



## NORTH CAROLINA REAL ESTATE COMMISSION

# Real Estate Bulletin

Volume 28

Winter 1998

Number 4

### Licensees must comply with agency disclosure rule

**Rule has been in effect for 2½ years and has been thoroughly covered in various Commission publications as well as continuing education Update courses.**

The Real Estate Commission continues to receive reports that many brokers and salesmen are not complying with its rule governing agency agreements and disclosure. [A summary of the requirements of the rule was included in the previous issue of your *Real Estate Bulletin*.]

To better assure compliance with the existing rule, the Commission's auditor/investigators, when investigating complaints and conducting unannounced inspections of real estate offices, have been directed to examine listing agreements and buyer agency agreements to verify that they contain the required *Description of Agent Duties and Relationships* and examine transaction records to verify that they contain the *Disclosure to Buyer From Seller's Agent or Sub-agent* form when required.

If you have a question concerning this or any other rule, please contact the Commission's Legal Services Division. ■

### Commission proposes to adopt and amend rules

The Real Estate Commission, pursuant to authority vested in it by N.C. General Statutes, proposes to adopt, amend and repeal certain rules contained in Title 21, Chapter 58 of the N.C. Administrative Code, to:

#### Brokers and Salesmen

1. Require only real estate firms and brokers-in-charge to display their license certificates, but require all licensees to produce their license pocket cards upon request as proof of licensure.
2. Clarify that licensees must report personal and business name changes to the Commission.
3. Require that cash be deposited into trust accounts within three banking days following receipt.
4. Clarify that brokers and salesmen must safeguard trust monies, and not convert or allow others to convert them to their personal use.
5. Set forth a procedure for disposing of disputed and abandoned trust monies.
6. Explain that real estate licensees may not compensate unlicensed persons or entities engaging in real estate brokerage activity in this state.
7. Provide that, in addition to the salesman's broker-in-charge, the salesman is responsible for notifying the Commission when the broker-in-charge terminates his/her supervision of the salesman.
8. Require licensees to respond in writing within fourteen days to written inquiries from the Commission.

(continued on page 5)

### Residential Property Disclosure Act

#### Reminder...

As reported in the Fall *Bulletin*, an amendment to the Residential Property Disclosure Act, effective December 1, 1997, authorizes and directs the Real Estate Commission to develop a new Residential Property Disclosure Statement for use on and after October 1, 1998. Please see page 5 of this current *Bulletin* for the date, time and place for the rulemaking hearing to consider the adoption of the Statement and the adoption, amendment and repeal of other rules. A draft of the proposed Statement is included for your review on pages 9 and 10. ■

## REAL ESTATE BULLETIN

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

### NORTH CAROLINA REAL ESTATE COMMISSION

1313 Navaho Drive  
P.O. Box 17100  
Raleigh, North Carolina 27619 - 7100  
Phone 919/875-3700  
James B. Hunt, Jr., Governor

### COMMISSION MEMBERS

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

Phillip T. Fisher  
Executive Director

### ADMINISTRATION

Mary Frances Whitley ..... Director  
Paula L. Lassiter ..... Financial Officer  
Vickie R. Crouse ... Data Proc. Administrator  
Carrie D. Worthington ... Publications Officer

### AUDITS & INVESTIGATIONS

Emmet R. Wood ..... Director  
Gary R. Caddell ..... Sr. Auditor/Investigator  
Evelyn G. Johnston ..... Compliance Officer  
Jennifer K. Boger ..... Auditor/Investigator  
Michael B. Gray ..... Auditor/Investigator  
René L. Rhodes ..... Auditor/Investigator  
Jarrod L. Williams ..... Auditor/Investigator

### EDUCATION & LICENSING

Larry A. Outlaw ..... Director  
Anita R. Burt ..... Ed./Exam. Officer  
Pamela R. Milligan ..... Cont. Ed. Officer  
Diane Ursone ..... Licensing/Ed. Officer

### LEGAL SERVICES

Thomas R. Miller ..... Lgl. Counsel, Director  
Spec. Dep. Attorney General  
Miriam J. Baer ..... Assistant Director  
Blackwell M. Brogden, Jr. .... Chief Dep. Lgl.  
Counsel  
Marilyn E. Tomei ..... Dep. Lgl. Counsel  
Janet B. Dutton ..... Assoc. Lgl. Counsel  
Stephen L. Fussell ..... Cons. Prot. Officer  
Robin F. Oliver ..... Cons. Prot. Officer  
Rebecca A. Sabel ..... Information Officer

Editor - In - Chief

Phillip T. Fisher

Editor

Carrie D. Worthington

## Commission Staff Update



**Emmet R. Wood**

Wood has been promoted to Director of Audits and Investigations. A graduate of N.C. State University, he has completed additional studies in accounting, business law and federal taxation. Emmet is a Certified Public Accountant and a licensed real estate broker. Prior to employment with the Commission,

he was associated with public accounting firms in Raleigh and also worked as an agent for a local real estate firm.

A native of Edenton, Emmet joined the Commission staff in 1981. As a Senior Trust Account Auditor, he has been serving as Acting Director of Audits and Investigations since the resignation of Christopher B. Smith, who served as Director of the Division from 1995 until 1997.

(continued on page 3)

### REAL ESTATE COMMISSION PUBLICATIONS ORDER FORM

	No. Copies Requested
<i>Res. Property Disclosure Statement and Guidelines</i> (Please limit request to one copy.)	_____
<i>Questions and Answers on: Tenant Security Deposits</i>	_____
<i>Questions and Answers on: Fair Housing</i>	_____
<i>Questions and Answers on: Condos and Townhouses</i>	_____
<i>Questions and Answers on: Who Agents Represent</i>	_____
<i>Questions and Answers on: Purchasing Coastal Real Estate in North Carolina</i>	_____
<i>Questions and Answers on: Renting Residential Real Estate</i>	_____

( )  
Name \_\_\_\_\_ Phone Number (Including Area Code) \_\_\_\_\_

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

### Instructions

1. You may request single copies of these free publications by returning this Order Form or calling the Commission office (919) 875-3700, menu option 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 Staff Update

(continued from page 2)

As Director of Audits and Investigations, Emmet will be responsible for the Commission's auditing and investigative programs.

□ □ □ □ □ □ □

Auditor/Investigators **Reneé L. Rhodes** and **Jarrold L. Williams** attended the Advanced Investigator Seminar in Salt Lake City, Utah, sponsored by the Association of Real Estate License Law Officials (ARELLO)...**Warren H. Harper** has resigned as a Real Estate Commission Auditor/Investigator to accept a position with the Banking Commission.

□ □ □ □ □ □ □

The following Commission staff members have made appearances before various real estate industry and related groups since the last issue of the *Bulletin*. Special Deputy Attorney General **Thomas R. Miller**, the Commission's Director of Legal Services, spoke on "What Coastal Buyers Should Know: Disclosure requirements for sellers and real estate agents," when he

addressed the recent coastal workshops in Atlantic Beach, Nags Head and Wilmington. [See article on page 6.]...Continuing Education Officer **Pamela R. Milligan** also attended the workshops to help with preparations...Chief Deputy Legal Counsel **Blackwell M. Brogden, Jr.**, discussed problems and challenges facing today's

real estate agents when he addressed the Durham Lions Club.

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

## 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.**

☐ February 3                      ☐ May 6                      ☐ June 2  
☐ April 14                      ☐ July 7

**BASIC TRUST ACCOUNT PROCEDURES COURSE - Caravan**

☐ Nags Head (March 3)                      ☐ Southern Pines (March 6)                      ☐ Wilmington (March 31)  
☐ Greenville (March 5)                      ☐ Charlotte (March 18)                      ☐ Greensboro (April 3)

**TRUST ACCOUNT PROCEDURES  
FOR RESORT PROPERTY MANAGERS COURSE - Caravan**

☐ Nags Head (March 4)                      ☐ Wilmington (April 1)

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. 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 Specialist  
☐ Salesman (License No. \_\_\_\_\_) P. O. Box 17100  
Raleigh, NC 27619-7100  
☐ Bookkeeper Enclose \$35 tuition fee

### EXAM RESULTS

	Passed	Failed
September		
Brokers	74	60
Salesmen	375	261
October		
Brokers	117	82
Salesmen	310	207
November		
Brokers	142	105
Salesmen	481	340



# Communicating with the Commission

If you wish to contact the North Carolina Real Estate Commission by phone, fax, mail or e-mail, please refer to the following information.

## North Carolina Real Estate Commission

### Mail

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

### Telephone

919/875-3700

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

### Subject Access Codes

- Application form requests . . . . Receptionist (0)
- Real estate license renewals and record changes . . . . . Records Section (1)
- Complaints and legal matters (Consumer complaints/inquiries, pending cases/hearings) . . . . Legal Services Division (2)
- Education matters . . . . . Education Section (3)
- Real estate license qualifications and examinations . . . . . Application Section (4)
- Real estate firm licensing and licensing by reinstatement or reciprocity . . . . . Licensing Section (5)
- Complaint investigations and audits . . . Audits and Investigations Division (6)
- Administration, personnel matters and accounting . . . . Administration Division (7)
- Other matters . . . . . Receptionist (0)

### Interactive Voice Response

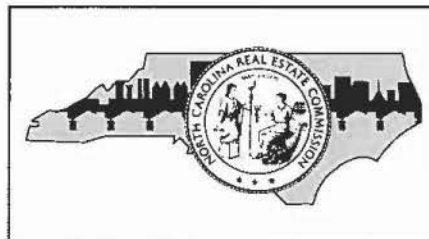
To retrieve licensee data (license status, CE credits, broker-in-charge information, etc.) from the Interactive Voice Response (IVR) system, use a touchtone phone to dial (919) 850-2753.

### E-Mail

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

### Internet

Web Site: [www.ncrec.state.nc.us](http://www.ncrec.state.nc.us)



"Visit" the Commission online - your easy access to Commission information. The Internet brings to your computer screen

licensing information including the License Law, Commission Rules, Trust Account Guidelines, State Fair Housing Act, general information and guides, sample forms and real estate licensing forms. Also, exam schedules and review dates as well as Commission publications including the *Bulletin* and *CE Schedule*, Commission brochure and the complete *Question and Answer Series*.

### Fax-on-Demand

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

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

### Education/Licensing

300	Continuing Education Course Schedule
310	Publications Order Form
320	License Examination Schedule and License Examination Review Schedule
330	Basic Trust Account Procedures Course Schedule and Registration Form
340	Order Form for License Examination Candidate Roster/Order Form for Register of New Licensees
350	Verification of Salesman Experience
360	Request for Equivalent Education Credit

### Legal Services

400	Complaint Form
410	Criminal Conviction Reporting Form
420	Residential Property Disclosure Statement
430	Disclosure to Buyer From Seller's Agent or Subagent

### Other

500	1998 Commission Meeting Schedule
510	Request for Program Presenter

# Commission proposes to adopt and amend rules

(continued from page 1)

## Broker-in-Charge

9. Clarify that the broker-in-charge of the office where a transaction is conducted must retain all records of the transaction, including agency contracts, disclosure documents and records of incomplete transactions.
10. Eliminate the requirement that licensees furnish the Commission a copy of their assumed name registration certificate(s) when advertising a firm or assumed name that does not set forth the surname of the licensee.
11. Clarify that a broker can be broker-in-charge of more than one *firm* if the firms have the same physical location, and that an *office* can have only one broker-in-charge.
12. Eliminate the requirement that a "Verification of Salesman Experience" form be furnished to all salesmen when they terminate their association with their broker-in-charge, and instead require that the form be provided upon request from the salesman if the request is made within five years after termination.

## Agency

13. Include a discussion of designated agency in the "Description of Agent Duties and Relationships" statement.
14. Clarify that real estate agents in timeshare transactions must disclose their agency relationships to the parties.

## Property Disclosure Form

15. Adopt a "Residential Property Disclosure Statement" Form. (Effective October 1, 1998.) [See this *Bulletin*, pages 9 and 10.]

## License Reinstatement

16. Provide that reinstatement of a revoked license, a surrendered license or a license expired for more than one year will be treated as "initial licensure" for continuing education purposes.
17. Clarify the requirements for reinstatement of a license that has been suspended.

## Other

18. Clarify that if a licensed business entity is the principal broker of another licensed business entity, the *individual* principal broker of the "principal broker entity" will be responsible for assuring performance of the principal broker's duties with regard to both entities.
19. Eliminate the requirement that continuing education sponsors must submit a separate check for each separate class session when paying student fees to the Commission.
20. Set forth procedures for the summary suspension of real estate licenses.
21. Reinsert a provision requiring license applicants to submit within 60 days following request any information needed to make their applications current.
22. Eliminate an obsolete rule regarding the Appraisal Board.

Unless otherwise indicated, the rule changes would become effective August 1, 1998. Anyone interested in the Commission's proposals may present comments at a public rulemaking hearing to be held at 3:00 p.m., February 10, 1998, at the North Raleigh Hilton, 3415 Wake Forest Road, Raleigh, N.C. Written comments not presented at the hearing should be delivered by the hearing date to:

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

## Commission Calendar

### Meeting Dates

February 11

March 11

April 7

May 13

June 10

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

## Your Place at the Beach

*What Real Estate Agents and Developers Should Know About Building, Marketing and Selling Coastal Property*



# Commission cooperates with other agencies to conduct coastal area workshops

## Huge Response to *Your Place at the Beach*

Nearly 500 persons attended educational workshops conducted in September and October along the North Carolina coast. Jointly sponsored by the Real Estate Commission, North Carolina Sea Grant and the North Carolina Division of Coastal Management, the workshops were designed to inform real estate agents and developers about what they should know concerning building, marketing and selling coastal property.

During the five-hour program, a panel of experts, including Commission Legal Counsel Tom Miller, addressed such topics as beach erosion, building construction, property insurance, and disclosures which should be made to purchasers

of coastal real estate. Opening remarks were presented by The Honorable Marc Basnight, President Pro Tempore of the North Carolina Senate, and David Sullivan, Director of the North Carolina Disaster Recovery Task Force.

Response to the course offerings at Wilmington, Atlantic Beach and Nags Head was so overwhelming, an additional workshop was held at Wilmington in December.

The Real Estate Commission thanks the many speakers who participated in the workshops, the hundreds of real estate agents who attended, and the Commission staff members and others whose efforts contributed to the success of this program. □

---

## Educators meet in Pinehurst

*By Pamela R. Milligan, Continuing Education Officer*

Several members of the Commission's Education and Licensing staff attended the North Carolina Real Estate Educators' Association (NCREEA) Fall Conference in Pinehurst on September 25 and 26. Also attending the conference were prelicensing and continuing education instructors, school directors and sponsors - most of whom are members of NCREEA.

Patrick Hetrick, Dean of the Campbell University School of Law, opened the conference with a presentation of recent fair housing

litigation. [Mr. Hetrick and Larry Outlaw, the Real Estate Commission's Director of Education and Licensing, co-authored the Commission's textbook, *North Carolina Real Estate for Brokers and Salesmen*.]

Gary Taylor, a retired real estate school director, delivered an overview of syllabus changes for prelicensing instructors of the Fundamentals course. The highlight of the afternoon session was a discussion of the finalized 1997-1998 *Update* course by Mr. Outlaw and the

Commission's Legal Counsel, Tom Miller.

The second day of the conference featured CPA Scott Brewer's question and answer session on the Taxpayer Relief Act of 1997, a PowerPoint exhibition by real estate educator Mike Hughes, and a presentation of innovative instructional techniques by 1997 NCREEA Instructor of the Year, Bill Gallagher.

Approximately 75 educators attended the conference, which was planned and coordinated by NCREEA President Sharon Pelt. □



# Questions and Answers on: Renting Residential Real Estate

(continued from Bulletin Volume 28, Number 3, Fall 1997)



**Q: My one-year lease has expired, but I still live in the property and pay rent on a monthly basis. Now the landlord says he is increasing my rent. Must I pay the increase?**

**A:** It depends upon the terms of the lease. Most leases provide that when the lease expires, you automatically become a month-to-month tenant and are no longer guaranteed a particular rental rate. In that case, the landlord can increase the rent by any amount by giving you the same notice of his intent to raise the rent that he would be required to give to terminate your tenancy. You may either stay and pay the higher rent or move out.

However, some leases automatically expire at the end of the lease term and have no renewal provision. In that case, the landlord may demand a rent increase in order for you to remain in possession after the expiration of the lease. But if the landlord accepts your rent payment in the usual amount for the month following the expiration of your lease, he has effectively renewed your lease for another year at the old rate.

**Q: My landlord just sold the property I am renting to someone else. Can the new owner evict me?**

**A:** Probably not. If you are a tenant in possession of the property, the law presumes that the purchaser is aware of your tenancy, and requires that

purchaser to honor your lease. However, you could be evicted if you agreed in your lease that you would vacate the premises upon the sale of the property.

**Q: Am I responsible for paying my roommate's share of the rent if my name is on the lease?**

**A:** Yes. If your name is on the lease, you are legally responsible for the performance of the lease - even if your roommate's name is also on it. Many written leases require each tenant to be responsible for all rent that is due, and landlords will usually take legal action against the remaining tenant if his roommate(s) move out and the full rent is not paid.

**Q: What must a landlord do to evict me?**

**A:** A landlord may evict you for violating a provision of your lease, but must do so according to lawful procedures. For example, unless your lease provides otherwise, when you do not pay your full rent, the landlord must first make a clear demand on you for payment of the past-due rent. Then, if you do not pay the rent within ten days (or if you have violated your lease in some other way), the landlord may file a formal "summary ejectment" complaint against you in court describing why you should be ejected.

Many leases permit the landlord to shorten the ten day notice period or avoid it altogether by including a "forfeiture" clause. Such clauses provide that the lease terminates if you do not pay your rent within a specified number of days after it is due and may require no notice or less than ten days' notice before the land-

lord is permitted to begin the summary ejectment proceeding in court.

At the court hearing, you can, of course, raise defenses. If the magistrate rules in favor of the landlord, you can appeal the decision within ten days. However, you must pay the appropriate rent to the clerk of court while the appeal is pending. If you do not appeal in time, or if the landlord wins the appeal, he can enlist the services of the county sheriff to execute the judgment and evict you. At all times throughout the process, the landlord must use peaceable means to regain his property. "Self-help eviction," such as changing the locks, removing your possessions, or padlocking your door, is not permitted.

**Q: Can I pay rent to the landlord to stop an eviction proceeding?**

**A:** Maybe. It depends on the terms of your lease. If your lease does not address the issue and you pay or offer to pay the rent due (and any costs the landlord has incurred), the eviction proceeding is automatically terminated. If the landlord continues the suit, he will be responsible for your future legal fees. But if your lease allows the landlord to terminate your tenancy if you don't pay your rent on time, he can accept your late rent and still seek to evict you. Most leases today give the landlord this right.



# Answerline:

## Who owns an agency agreement?

By: *Blackwell M. Brogden, Jr., Chief Deputy Legal Counsel, and  
Stephen L. Fussell, Consumer Protection Officer*

**Q:** I am a broker and represent both buyers and sellers. I am considering leaving the firm where I currently work. Can I take "my" listings and buyer-clients with me?

**A:** No. The listing or buyer agency agreement is traditionally a contract between the *firm* and the principal, not between an individual agent and the principal. A broker who solicits a seller or buyer to use the firm's services, or who represents a seller or buyer on behalf of the firm, acquires no "ownership" in the agency agreement between the firm and the seller or buyer. Thus, when an individual agent leaves the firm, the agent cannot take the seller or buyer client to a new company without the consent of the firm. Even if the firm consents, because listing and buyer agency agreements are contracts to provide personal services, these agreements cannot be transferred from one firm to another without the consent of the seller or buyer as appropriate.

**Q:** What can I do to protect my interests when I leave a firm?

**A:** The Commission has long recommended that licensees affiliating with a firm (including a sole proprietor) have a written contract with the firm addressing *all* compensation and severance issues, including any right

to solicit sellers or buyers to transfer their contracts to the departing licensee. A firm does not have to agree to allow transfer of its clients. Even if it does, the principals may choose to remain with the original firm.

**Q:** I am licensed as a salesman. Do the above answers apply equally to me?

**A:** No. A salesman license is valid only while the salesman is working under a broker's supervision. The salesman can never contract to represent a buyer or seller in the salesman's own name, but instead, must always contract on behalf of the broker-in-charge or firm with which the salesman is affiliated. Furthermore, because the salesman's activities must be supervised by his or her current broker-in-charge, the salesman generally cannot solicit business on behalf of a new firm prior to employment there.

**Q:** Are these answers any different for property management agreements?

**A:** No. A property management agreement is also a contract to provide personal services. These agreements cannot be transferred or sold without the mutual consent of the firm and the property owner.

**Q:** If the firm I am leaving is unwilling to let me solicit or transfer "my" buyer and seller clients, is there anything I can do?

**A:** A licensee who attempts to circumvent the rights of the firm under a valid agency contract violates the Real Estate License Law and general contract law. For example, a licensee should not:

- take short-term listings or fail to renew listing agreements, buyer agency agreements or property management agreements in anticipation of departure from the firm, without the knowledge and consent of that firm;
- encourage principals to breach their contractual obligations to the firm;
- withdraw listings from a listing service without the consent of the firm and the seller;
- take originals or copies of agency contracts or any other documents from the firm's office without the firm's knowledge and consent;
- steer business to a new firm while still affiliated with the old firm.

A licensee who engages in such conduct may be disciplined by the Commission and face civil liability to the firm. ◻



**STATE OF NORTH CAROLINA  
RESIDENTIAL PROPERTY DISCLOSURE STATEMENT**

**DRAFT**

**Instructions to Property Owners**

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

**Note to Purchasers**

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

If you properly cancel the contract, you are entitled to a refund of any deposit monies you may have paid, and you cannot be otherwise penalized.

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

Property Address: \_\_\_\_\_

Owner's Name(s): \_\_\_\_\_

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

Owner Signature: \_\_\_\_\_ Date \_\_\_\_\_, 19\_\_\_\_

Owner Signature: \_\_\_\_\_ Date \_\_\_\_\_, 19\_\_\_\_

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

Purchaser Signature: \_\_\_\_\_ Date \_\_\_\_\_, 19\_\_\_\_

Purchaser Signature: \_\_\_\_\_ Date \_\_\_\_\_, 19\_\_\_\_

Regarding the property identified above, are you aware of any problem (malfunction or defect) with the:

	Yes*	No	No Representation
1. FOUNDATION, SLAB, FIREPLACE/CHIMNEYS, FLOORS, WINDOWS (INCLUDING STORM WINDOWS AND SCREENS), DOORS, CEILINGS, INTERIOR AND EXTERIOR WALLS, GARAGE, DRIVEWAY AND SIDEWALKS, OUTSIDE FENCES, PATIO, DECK OR OTHER STRUCTURAL COMPONENTS and any modifications to them? .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
a. Siding is <input type="checkbox"/> Masonry <input type="checkbox"/> Wood <input type="checkbox"/> Masonite <input type="checkbox"/> Vinyl <input type="checkbox"/> Synthetic Stucco <input type="checkbox"/> Other .....			<input type="checkbox"/>
b. Age of Structure? .....			<input type="checkbox"/>
2. ROOF (leakage or other problem)? .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
a. Age of roof covering? .....			<input type="checkbox"/>
3. BASEMENT, CRAWL SPACE OR SLAB (including water seepage, leakage, dampness or standing water)? ....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4. ELECTRICAL SYSTEM (outlets, wiring, panel, etc.)? .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5. PLUMBING SYSTEM (pipes, fixtures, etc.)? .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6. HEATING AND AIR CONDITIONING? .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
a. Heat Source is: <input type="checkbox"/> Furnace <input type="checkbox"/> Heat Pump <input type="checkbox"/> Baseboard <input type="checkbox"/> Other .....			<input type="checkbox"/>
b. Fuel Source is: <input type="checkbox"/> Electricity <input type="checkbox"/> Natural Gas <input type="checkbox"/> Propane <input type="checkbox"/> Oil <input type="checkbox"/> Other .....			<input type="checkbox"/>
7. WATER SUPPLY (including water quality and water pressure)? .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
a. Water supply is: <input type="checkbox"/> City/County <input type="checkbox"/> Community System <input type="checkbox"/> Private Well <input type="checkbox"/> Other <input type="checkbox"/> .....			<input type="checkbox"/>
b. Water pipes are: <input type="checkbox"/> Copper <input type="checkbox"/> Galvanized <input type="checkbox"/> PVC (plastic) .....			<input type="checkbox"/>
8. SEWER SYSTEM? .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
a. Sewerage disposal system is: <input type="checkbox"/> Septic Tank <input type="checkbox"/> Community System <input type="checkbox"/> Connected to City/County System			
<input type="checkbox"/> City/County System available <input type="checkbox"/> Other .....			<input type="checkbox"/>
9. APPLIANCES included in sale: RANGE/OVEN, MICROWAVE, HOOD/FAN, DISHWASHER, DISPOSAL, REFRIGERATOR, WASHER/DRYER, TRASH COMPACTOR, WINDOW OR IN-WALL AIR CONDITIONER, OR OTHER APPLIANCES? .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
10. OTHER SYSTEMS AND FIXTURES: T.V. ANTENNA, CABLE WIRING OR SATELLITE DISH, CENTRAL VACUUM, POOL, ATTIC FAN, EXHAUST FAN, CEILING FAN, WATER HEATER, SUMP PUMP, IRRIGATION SYSTEM, OR OTHER SYSTEMS? .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
11. DRAINAGE, GRADING OR SOIL STABILITY OF LOT? .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
12. WOOD-DESTROYING INSECTS (Present infestation or damage from past infestation which has not been repaired)? .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Also regarding the property identified above, are you aware of any:

13. ROOM ADDITIONS OR OTHER STRUCTURAL CHANGES (including separate structures)? .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
14. ENVIRONMENTAL HAZARDS (substances, materials or products) including asbestos, formaldehyde, radon gas, methane gas, lead-based paint, underground storage tank, or other hazardous or toxic material (whether buried or covered), contaminated soil or water, or other environmental contamination)? .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
15. ENVIRONMENTAL NUISANCES (noise, odor, smoke, etc.) affecting the property? .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
16. NON-CONFORMING USE or VIOLATIONS OF LOCAL, STATE OR FEDERAL LAWS, BUILDING CODES, ZONING ORDINANCES, RESTRICTIVE COVENANTS OR OTHER LAND-USE RESTRICTIONS ? .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
17. ENCROACHMENTS FROM OR TO ADJACENT PROPERTY, UTILITY OR OTHER EASEMENTS, SHARED DRIVEWAYS, PARTY WALLS or similar matters that could affect title to the property? .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
18. LAWSUITS, FORECLOSURES, BANKRUPTCY, DIVORCE ACTIONS, JUDGMENTS, TAX LIENS, PROPOSED ASSESSMENTS, MECHANICS LIENS, MATERIALMEN'S LIENS OR NOTICE FROM ANY GOVERNMENTAL AGENCY that could affect title to the property? .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
19. HOMEOWNERS' ASSOCIATION OR "COMMON AREA" EXPENSES OR ASSESSMENTS? .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
20. Evidence that the property is located in a FEDERALLY DESIGNATED FLOOD PLAIN or that it has ever been damaged by flooding? .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

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

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

# 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.*

**MILTON AGUILAR (Fayetteville)** - By Consent, the Commission revoked Mr. Aguilar's broker license effective October 15, 1997. The Commission then granted Mr. Aguilar a salesman license. The Commission found that Mr. Aguilar had failed to properly maintain his firm's trust and escrow accounts and to supervise the conduct of his firm's bookkeepers, thereby creating a situation whereby a salesman with the firm was able to convert funds to her own use, resulting in a substantial shortage in the firm's trust accounts. The Commission noted that Mr. Aguilar subsequently replaced the funds and balanced the accounts.

**AMERICAN PROPERTIES, INC. (Jacksonville)** - By Consent, the Commission suspended the firm real estate broker license of American Properties, Inc. for one year effective September 1, 1997. The Commission then stayed the suspension for a probationary term of one year. The Commission found that American Properties, Inc. had failed to properly maintain its trust accounts and trust account records in that it had created a special account which it used for deposits, withdrawals and holding of funds whose ownership the firm could not immediately determine. The Commission noted that American Properties, Inc. has now traced all funds in the special account and disbursed them to the proper sources.

**CENTURY 21 RICHARDSON PROPERTIES, INC. (Winston-Salem)** - The Commission accepted the voluntary surrender of Century 21 Richardson

Properties, Inc.'s firm real estate broker license for two years effective September 1, 1997. The Commission dismissed without prejudice charges that Century 21 Richardson Properties, Inc. had violated various provisions of the Real Estate License Law and administrative rules of the Commission. Century 21 Richardson Properties, Inc. neither admitted nor denied any misconduct.

**JOHN DALE FREEMAN (Durham)** - The Commission revoked Mr. Freeman's salesman license effective August 7, 1997. The Commission found that Mr. Freeman had been convicted of the federal offense of bank robbery.

**SUSAN S. GAMBLIN (Banner Elk)** - By Consent, the Commission suspended Ms. Gamblin's broker license for two years effective September 30, 1997. The Commission then stayed the suspension for a probationary term of two years upon certain conditions. The Commission found that Ms. Gamblin had failed to maintain, in a reasonable and prudent manner, the financial records of a homeowners association.

**DONALD AUSTIN GIBBS, JR. (Charlotte)** - By Consent, the Commission suspended Mr. Gibbs' salesman license for one year effective September 1, 1997. The Commission then stayed the suspension for a probationary term of one year. The Commission found that Mr. Gibbs had failed to state complete employment information on his application for licensure as a real estate salesman. The Commission noted that the information Mr. Gibbs had provided was correct; however the information was misleading and resulted in a false statement of his employment history preceding his application.

**CHARLES W. LANEY (Murphy)** - By Consent, the Commission reprimanded Mr. Laney effective August 15, 1997. The Commission found

that while engaging in real estate brokerage, Mr. Laney had failed to confirm the correct legal description of a lot prior to listing and selling it, thereby causing buyers to close the purchase of another lot.

**MALCOLM C. MINOR (Banner Elk)** - By Consent, the Commission suspended Mr. Minor's broker license for two years effective September 30, 1997. Six months of the suspension was active and the remaining period stayed for a probationary term of 18 months upon certain conditions. The Commission found that Mr. Minor had failed to maintain, in a reasonable and prudent manner, the financial records of a homeowners association.

**JOSEPH P. RICHARDSON, JR. (Winston-Salem)** - The Commission accepted the voluntary surrender of Mr. Richardson's broker license for two years effective September 1, 1997. The Commission dismissed without prejudice charges that Mr. Richardson had violated various provisions of the Real Estate License Law and administrative rules of the Commission. Mr. Richardson neither admitted nor denied any misconduct.

**DEBORAH A. SHABAZZ (Greensboro)** - The Commission accepted the voluntary surrender of Ms. Shabazz' broker license for five years effective September 1, 1997. The Commission dismissed without prejudice charges that Ms. Shabazz had violated provisions of the Real Estate License Law and the rules of the Commission. Ms. Shabazz neither admitted nor denied any misconduct.

**RONNIE L. STURDIVANT (Durham)** - By Consent, the Commission suspended Mr. Sturdivant's broker license for three years effective December 1, 1997. The Commission then stayed the suspension for a probationary term of three years upon

*(continued on page 12)*



# Disciplinary action

(continued from page 11)


certain conditions. The Commission found that Mr. Sturdivant, while renting residential properties, had engaged in improper eviction practices. The Commission further found that Mr. Sturdivant had used single-family residential properties for boarding houses in violation of local zoning regulations.

TOWN & COUNTRY REAL ESTATE & APPRAISALS, INC. OF FAYETTEVILLE (Fayetteville) - By Consent, the Commission suspended the firm real estate broker license of Town & Country Real Estate & Appraisals, Inc. of Fayetteville for two

years effective October 15, 1997. The Commission then stayed the suspension for a probationary term of two years. The Commission found that Town & Country Real Estate & Appraisals, Inc. of Fayetteville had failed to properly maintain its trust and escrow accounts and to supervise the conduct of its bookkeepers, thereby creating a situation whereby a salesman with the firm was able to convert funds to her own use, resulting in a substantial shortage in the firm's trust accounts. The Commission noted that Town & Country Real Estate & Appraisals, Inc. of Fayetteville subsequently replaced the funds and balanced the accounts.

GARLAND W. WAGONER, JR. (Burlington) - The Commission accepted the voluntary surrender of Mr. Wagoner's broker license for three years effective September 1, 1997.

The Commission dismissed without prejudice charges that Mr. Wagoner had violated certain provisions of the Real Estate License Law as a result of his conviction of a criminal offense. Mr. Wagoner neither admitted nor denied any misconduct.

REBECCA H. WILLIS (Jacksonville) - By Consent, the Commission suspended Ms. Willis' broker license for one year effective September 1, 1997. The Commission then stayed the suspension for a probationary term of one year. The Commission found that Ms. Willis, as broker-in-charge of a corporation, had created a special account which she used for deposits, withdrawals and holding of funds whose ownership she could not immediately determine. The Commission noted that Ms. Willis has now traced all funds in the special account and disbursed them to the proper sources.  □

## ANNOUNCING...

**Commission's new  
telephone number!  
(919) 875-3700**

### *On the inside...*

**Commission proposes  
to adopt and amend  
rules**

**Property disclosure  
form**

**Huge response to  
*Your Place at the  
Beach***

**Communicating with  
the Commission**

**Commission Calendar**

**Answerline: *Who owns  
an agency agreement?***

**Real Estate Educators  
meet in Pinehurst**

**Rental Brochure  
reprint**

*...and more.*

76,000 copies of this public document were printed at a cost of \$.1184 per copy.

NORTH CAROLINA  
REAL ESTATE COMMISSION  
P.O. Box 17100  
Raleigh, NC 27619 - 7100

BULK RATE  
U.S. Postage  
**PAID**  
Permit No.99  
RALEIGH, NC