



NORTH CAROLINA REAL ESTATE COMMISSION

Real Estate Bulletin

Volume 27

Winter 1997

Number 4

Commission Staff Update



The Real Estate Commission recently filled a position in the Records Section of the Administration Division.

Faye E. Ray has been employed as a Records Specialist. She is a native North Carolinian.

Prior to joining the Commission staff, Faye was employed as a Patient Service Representative at an orthopaedic clinic in Raleigh. She served as a Policy Service Analyst for an insurance company for over 15 years.

In her new position with the Commission, Faye will assist with updating and maintaining licensee files.

Continuing Education Officer Evelyn G. Johnston has assumed new duties in the Commission's Audits & Investigations Division, where she will serve as Compliance Officer. Her duties will include conducting reviews and inspections of individual licensees' and licensed entities' records, assisting in monitoring Commission-approved real estate courses, and conducting Commission-developed courses and instructional programs.

Evelyn has a B.A. degree in English from Sam Houston University.

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Commission amends agency rule

Following a September 18 rule-making hearing, the Real Estate Commission at its November 6 meeting approved amendments to its rule on agency agreements and disclosure (Rule A .0104).

The amendments enable real estate firms in dual agency transactions "to designate" one or more of its brokers or salesmen to represent the buyer, and another or other brokers or salesmen to represent the seller.

The amendments also provide that an individual broker or salesman, when representing both the buyer and seller in the same transaction, may (with the written consent of the buyer and seller) withhold any information about a party which that party has identified as confidential, unless disclosure is required by statute or rule.

Following is the complete text of the rule amendments (subsections i-n) which will become effective July 1, 1997 if approved by the General Assembly:

"(i) A firm which represents both the buyer and the seller in the same real estate sales transaction is a dual agent and through the brokers and salesmen associated with the firm shall disclose its dual agency to the buyer and seller.

(j) When a firm represents both the buyer and seller in the same real estate sales transaction, the firm may, with the prior written approval of its buyer and seller clients, designate one or more individual brokers or salesmen associated with the firm to represent only the interests of the seller and one

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A reminder!

The rule requiring the licensure of all real estate business entities became effective January 1, 1997. Any corporation, partnership, limited liability company or other business entity (other than a sole proprietorship) engaged in the brokerage business must obtain a real estate broker license.

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

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

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Phillip T. Fisher
Editor
Carrie D. Worthington

Commission Staff Update

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She is a former high school English teacher and a licensed real estate broker.

Licensing and Education Officer **Pamela R. Milligan** will fill the position of Continuing Education Officer, to coordinate the Commission's CE Program.

Pam received a BA in English and Speech Communications and Secondary Education from UNC-Chapel Hill and an MA in Literature from ECU. She taught high school English for over 14 years.

Pam was licensed as a real estate salesman in 1993 and now has her broker license.

Education Clerk **Susan M. Tysor** has transferred to the Administration Division as a Records Specialist to assist in converting microfilm records to optical imaging.

Susan was employed with the Commission from 1984 - 1986, prior to moving out-of-state. After returning to Raleigh, she held a secretarial position at an environmental agency and returned to the Commission staff in 1995.

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REGISTRATION FORM for BASIC TRUST ACCOUNT PROCEDURES COURSE and TRUST ACCOUNT PROCEDURES FOR RESORT PROPERTY MANAGERS COURSE

Courses will comply with Commission Rule Section 58 A.1705 Attendance and Participation Requirements for Continuing Education. **Four (4) hours continuing education elective credit will be awarded for completion of each course.** Courses are intended for brokers and trust account bookkeepers. Salesmen will be admitted on a space available basis.

BASIC TRUST ACCOUNT PROCEDURES COURSE - Raleigh - 1:00 P. M. to 5:00 P. M.

☐ March 11 ☐ May 13 ☐ July 8
☐ April 8 ☐ June 3 ☐ August 12

BASIC TRUST ACCOUNT PROCEDURES COURSE - Caravan - 9:00 A. M. to 1:00 P. M.

☐ Nags Head (March 4) ☐ Southern Pines (March 20) ☐ Asheville (March 24)
☐ Morehead City (March 6)* ☐ Gastonia (March 26)
☐ Wilmington (March 18) ☐ Greensboro (March 27)

TRUST ACCOUNT PROCEDURES

FOR RESORT PROPERTY MANAGERS COURSE - Caravan - 9:00 A. M. to 1:30 P. M.

☐ Nags Head (March 5) ☐ Wilmington (March 19) ☐ Southern Pines (March 21)
☐ Morehead City (March 7) ☐ Asheville (March 25)

Complete this form (make copies for additional persons). Indicate the session location for the course which you would like to attend. Mail registration form with a check for \$35 tuition fee to be received in the Commission Office no later than 10 days prior to date of course. With one exception, (please see * at bottom of this form), sessions will be limited to 40 participants. **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. _____) Mail to: **NC REAL ESTATE COMMISSION**
Attention: Education Clerk
☐ Salesman (License No. _____) P. O. Box 17100
Raleigh, NC 27619-7100
☐ Bookkeeper Enclose \$35 tuition fee

* This session, only, limited to 25 participants. (All other sessions limited to 40.)

Commission Staff Update

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Auditor/Investigators **Reneé L. Rhodes** and **Jarrod L. Williams** have been designated "Certified Investigators" by the Council on Licensure, Enforcement and Regulation (CLEAR).

The following Commission staff members have made appearances before various real estate industry and related groups since the last issue of the *Bulletin*. Special Deputy Attorney General **Thomas R.**

Miller participated in a "question-and-answer" session at the "1996 REALTOR® Rally" that was held by the Charlotte Regional REALTOR® Association. Tom answered questions on agency disclosure, real estate contracts and related topics...At a meeting of the Winston-Salem Board of REALTORS®, **Miriam J. Baer**, the Commission's Assistant Director of Legal Services discussed agency and other issues

affecting commercial real estate brokers. **Miriam** and Deputy Legal Counsel **Marilyn E. Tomei** made a joint presentation on risk management issues at the N.C. Association of REALTORS® Annual Convention in Myrtle Beach, S.C.

(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.) ■

Happy anniversary... to us!

On July 1, 1997, the North Carolina Real Estate Commission will celebrate forty years of service to the state's real estate consumers and licensees. And to commemorate the occasion, the Commission plans a special anniversary edition of the *Real Estate Bulletin*.

Look for special features and articles of interest to new licensees and "veterans" alike, as the Commission remembers its first forty years - in the anniversary edition of the *Bulletin*, Volume 28, Number 2, Summer 1997. □

EXAM RESULTS

	Passed	Failed
September 1996		
Brokers	83	61
Salesmen	292	255
October 1996		
Brokers	44	55
Salesmen	240	176
November 1996		
Brokers	52	35
Salesmen	363	207

REAL ESTATE COMMISSION PUBLICATIONS ORDER FORM

	No. Copies Requested
<i>Res. Property Disclosure Statement and Guidelines</i> (Free form - Please limit request to one copy.)	_____
<i>Questions and Answers on: Tenant Security Deposits</i> (Free Brochure) Also available in bulk to property managers to distribute to tenants and landlords.	_____
<i>Questions and Answers on: Condos and Townhouses</i> (Free Brochure)	_____
<i>Questions and Answers on: Who Agents Represent</i> (Free Brochure)	_____
<i>Questions and Answers on: Purchasing Coastal Real Estate in North Carolina</i> (Free Brochure)	_____

()
Name _____ Phone Number (Including Area Code) _____

Street Address (NOT P.O. BOX) _____ City _____ State _____ Zip _____

Instructions

1. You may request single copies of these publications by returning this Order Form or calling the Commission office (919) 733-9580, menu option 3.
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.
6. Space has been provided on the *Questions and Answers* brochures if you wish to add your company name.

Commission amends agency rule

(continued from page 1)

or more other individual brokers and salesmen associated with the firm to represent only the interests of the buyer in the transaction. An individual broker or salesman shall not be so designated and shall not undertake to represent only the interests of one party if the broker or salesman has actually received confidential information concerning the other party in connection with the transaction. A broker-in-charge shall not act as a designated agent for a party in a real estate sales transaction when a salesman under his supervision will act as a designated agent for another party with a competing interest.

(k) When a firm acting as a dual agent designates an individual broker or salesman to represent the seller, the broker or salesman so designated shall represent only the interest of the seller and shall not, without the seller's permission, disclose to the buyer or a broker or salesman designated to represent the buyer:

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

(l) When a firm acting as a dual agent designates an individual broker or salesman to represent the buyer, the broker or the salesman so designated shall represent only the interest of the buyer and shall not, without the buyer's permission, disclose to the seller or a broker or salesman designated to represent the seller:

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

(m) A broker or salesman designated to represent a buyer or seller in accordance with Section (b) of this Rule shall disclose the identity of all of the brokers and salesmen so designated to both the buyer and the seller. The disclosure shall take place no later than the presentation of the first offer to purchase or sell.

(n) When an individual broker or salesman represents both the buyer and seller in the same real estate sales transaction pursuant to a written agreement authorizing dual agency, the parties may provide in the written agreement that the broker or salesman shall not disclose the following information about one party to the other without permis-

sion from the party about whom the information pertains:

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

"Trust Account Guidelines" revised

Starting on page 7 of this *Bulletin* is the first portion of the Commission's "Trust Account Guidelines," as they appear in the latest edition of the license application booklet, *Real Estate Licensing in North Carolina* (Revised 11/1/96).

The Commission is re-printing the Guidelines for your review and information. The final installment will appear in the next *Bulletin - Spring 1997, Volume 28, Number 1*.

Broker Price Opinions

By Roberta Ouellette, Legal Counsel
North Carolina Appraisal Board

A "broker's price opinion" (i.e. an opinion as to a property's probable sale price) is an "appraisal" under the North Carolina Appraiser Act. Real estate licensees may not provide such an appraisal service for a fee unless they are state-licensed or state-certified real estate appraisers and the opinion of value conforms with the Uniform Standards of Professional Appraisal Practice.

The only type of appraisal that can be performed by real estate agents who are not appraisers is a "Comparative Market Analysis" (CMA), which is defined as "...the analysis of sales of similar recently sold properties in order to derive an indication of the probable sales price of a particular property..." Although a CMA is also a type of appraisal, the Appraiser Act as interpreted by the Appraisal Board allows

real estate licensees to perform them for seller-clients or prospective seller-clients in the course of listing or attempting to list their property and for buyer-clients who are interested in buying a property so long as licensees do not represent themselves as state-licensed or -certified appraisers and do not accept a fee for providing it (even if the fee is only intended to cover the licensee's expenses).

It is important to note that the Comparative Market Analysis exemption only applies where real estate licensees are performing a brokerage service for their principals, such as listing a property or showing listed properties, otherwise, a CMA (or a "broker's price opinion") performed by a real estate licensee for a fee violates the law unless the licensee is also a licensed or certified appraiser. □

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 North Carolina Real Estate Commission, P. O. Box 17100, Raleigh, NC 27619-7100, or call the Commission office (919) 733-9580.

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

We won!

At its annual conference this fall in Ottawa, Ontario, Canada, the Association of Real Estate License Law Officials (ARELLO) presented its "Newsletter Excellence Award" to the Commission for its *Real Estate Bulletin* and *Continuing Education Schedule* publications.



Shown with the award, left to right: Commission Member Mona Hill, Commission Vice-Chairman Wanda Proffitt, Publications Officer Carrie Worthington and Commission Chairman John Bridgeman.

In memoriam

With deep regret, the Real Estate Commission announces the recent death of James E. "Jim" Poole, Jr., of Raleigh. Mr. Poole served as Director of the Commission's Appraiser Licensing and Certification Division prior to the Appraisal Board's separation from the Commission.

He was the Appraisal Board's first Executive Director, but had stepped down from that position due to health reasons.

The Commission extends deepest sympathy to Mr. Poole's family. ■

Commission Calendar

Meeting Dates

March 12

April 9

May 14

June 11

July 10*

August 13

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

*Town Hall, Blowing Rock, NC

Commission offers "fax-on-demand"



By Mary Frances Whitley, Director of Administration

The Real Estate Commission is pleased to announce the installation of a "fax-on-demand" system for use by licensees as well as members of the general public. Using a touch-tone telephone, callers can request and immediately receive forms and other information - simply by entering the document number(s) of the desired material.

To access the system, dial (919) 850-2757, then follow the automated instructions using the DOCUMENT NUMBER provided on the system index, and enter your fax number (number where you wish to receive the document).

The following documents are available from the various Commission Divisions/Sections through the fax-on-demand system:

Administration/Records

- Request to Activate Broker or Salesman License, Notification of Salesman Supervision, Notification of Change of Broker's Business Address
- Broker-in-Charge Declaration
- Request for Reissuance of Real Estate License Certificate and/or Renewal Pocket Card

Education/Licensing

- Continuing Education Course Schedule
- Publications Order Form
- License Examination Schedule and License Examination Review Schedule
- Basic Trust Account Procedures Course Schedule and Registration Form
- Order Form for License Examination Candidate Roster
- Order Form for Register of New Licensees

Legal Services

- Complaint Form
- Criminal Conviction Reporting Form
- Residential Property Disclosure Statement

- Disclosure to Buyer From Seller's Agent or Subagent

Other

- Request for Program Presenter
- 1997 Commission Meeting Schedule

□

A reminder...

You may contact the Commission office through its "interactive voice response" (IVR) system at (919) 850-2753 for licensee data including your license status, CE credits, and broker-in-charge information.

Issue: Completion of contract forms vs. drafting

By Blackwell M. Brogden, Jr., Chief Deputy Legal Counsel

In their haste to secure a deal, licensees sometimes create a "letter of intent" or "memorandum of understanding" signed by the parties and obligating them to execute a formal contract at a later date. However, no matter what such documents are called, they are often actually **contracts** which must be drafted by an attorney, not a licensee. Real estate licensees may "fill in" preprinted contract forms but may not draft contracts or special contract form provisions.

Real estate licensees must:

- ☐ Know that any document imposing an obligation between two or more separate persons or entities and supported by consideration is a contract.
- ☐ Refer parties to an attorney to have a contract, addendum or special provision drafted when an appropriate form is not available.
- ☐ Use only contract forms that comply with Commission rules.

Real estate licensees must NOT:

- ☐ Draft any document which binds the parties including
 - a "letter of intent" or "memorandum"
 - an additional provision or addendum to a contract
 - other contracts such as a lease, option, etc.
- ☐ Convert documents used in prior transactions into "forms" to be completed for current transactions.
- ☐ Delete provisions from forms (electronically generated or otherwise) unless the deletions
 - are of specific provisions,
 - are made at the direction of the parties,
 - are clearly shown on the final document and
 - do not result in a contract that is missing a material term.
- ☐ Draft atypical, special provisions for insertion in contract forms.

TRUST ACCOUNT GUIDELINES

I. INTRODUCTION

"Trust" — the one word which perhaps best describes the relationship of the real estate broker (or salesman) to his clients and customers. The seller trusts the broker to promote his best interests in the sale of his property. The investor trusts the broker/property manager to manage his property and protect his investment. The buyer trusts the broker to provide complete and accurate information concerning the property which he is considering buying. But perhaps nowhere is the broker's position of trust more clearly illustrated than in his/her role as custodian of the funds of others; i.e., "trust money."

The following information is being provided for the purpose of assisting North Carolina real estate brokers in understanding and carrying out their duties and responsibilities as trustees for the funds of others. It is suggested that both licensees and persons studying for real estate licenses carefully study this material, and that practicing brokers review and evaluate their current procedures in light of this information.

While it is recognized that no single treatment of this subject can possibly answer all questions or address all situations which the broker may encounter in this area, nevertheless, an attempt has been made to deal with those questions which most frequently arise and those situations most often encountered during the course of "typical" real estate transactions. In addition, the specialized area of property management has been given separate treatment where it was deemed necessary.

Brokers are reminded that any questions or problems involving the handling and/or accounting of trust money should be directed to the Real Estate Commission office in Raleigh.

II. LEGAL REQUIREMENTS

It is often said that a home represents the largest single investment (the most expensive purchase) that most people will ever make; likewise, rental payments and security deposits represent a substantial financial investment on the part of tenants. Consequently, during the course of real estate transactions, sizable sums of money change hands, a great deal of which passes through the hands of the real estate broker. Recognizing the very serious consequences of the broker's actions as a trustee for these funds, the North Carolina General Assembly included a number of provisions in the Real Estate License Law (G.S. 93A) specially designed to govern the activities of real estate brokers acting in the capacity of trustee.

In general, these provisions require brokers to deposit trust monies in an escrow or trust account (separate from the broker's general or operating account); to maintain complete records of deposits and withdrawals; and to make a final accounting to the persons for whom he is holding the funds. Specifically, **Section 93A-6(a) of the License Law** empowers the Real Estate Commission to suspend or revoke the license of any real estate broker or salesman where the licensee is deemed to be guilty of:

"(7) Failing, within a reasonable time, to account for or to remit any moneys coming into his possession which belong to others;

(12) Commingling the money or other property of his principals with his own or failure to maintain and deposit in a trust or escrow account in an insured bank or savings and loan association in North Carolina all money received by him as a real estate broker acting in that capacity, or an escrow agent, or the temporary custodian of the funds of others, in a real estate transaction; provided, these accounts shall not bear interest unless the principals authorize in writing the deposit be made in an interest bearing account and also provide for the disbursement of the interest accrued;

(14) Failing as a broker, at the time the transaction is consummated, to deliver to the seller in every real estate transaction, a complete detailed closing statement showing all of the receipts and disbursements handled by him for the seller or failing to deliver to the buyer a complete statement showing all money received in the transaction from the buyer and how and for what it was disbursed; or"

Also,

"(d) Each broker shall maintain complete records showing the deposit, maintenance, and withdrawal of money or other property owned by his principals or held in escrow or in trust for his principals. The Commission may inspect these records periodically, without prior notice and may also inspect these records whenever the Commission determines that they are pertinent to an investigation of any specific complaint against a licensee."

With regard to monies received in time share sales transactions, **Section 93A-45 of the License Law** requires that:

"(c) Any payments received by a time share developer or time share salesman in connection with the sale of the time share shall be immediately deposited by such developer or salesman in a trust or escrow account in an insured bank or savings and loan association in North Carolina and shall remain in such account for 10 days or cancellation by the purchaser, whichever occurs first. Payments held in such trust or escrow accounts shall be deemed to belong to the purchaser and not the developer."

In addition, the Real Estate Commission has adopted rules to enable it to administer the statutes at the operating level. Specifically, these rules are as follows:

A.0107 Handling and Accounting of Funds

(a) All monies received by a broker acting in his fiduciary capacity shall be deposited in a trust or escrow account not later than three banking days following receipt of such monies except that earnest money deposits received on offers to purchase real estate and tenant security deposits received in connection with real estate leases shall be deposited in a trust or escrow account not later than three banking days following acceptance of such offer to purchase or lease; the date of acceptance of such offer to purchase or lease shall be set forth in the purchase or lease agreement. All monies received by a salesman shall be delivered immediately to the broker by whom he is employed.

(b) In the event monies received by a broker while acting in a fiduciary capacity are deposited in a trust or

escrow account which bears interest, such broker shall first secure from all parties having an interest in the monies written authorization for the deposit of such monies in an interest-bearing account. Such authorization shall specify how and to whom the interest will be disbursed, and, if contained in an offer, contract, lease, or other transaction instrument, such authorization shall be set forth in a clear and conspicuous manner which shall distinguish it from other provisions of the instrument.

(c) Closing statements shall be furnished to the buyer and the seller in the transaction at the closing or not more than five days after closing.

(d) Trust or escrow accounts shall be so designated by the bank or savings and loan association in which the account is located, and all deposit tickets and checks drawn on said account as well as the monthly bank statement for the account shall bear the words "Trust Account" or "Escrow Account".

(e) A broker shall maintain and retain records sufficient to verify the accuracy and proper use of his trust or escrow accounts, including, but not limited to:

- (1) bank statements;
- (2) cancelled checks which shall be referenced to the corresponding transaction or owner ledger sheet;
- (3) deposit tickets and, if necessary, a supplemental worksheet for each deposit ticket identifying the property and the parties to each transaction for which funds are deposited;
- (4) a separate ledger sheet for each sales transaction and for each owner of property managed by the broker identifying the property, the parties to the transaction, the amount, date, and purpose of the deposits and from whom received, the amount, date, check number, and purpose of disbursements and to whom paid, and the running balance of funds on deposit for the particular transaction or owner of property;
- (5) a journal or check stubs identifying each transaction and showing a running balance for all funds in the account;
- (6) copies of contracts, leases and management agreements;
- (7) closing statements and property management statements; and
- (8) any other documents necessary and sufficient to verify and explain record entries.

A broker shall maintain records of all receipts and disbursements of trust or escrow monies in such a manner as to create a clear audit trail from deposit tickets and cancelled checks to check stubs or journals and to the ledger sheets. A broker must reconcile ledger sheets and his journals or check stubs to the trust or escrow account bank statements on a monthly basis. A broker shall create a worksheet for each such monthly reconciliation and retain it as part of his records.

(f) All trust or escrow account records shall be made available for inspection by the Commission or its authorized representatives in accordance with Rule 58A .0108.

(g) In the event of a dispute between the seller and buyer or landlord and tenant over the return or forfeiture of any deposit other than a residential tenant security deposit held by a broker, the broker shall retain said deposit in his trust or escrow account until he has obtained a written release from the parties consenting to its disposition or until disbursement is ordered by a court of competent jurisdiction.

(h) A broker may transfer earnest money deposits in his possession collected in connection with a sales transaction to the closing attorney or other settlement

agent not more than ten days prior to the anticipated settlement date. A broker or salesman shall not disburse prior to settlement any earnest money in his possession for any other purpose without the written consent of the parties.

B.0501 Time Share Trust Funds

(a) Except as otherwise permitted by G.S. 93A-45(c), all monies received by a time share developer or a time share salesman in connection with a time share sales transaction shall be deposited into a trust or escrow account not later than three banking days following receipt and shall remain in such account for ten days from the date of sale or until cancellation by the purchaser, whichever first occurs.

(b) All monies received by a person licensed as a salesman in connection with a time share transaction shall be delivered immediately to his project broker.

(c) When a time share purchaser timely cancels his time share purchase, the developer shall refund to the purchaser all monies paid by the purchaser in connection with the purchase. The refund shall be made no later than 30 days following the date of execution of the contract. Amounts paid by the purchaser with a bank card or a credit card shall be refunded by a cash payment or by issuing a credit voucher to the purchaser within the 30-day period.

(d) Every project broker shall obtain and keep a written representation from the developer as to whether or not lien-free or lien-subordinated time share instruments can be recorded within 45 days of the purchaser's execution of the time share purchase agreement. When a lien-free or lien-subordinated instrument cannot be recorded within said time period, on the business day following the expiration of the ten day time share payment escrow period, a project broker shall transfer from his trust account all purchase deposit funds or other payments received from a purchaser who has not cancelled his purchase agreement, to the independent escrow agent in a check made payable to the independent escrow agent. Alternatively, the check may be made payable to the developer with a restrictive endorsement placed on the back of the check providing "For deposit to the account of the independent escrow agent for the (name of time share project) only."

The Commission considers violations of these laws and rules to be a particularly serious matter. In fact, more brokers and salesmen are disciplined for trust money or trust account violations than for any other single type of offense.

III. TRUST MONEY

Definition

The term "trust money" may be defined as those funds received by a real estate broker or salesman while acting as an agent in a real estate transaction. Note that licensees who collect money on behalf of homeowner associations must deposit that money into a properly designated trust or escrow account. The most common examples of trust money are earnest money deposits, down payments, tenant security deposits, rents, homeowner association dues and assessments, and money received from final settlements. In the case of resort and other short-term rentals, trust money would also include advance reservation deposits and the state (and local, if applicable) sales taxes on the gross receipts from such rentals.

Perhaps equally important to the real estate broker is a clear understanding of what funds are not "trust money." From the above definition we can deduce that

funds which are received in **non-real estate transactions** and funds which are received in transactions in which the broker is **not acting as an agent** for some other person(s), should **not** be considered trust money. Brokers should not deposit this "non-trust money" in their "brokerage trust accounts" because to do so would constitute a commingling or mixing of trust money with non-trust money. This, in turn, could raise doubt as to whether the account is, in fact, a true trust account, and thus could deprive the broker's customers and clients of the protection given by trust accounts.

IV. TRUST ACCOUNTS

Definition/Purpose

A "trust account" (or "escrow account") is simply a bank account into which trust money (and only trust money) is deposited. It must be a **separate custodial account** which provides for **withdrawal of funds on demand** (without prior notice).

By depositing trust money in a trust account and keeping accurate records that identify each depositor (buyer, seller, landlord, tenant, etc.), the depositors are protected from the funds being "frozen" (attached) should the broker/trustee become involved in legal action or become incapacitated or die. Also, deposits are insured by a federal agency. Furthermore, by placing these funds in a **separate account**, brokers are less likely to confuse the trust money with their personal or business funds and inadvertently use money (which belongs to others) for personal or business purposes.

Opening the Account

Trust accounts must be opened and maintained in either an insured bank or savings and loan association in North Carolina. Brokers who are not using their real estate licenses are not required to open or maintain a trust account, but the account must be available for use by the broker at such time as it is needed. If a broker does not collect or otherwise handle the funds of others, no trust account is required. Only one trust account is required, and all earnest money deposits, tenant security deposits, rents, and other trust money can be deposited into this one common account. However, brokers who are active in both sales and property management often find it helpful to use two trust accounts: a "general sales trust account" for earnest money deposits, settlement proceeds, etc., and a "rental trust account" for tenant security deposits, rents, and related receipts. [NOTE: Although it is not required, many property managers elect to maintain an additional "security deposit trust account" for the purpose of separating tenant security deposits from rents and other related receipts.] Also, brokers who are active in selling or leasing their own property frequently open an additional trust account for funds received in connection with these properties. Brokers who sell or lease their own property must not commingle funds received in connection with these properties with funds they hold in trust for others. Earnest money, tenant security deposits and other funds required to be held in trust in connection with broker-owned property must be held in a separate trust account.

A trust account must be designated as a "Trust Account" or "Escrow Account" by the bank (or savings and loan association) in which the account is located, and all signature cards, bank statements, deposit tickets and checks drawn on the account must bear the words, "Trust Account" or "Escrow Account."

Trust accounts are subject to the same service charges

as regular checking accounts. Whenever possible, brokers should arrange for the depository to either bill them for these expenses or charge these expenses to the broker's personal or general operating account. But if such arrangements cannot be made, the broker may deposit and maintain in his trust account a maximum of \$100.00 of his personal funds (or such other amount as may be required) to cover such charges; however, brokers must be careful to properly enter and identify this deposit in their trust account records and to deduct any bank charges as they occur.

Interest-Bearing Trust Accounts

Trust money may be deposited in an interest-bearing trust account **ONLY** under the following conditions: (1) the broker must obtain from the persons for whom he is holding the funds written authorization to deposit the funds in an interest-bearing account; (2) the authorization must clearly specify how and to whom the interest will be disbursed; and (3) if the authorization is contained in an offer, contract, lease or other transaction instrument, it must be set forth in a manner which shall draw attention to the authorization and distinguish it from other provisions of the instrument (for example, *italics*, **boldface type**, underlining, a blank _____ to be filled in with the name of the party to whom the interest will be paid, or some similar means).

Inasmuch as trust money must be deposited in a demand account in an insured bank or savings and loan association, the investment of such funds in any type of security, including government bonds, would be prohibited. The investment of trust money in most certificates of deposit is also prohibited. Trust money may be maintained in a certificate of deposit with an insured bank or savings and loan association only if the certificate of deposit permits withdrawal of the trust money on demand and without any penalty that would reduce the principal amount of the trust money invested in this manner.

V. DEPOSITING TRUST MONEY

Who Should Deposit?

When listing property for sale or lease, a provision should be included in the listing or property management agreement naming the broker as trustee or escrow agent for the purpose of receiving and holding trust money. Likewise, offers to purchase, sales agreements, leases, etc. should specify in whose account the trust money will be held so that all persons who have an interest in the funds will know whom to hold responsible for their safekeeping.

Unless otherwise agreed upon by the parties, trust money received by a "selling broker" in a co-brokered sales transaction should be immediately delivered to the "listing broker" for deposit in the listing broker's trust account. All trust money received by a licensed real estate broker while associated with or employed by another broker or brokerage firm should, of course, be deposited in the trust account of such broker or firm. All trust money received by a real estate salesman must be immediately delivered to the salesman's supervising broker.

A broker may transfer possession of trust money to a bookkeeper, secretary, or some other clerical employee for that person to deposit the funds in a trust account; however, the broker will still be held responsible for the care and custody of such funds. Brokers should closely and diligently supervise the acts of these persons. Periodic audits and bonding of such persons is recommended.

When to Deposit?

Earnest money received on offers to purchase and tenant security deposits received in connection with leases must be deposited in a trust account not later than three banking days following acceptance of the offer to purchase or lease. The date of acceptance must be shown in the purchase or lease agreement. Rents, settlement proceeds, and other trust money must be deposited in a trust account not later than three banking days following receipt of the funds.

VI. DISBURSING TRUST MONEY

Permitted Uses/Access

The instrument creating the trust (sales contract, property management agreement, lease, etc.) should contain a clear and complete statement as to how and under what conditions the trust money will be disbursed (especially in the event the transaction is not consummated). Brokers may disburse trust money only for the purpose(s) set forth in this instrument; for example, brokers may not use trust money to pay for credit reports, surveys, appraisal fees, or other transaction expenses without the consent of both the buyer and the seller, or the landlord and tenant.

Access to trust money should be limited and carefully controlled. Although a broker may authorize a secretary, a bookkeeper, or some other person who is not a party to the transaction to sign checks withdrawing trust money, the broker will not escape liability and responsibility for the misuse of the funds by such persons. Again, brokers are advised to closely supervise these persons, and periodic audits and bonding of such persons are recommended.

When to Disburse?

Sales Transactions:

In "sales transactions," brokers will normally disburse trust money upon the happening of one of the following events:

(1) **Upon revocation or rejection of an offer.** A buyer (offeror) may revoke an offer to purchase at any time prior to being notified of the acceptance of the offer. If the buyer revokes his offer or if the offer is rejected by the seller (offeree), then the broker should immediately return the earnest money to the buyer. However, if the earnest money is in the form of a personal check which has already been deposited by the broker, the broker should not refund the deposit until the check has cleared.

(2) **Upon termination of a transaction.** If, for some reason, a transaction is not consummated and there is no dispute between the parties as to the disposition of the trust money, then the broker should disburse the money according to the provisions of the sales agreement. However, in the event of a dispute between the buyer and seller over the funds (or if the broker has reason to believe that such a dispute may arise), then the broker must attempt to obtain a written release from the parties consenting to its disposition, and failing this, the broker must retain the funds in his trust account until the dispute is litigated by the parties and disbursement is ordered by a court of competent jurisdiction.

(3) **Upon closing of a transaction.** At the successful conclusion of a real estate transaction, any funds

pertaining to the transaction which are on deposit in the broker's trust account should be paid to and subsequently disbursed by the person designated to close the transaction (usually an attorney or lending officer).

Occasionally, however, the broker will actually conduct the closing and disburse the funds. In such cases, brokers should not transfer trust money from their trust account to their general business account for final disbursement, because this would result in a commingling of trust money and non-trust money during that period of time in which the trust money is in the business account. Trust money should be disbursed directly from the trust account to the persons entitled to such funds.

Furthermore, brokerage fees, including interest earned on interest-bearing accounts, or commissions (when earned), should be disbursed promptly (within 30 days) from the trust account to the broker's general business account, with each check clearly indicating the specific transaction to which it applies. When a broker retains deposit money in his trust account in order to pay all or a part of the commission of fees owed to him or other licensees involved, he may pay the money to the intended recipients directly from his trust account or pay the money into his general business account and make further payments from that account. Brokers should not, of course, withdraw from the trust account any portion of their earned commissions prior to closing without the express consent of all parties to the transaction.

Lease Transactions:

In "lease transactions" (that is, transactions involving the leasing or renting of real estate), the leasing agent or property manager must deposit all rental income (and tenant security deposits) in his trust account; likewise, all disbursements required in connection with the property must be made directly from the trust account to the person(s) entitled to such funds. In general, disbursements of rental income are made to pay the operating expenses of the leased property (utilities, maintenance, mortgage payments, administrative costs, etc.) with the balance being remitted to the property owner; the scope and extent of the property manager's authority to expend funds on behalf of the owner should be expressly stated in the Property Management Agreement.

The property manager must pay these operating expenses in a timely manner; however, disbursements must not at any time exceed the amount of funds on hand for that particular property or property owner. For example, if the manager has collected only \$300 in rent from property owned by Mr. A, he cannot disburse \$400 from his trust account to repair Mr. A's roof. Although the total of all funds in the trust account may be sufficient to cover the \$400 expenditure, such payment would, of course, result in the disbursement of funds belonging to other persons to pay for Mr. A's roof.

The Property Management Agreement should specify the procedure to follow in situations where disbursements would exceed receipts; for example, the manager may be authorized to withhold from the owner a certain sum of money to be held in reserve, or the manager may agree to pay such expenses from his general operating account and then be reimbursed as rents are collected. The property manager should not, however, place any of his own funds in his trust account to

Lead-based paint disclosure now mandatory

To implement the Residential Lead-Based Paint Hazard Reduction Act of 1992, The Environmental Protection Agency (EPA) and the Department of Housing and Urban Development (HUD) announce new federal legislation, now in effect.

Basic Requirements

Prior to selling or renting most residential housing that was built before 1978, sellers and landlords - or their real estate agents - are required to:

1. disclose in writing to the buyers/renters the presence of any known lead-based paint or lead-based paint hazard;
2. provide the buyer/renter any reports or records pertaining to a lead-based paint or related hazard; and
3. provide the buyer/renter a copy of the EPA pamphlet entitled *Protect Your Family from Lead in Your Home*.

Other Requirements

- △ A disclosure form must be included in (or be an addendum to) each sales contract or lease for affected housing.
- △ A seller must allow the buyer a 10-day period to conduct a lead-based paint risk assessment or inspection; however, the buyer may waive or modify this right in writing.
- △ A disclosure to an existing tenant is not required, but must be made upon the tenant's renewal of the lease agreement.

Your Responsibility as an Agent

As an agent of the seller or landlord, you are required to:

1. inform the seller or landlord of his/her obligations under these rules; and
2. either ensure that the seller or landlord has performed all activities required by the rules or *personally ensure compliance with the requirements of the rules. The agent shares with the seller or landlord the legal responsibility for compliance!*

Note: For purposes of these rules, a **buyer's agent** who is paid by the seller or through a cooperative brokerage agreement with the listing agent is also considered to be a seller's agent.

For More Information

- △ Attend the current *Real Estate Update* mandatory continuing education course.
- △ Obtain a copy of *Protect Your Family from Lead in Your Home*, the sample disclosure forms, or the rule by calling the National Lead Information Clearinghouse (NLIC) at (800) 424-Lead, or TDD (800) 526-5456 for the hearing impaired; or fax your request to (202) 659-1192.

- △ Order bulk copies of the pamphlets from the Government Printing Office (GPO) at (202) 512-1800. Please refer to the complete title or GPO stock number 055-000-00507-9. The price is \$26 for a pack of 50 copies.

Note: Reproduction of the pamphlet, for use or distribution, is allowed if the text and graphics are reproduced in full. Camera-ready copies of the pamphlet are available from the National Lead Information Clearinghouse.

- △ Get answers to specific questions about lead-based paint and lead-based paint hazards by calling the National Lead Information Clearinghouse at (800) 424-LEAD, or TDD (800) 526-5456 for the hearing impaired.



Stucco - EIFS or Real?

By Miriam J. Baer, Assistant Director of Legal Services

The Real Estate Commission recently determined that the presence of "exterior insulating and finishing system" (EIFS - a type of synthetic stucco) on a property is a material fact and must be disclosed to prospective purchasers. EIFS has been associated with high moisture readings in the structural wood components of properties clad with this product. And high moisture levels often lead to problems such as rot damage and termite infestation. The problem is aggravated by the fact that the damage occurs behind the EIFS siding and can be difficult to detect.

But how do you tell if what appears to be stucco is really EIFS, so that you can make the necessary disclosure?

EIFS is relatively light, and sounds hollow when tapped...Real stucco is relatively heavy and feels and sounds solid when tapped.

EIFS siding is created by affixing a styrofoam panel to the wall sheathing. The styrofoam is covered with reinforcing mesh, followed by a base coat and a finish coat. Both the base and finish coats include an acrylic resin. The resin is water soluble in its liquid form, but once applied and dried, it becomes waterproof.

Typically, EIFS - from styrofoam to the finished surface - is only about 3/8 of an inch thick. It is relatively light, and sounds hollow when tapped.

The use of EIFS and other products has become increasingly popular in recent years. Because it is easily cut and applied, it is often used for decorative architectural features. In general, the newer the home, the more likely it is to have been sided with EIFS rather than real stucco.

Real stucco, on the other hand, is composed of cement and water, along with inert materials such as sand and lime. Galvanized wire lath may be attached to the exterior of the structure, and the cement mixture applied onto it. Sometimes, the cement mix is applied directly to specially prepared masonry surfaces. It is porous, and not waterproof. Thus, although it will absorb moisture, especially when unpainted, it also will dry easily, without damage to the structure.

Real stucco is relatively heavy and feels and sounds solid when tapped. It is a much harder material than EIFS, and is more resistant to injury by a blow or impact.

EIFS and real stucco may look similar, but a simple comparison of the two quickly reveals their differences. If you are uncertain whether the stucco siding on a property is EIFS, recommend that the parties have it inspected by a qualified inspector. Advise them of the available information about EIFS and other synthetic stucco products and refer them to building inspection offices and other experts for more information.

NOTE: There are synthetic stucco products other than conventional EIFS. These include DEFS or EFS ("Direct-applied Exterior Finish Systems") and "drainable EIFS." DEFS or EFS is a system that involves the use of cement board panels rather than styrofoam panels. "Drainable EIFS" systems incorporate drainage channels behind the styrofoam panels which may be visible at the bottom of the exterior synthetic stucco wall. These systems have been used less frequently than conventional EIFS. Because of the variety of stucco products, and the difficulty identifying some of these lesser known systems, it is especially important to involve qualified inspectors and other experts in transactions involving stucco. ◻

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.

DORA E. BLANCHARD (Holly Springs) - The Commission revoked Ms. Blanchard's broker license effective August 9, 1996. The Commission found that Ms. Blanchard had misrepresented to the Commission's representatives the extent and nature of the records she created and maintained of the funds she held for others and also had misrepresented her authority and control over bank accounts containing these funds. The Commission further found that Ms. Blanchard had failed to deposit and maintain the funds she held for others in a trust or escrow account; had failed to maintain proper trust account records including ledgers, journals or check stubs, canceled checks, and bank statements sufficient to establish a clear audit trail; and had failed to make transaction records including leases and trust account records available for inspection by the Commission's authorized representatives.

BLUEGREEN CORPORATION F/K/A PATTEN CORPORATION (Boca Raton, FL) - The Commission accepted the voluntary surrender of Bluegreen Corporation's corporate real estate broker license for one year effective November 1, 1996. The Commission dismissed without prejudice charges that Bluegreen Corporation had violated the Real Estate License Law and the rules of the Commission in the conduct of its real estate development business. Bluegreen Corporation denied any misconduct.

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Disciplinary action

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MALCOLM H. BURNETTE (Kenbridge, VA) - By Consent, the Commission suspended Mr. Burnette's salesman license for three years effective August 8, 1996. One year of the suspension is to be active and the remaining period stayed for a probationary term of two years. The Commission found that Mr. Burnette, through a corporation he owned, had purchased property from sellers who had hired him to market the property, and that he had immediately resold the property at a gross profit of \$20,000 without ever informing his seller-clients about his buyer's interest in the property.

DANIEL B. CALKINS (Charlotte) - The Commission accepted the voluntary surrender of Mr. Calkins' broker license for one year effective September 1, 1996. The Commission dismissed without prejudice charges that Mr. Calkins had violated provisions of the Real Estate License Law. Mr. Calkins neither admitted nor denied any misconduct.

COASTAL CONCEPTS, INC. (Surf City) - By Consent, in an order superseding a prior order in the case, the Commission suspended Coastal Concepts, Inc.'s corporate real estate broker license for 180 days effective November 1, 1996. The Commission then stayed the suspension for a probationary term of one year. The Commission found that Coastal Concepts, Inc. had failed to keep proper and adequate records of funds it collected on its clients' behalf. The Commission further found that from time-to-time, Coastal Concepts, Inc. had paid for repairs and maintenance of particular properties using funds belonging to clients who were not the owners of those properties. The Commission noted that Coastal Concepts, Inc. did not convert client monies to its own use and that it has taken steps to correct its record-keeping of trust monies.

JAMES C. COX (Tabor City) - By Consent, the Commission suspended Mr. Cox's broker license for two years effective October 1, 1996. The Commission then stayed the suspension. The Commission found that Mr. Cox had failed to properly control the advertising of a property by a real estate firm of which he was broker-in-charge.

SHIRLEY D. DELONG (Jamestown) - By Consent, the Commission reprimanded Ms. deLong effective July 9, 1996. The Commission found that in 1993, Ms. deLong had submitted to the local REALTORS® association an application for membership in which she had failed to adequately disclose and describe the nature of a 1981 conviction.

DAVID L. DICKEY (Wilmington) - By Consent, the Commission reprimanded Mr. Dickey effective November 1, 1996. The Commission found that Mr. Dickey had allowed the use of an unlawful referral program by a corporation of which he was principal broker and broker-in-charge.

CHARLES R. GARDNER, JR. (Charlotte) - By Consent, the Commission suspended Mr. Gardner's broker license for two years effective September 1, 1996. The Commission found that during the course of a real estate transaction, Mr. Gardner, a builder, had failed to disclose to a buyer that foreclosure of the property was imminent. The Commission further found that Mr. Gardner had failed to refund the buyer's \$5,000 earnest money deposit after the property was sold to another party in foreclosure. Mr. Gardner neither admitted nor denied misconduct.

MARGARET D. GIBBS (Lenoir) - By Consent, the Commission suspended Ms. Gibbs' salesman license for 30 days effective September 10, 1996. The Commission then stayed the suspension for a probationary term of

one year. The Commission found that in advertisements of a property which she had listed for sale, Ms. Gibbs had indicated that the property's detached garage could be used as a separate apartment when, in fact, such a use violated the local zoning ordinance. Ms. Gibbs neither admitted nor denied any misconduct.

GOLD COAST REALTY, INC. (Cala-bash) - The Commission accepted the permanent voluntary surrender of Gold Coast Realty, Inc.'s corporate real estate broker license effective September 1, 1996. The Commission dismissed without prejudice charges that Gold Coast Realty, Inc. had violated the Real Estate License Law and the rules of the Commission in the conduct of a real estate brokerage business.

ELEANOR B. GULLY (Cary) - By Consent, the Commission reprimanded Ms. Gully effective August 23, 1996. The Commission found that Ms. Gully had failed to disclose to a purchaser that a portion of property which Ms. Gully had listed for sale was located in a flood plain. The Commission noted that Ms. Gully had not intended to deceive the purchaser, and that he was able to withdraw from the contract without penalty.

HOME INVEST CORP. (Charlotte) - The Commission accepted the voluntary surrender of Home Invest Corp.'s corporate real estate broker license for one year effective September 1, 1996. The Commission dismissed without prejudice charges that Home Invest Corp. had violated provisions of the Real Estate License Law. Home Invest Corp. neither admitted nor denied any misconduct.

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Disciplinary action

(continued from page 13)

GLENN E. HUDSON (Calabash) - The Commission accepted the voluntary surrender of Mr. Hudson's broker license for five years effective September 1, 1996. The Commission dismissed without prejudice charges that Mr. Hudson had violated the Real Estate License Law and the rules of the Commission in the conduct of a real estate brokerage business.

PHILLIP M. JACKSON (Durham) - By Consent, the Commission suspended Mr. Jackson's broker license for 90 days effective September 1, 1996. The Commission then stayed the suspension for a probationary term of one year. The Commission found that Mr. Jackson had signed several documents as secretary of a corporation when he was not actually its secretary. Mr. Jackson neither admitted nor denied any misconduct.

DENEL R. KEASLER (Charlotte) - The Commission accepted the voluntary surrender of Ms. Keasler's salesman license for one year effective September 1, 1996. The Commission dismissed without prejudice charges that Ms. Keasler had violated the Real Estate License Law by negligently representing to lot purchasers that property near or neighboring their own was federally protected wetlands when, in fact, it was not. Ms. Keasler neither admitted nor denied any misconduct.

LARRY D. KINGSLEY (Cary) - By Consent, the Commission revoked Mr. Kingsley's broker license effective September 15, 1996. On May 15, 1997, Mr. Kingsley may obtain a salesman license on certain conditions. The Commission found that Mr. Kingsley had listed a property for sale and then had contracted to buy it at the full asking price but without disclosing to the seller that the value of the timber on her property exceeded the contract price. The Commission further found that after clos-

ing the transaction and receiving a brokerage fee, Mr. Kingsley had sold a portion of the timber at a significant profit. Mr. Kingsley subsequently paid his profits to the seller.

MAIN STREET REALTY, INC. (Wilmington) - By Consent, the Commission revoked Main Street Realty, Inc.'s corporate real estate broker license effective December 31, 1996. The Commission found that Main Street Realty, Inc. had failed to deposit the funds of others into a designated trust account as required by Commission rule. Main Street Realty, Inc. neither admitted nor denied any misconduct.

EVELYN J. MARSHALL (Lenoir) - By Consent, the Commission suspended Ms. Marshall's salesman license for 30 days effective September 10, 1996. The Commission then stayed the suspension for a probationary term of one year. The Commission found that Ms. Marshall had used the presence of a residential apartment in a property's garage as a marketing factor and had advised a potential buyer that the garage apartment could be rented out to generate income when, in fact, the use of the garage for residential purposes violated the local zoning ordinance. Ms. Marshall neither admitted nor denied any misconduct.

MILES J. MCCORMICK, JR. (Surf City) - By Consent, in an order superseding a prior order in the case, the Commission suspended Mr. McCormick's broker license for 180 days effective November 1, 1996. Thirty days of the suspension are to be active and the remaining period stayed for a probationary term of one year. The Commission found that Mr. McCormick had failed to keep proper and adequate records of funds he collected on his clients' behalf. The Commission further found that

from time-to-time, Mr. McCormick had paid for repairs and maintenance of particular properties using funds belonging to clients who were not the owners of those properties. The Commission noted that Mr. McCormick did not convert client monies to his own use and that he has taken steps to correct his record-keeping of trust monies.

EVA F. PUCKETT (Fayetteville) - The Commission revoked Ms. Puckett's broker license effective August 8, 1996. The Commission found that Ms. Puckett had failed to account for or remit rents and security deposit monies she collected which belonged to her landlord clients and their tenants, had failed to account for her handling of the funds of others or otherwise produce records for inspection by duly authorized representatives of the Real Estate Commission, and had informed her landlord clients that their property was vacant when, in fact, it was occupied by a tenant she had procured.

HUBERT L. RAPER (Murphy) - By Consent, the Commission suspended Mr. Raper's broker license for six months effective September 15, 1996. The Commission then stayed the suspension for a probationary term of six months. The Commission found that in 1994, the firm of which Mr. Raper was principal broker and broker-in-charge had incorrectly represented in advertisements that a listed property could be used as "1 home or 2 apts." The Commission noted that Mr. Raper had relied upon information supplied by the seller of the property.

NANCIE JACK REYNOLDS (Brevard) - The Commission suspended Ms. Reynolds' salesman li-

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Disciplinary action

(continued from page 14)

cense for one year effective November 15, 1996. The Commission found that Ms. Reynolds had made a false statement on her application for real estate licensure; namely, Ms. Reynolds answered "no" to the application question regarding criminal convictions when, in fact, she had been convicted of the crime of writing a worthless check. The Commission further found that after her licensure, Ms. Reynolds had written two other worthless checks - including one to the Commission in 1995 for renewal of her license. The Commission noted that Ms. Reynolds subsequently made all three of her bad checks good.

VIVIAN M. RIDDLE (Greensboro) - By Consent, the Commission reprimanded Ms. Riddle effective September 15, 1996. The Commission found that Ms. Riddle had allowed her real estate broker license to expire on June 30, 1995, and had failed to renew it until on or about August 15, 1995, and that her license had been renewed on inactive status because she had failed to complete the continuing education required for active licensure. The Commission further found that Ms. Riddle had continued her brokerage activities while her license was expired and on inactive status. The Commission noted that Ms. Riddle had eventually completed the required continuing education on or about May 24, 1996, and her license was restored to active status.

CHRISTOPHER T. SANDERS (Durham) - By Consent, the Commission suspended Mr. Sanders' salesman license for four years, two months and nine days effective August 23, 1996. If prior to October 30, 2000, Mr. Sanders is released from supervised probation imposed as a result of criminal convictions, the Commission shall stay the suspension and place him on probation for the remainder of

the suspension period. The Commission found that Mr. Sanders had been convicted of counterfeiting United States currency.

JOHN N. STARLING (Wilmington) - By Consent, the Commission revoked Mr. Starling's broker license effective December 31, 1996. The Commission found that Mr. Starling had failed to maintain the trust account records required by Commission rule with respect to advance deposits in a pre-sale campaign for a condominium development. Mr. Starling neither admitted nor denied any misconduct.

HARRY G. SUDDRETH (Lenoir) - By Consent, the Commission suspended Mr. Suddreth's broker license for 30 days effective September 10, 1996. The Commission then stayed the suspension for a probationary term of one year. The Commission found that in advertisements of a property for sale, the firm where Mr. Suddreth was broker-in-charge had indicated that the property's detached garage could be used as a separate apartment when, in fact, such a use violated the local zoning ordinance. Mr. Suddreth neither admitted nor denied any misconduct.

ANGELA M. SUTTLES [BRETZ] (Asheville) - By Consent, the Commission suspended Ms. Suttles' [Bretz'] broker license for one year effective July 1, 1996. Three months of the suspension are to be active and the remaining period stayed for a probationary term of nine months. The Commission found that Ms. Suttles [Bretz] had failed to disclose to buyers a furnace inspection report which indicated two cracks in the heat exchanger of the property which she had listed. The Commission further found that Ms. Suttles [Bretz] had then arranged for another inspection which showed no defects.

EUGENE B. WATERS (Plymouth) - By Consent, the Commission sus-

pended Mr. Waters' broker license for six months effective September 1, 1996. The Commission then stayed the suspension for a probationary term of one year upon certain conditions. The Commission found that Mr. Waters, while acting as a listing agent for real property, had made an offer to purchase the property for himself for the full list price with no commission to be paid and negligently had failed to disclose to the seller another potential offeror who was interested in the property. The Commission further found that Mr. Waters had negligently failed to advise the other offeror of the recent price reduction by the seller. Mr. Waters neither admitted nor denied any misconduct.

TERI LYNN WELLS (Burlington) - By Consent, the Commission suspended Ms. Wells' broker license for three years effective September 1, 1996. Sixteen months of the suspension are to be active and the remaining period stayed for a probationary term of 20 months. The Commission found that Ms. Wells, without authority or consent, had diverted to her own use certain funds belonging to the real estate firm where Ms. Wells was employed. Ms. Wells believed that she was entitled to the funds. The Commission noted that Ms. Wells has made full restitution of all sums.

JOE E. WILLIAMSON (Wilmington) - By Consent, the Commission reprimanded Mr. Williamson effective August 8, 1996. The Commission found that Mr. Williamson had executed a notary acknowledgment on a deed stating that the two signatories had personally appeared before him when, in fact, one of them had not signed or acknowledged the deed in his presence.

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Disciplinary action

(continued from page 15)

GEORGE F. WILSON, JR. (Winston-Salem) - By Consent, the Commission suspended Mr. Wilson's salesman license for six months effective September 1, 1996. The Commission then stayed the suspension for a probationary term ending February 20, 1998. The Commission found that Mr. Wilson had made an oral offer on a property which was owned by his broker-in-charge and was listed through the real estate corporation where Mr. Wilson was employed as a sales associate. Mr. Wilson then contracted to sell a portion of the property, but failed to immediately advise his broker-in-charge of the contract and failed to turn over to his broker-in-charge the buyers' \$500 earnest money check. The Commis-

sion noted that when Mr. Wilson's contract to sell the property failed, he returned the buyers' earnest money check uncashed, and neither the buyers nor any other member of the public was harmed by Mr. Wilson's conduct. Mr. Wilson neither admitted nor denied any misconduct.

SANDRA H. YORK (Murphy) - By Consent, the Commission suspended Ms. York's salesman license for one year effective September 15, 1996. The Commission then stayed the suspension for a probationary term of one year. The Commission found that Ms. York had incorrectly represented in advertisements that property which she had listed could be used as "1 home or 2 apts." The Commission noted that Ms. York had relied

upon information supplied by the seller of the property. □



Please note...

The annual Trust Account Course Caravan starts in March. Courses are scheduled for Asheville, Gastonia, Greensboro, Morehead City, Nags Head, Southern Pines and Wilmington. Please refer to the "Registration Form" on page 2 of this *Bulletin* for Caravan Course dates and times as well as for the regularly scheduled courses in Raleigh.

On the inside...

Commission amends agency rule

Commission offers "fax-on-demand"

Lead-based paint disclosure now mandatory

Broker Price Opinions

Commission Calendar

Completion of contract forms vs. drafting

"Trust Account Guidelines" reprint

Stucco - EIFS or Real?

Disciplinary action

...and more.

A reminder...

The countdown is on! June 10 is the deadline to earn continuing education credits for the current fiscal year.

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