Mr. Ward's broker's license for six months effective December 1, 1991. Thirty days of the suspension are to be active, and the remaining period stayed for a probationary term of two years on condition that he complete the Real Estate Commission's Trust Account Course. The Commission found that Mr. Ward, while designated as the broker-in-charge of his office, had failed to maintain transaction ledgers and to reconcile his trust account records with the bank statements for the firm's trust accounts. The Commission also found that, at the time of the Commission's audit, a shortage existed in the firm's trust account. □

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