



NORTH CAROLINA REAL ESTATE COMMISSION

Real Estate Bulletin

Volume 31

Winter 2000 - 2001

Number 4

Commission amends rules

Effective July 1, 2001

Following a rulemaking hearing November 15 at the Real Estate Commission office, the Commission amended its rules on agency agreements and disclosure (Rule A.0104) to allow brokers and salespersons to begin working as buyers' agents without a written buyer agency agreement under the following conditions:

1. The broker or salesperson must, from the inception, clearly disclose to the buyer that he or she is the buyer's agent.
2. The buyer agency agreement must be in writing if it binds the buyer for a period of time or restricts the buyer from working with other agents (or without an agent).
3. The agent must obtain a written buyer agency agreement not later than the time an offer to purchase is presented to the seller (or seller's agent).

In addition, brokers or salespersons must, at the point of first substantial contact, provide and review with their client (buyer or seller) a brochure (available from the Commission) on agency relationships; or if the contact is by telephone, fax, etc., must mail or transmit the brochure within three days. Brokers-in-charge

(continued on page 16)



ARELLO honors Real Estate Commission

At annual conference in October, ARELLO appoints Commission member to chair ARELLO committee and elects staff member to office. Commission receives awards.

The Association of Real Estate License Law Officials (ARELLO) has elected Director of Audits and Investigations Emmet R. Wood as a Director of ARELLO's Southern District. Mr. Wood also currently serves as Chair of the ARELLO Investigator Training Board.

In addition to North and South Carolina, the Southern District includes Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, Tennessee, Texas, Virginia and West Virginia, as well as Puerto Rico and the Virgin Islands.

Also at the annual conference, Commission member Mona S. Hill of Pinehurst was appointed to chair ARELLO's Nominating Committee.

ARELLO President Larry Lyngstad gave special recognition awards to the Commission's Executive Director, Phillip T. Fisher, and Director of Administration Mary Frances Whitley for outstanding service to ARELLO during 1999-2000. Mr. Fisher chaired the subcommittee on Organizational Restructuring and Governance, and Mrs. Whitley co-chaired the Administrative Committee.

Sr. Auditor/Investigator Gary R. Caddell was honored by ARELLO as "Investigator of the Year." A graduate of Michigan State University, Mr. Caddell joined the Commission staff in 1990.



ARELLO President Larry Lyngstad (right) congratulates Sr. Auditor/Investigator Gary Caddell (left), recipient of ARELLO's "Investigator of the Year" award.

Please note . . .

A "License Activation/Supervision of Salesperson/Change of Broker's Business Address" form is reprinted on pages 11 - 12.

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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Editor
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Commission Staff Update

The following Commission staff members have made appearances before various real estate industry and related groups since the last issue of the *Bulletin*. Chief Deputy Legal Counsel Blackwell M. Brogden, Jr., participated in a panel discussion of topics related to rental procedures when he went to Greensboro to attend the annual Property Management Division Seminar of the North Carolina Association of REALTORS®. At a North Carolina State Bar LAMP (Legal Assistance of Military Personnel) Committee meeting in Raleigh, Black discussed the role of the Real Estate Commission in protecting real estate consumers...

Associate Legal Counsel Pamela V. Millward was in Statesville to talk to the Iredell REALTORS® Association about topics of special interest and concern to the Real Estate Commission. Pam attended the Property Management Seminar of the Fayetteville Association of REALTORS® where she discussed common complaints received by the Commission, especially as they apply to property management. *(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

2001 BASIC TRUST ACCOUNT PROCEDURES COURSE MONTHLY - RALEIGH

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

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

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

* April

□ May 8

□ June 5

□ July 10

Name _____ Phone _____
(Daytime)

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

□ Broker (License No. _____) Mail to: NC REAL ESTATE COMMISSION
Attention: Audits and Investigations Division
□ Salesperson (License No. _____) P. O. Box 17100
Raleigh, NC 27619-7100

□ Bookkeeper

Enclose \$35 tuition fee

* No class in Raleigh in April due to Trust Account Caravan.

Commission Calendar

Meeting Dates

April 11

May 9

June 6

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.]

In Memoriam

With deep regret, the Real Estate Commission announces the death of former Commission Member William A. Smith, Jr. Mr. Smith served on the Commission from 1991 - 1994.

The Commission extends deepest sympathy to Mr. Smith's family.

EXAM RESULTS

	Passed	Failed
September		
Brokers	111	142
Salespersons	578	445
October		
Brokers	214	54
Salespersons	700	502
November		
Brokers	3	8
Salespersons	96	45

Habla Usted Español?

Commission publishes *Preguntas y Respuestas sobre Alquiler de Inmuebles para Vivienda*. New publication is Spanish translation of brochure which addresses issues of interest to persons renting residential real estate.

The Real Estate Commission recently published a Spanish translation of its *Questions and Answers on: Renting Residential Real Estate* brochure. The new publication is entitled *Preguntas y Respuestas sobre Alquiler de Inmuebles para Vivienda*.

To ensure that the Hispanic/Latino population in North Carolina has

access to the publication, the Commission is contacting agencies and groups that might be interested in helping with its distribution.

Like the other brochures in the Commission's *Question and Answer* series, it is being offered free of charge. [Please see order form below.] □

REAL ESTATE COMMISSION PUBLICATIONS ORDER FORM

No. Copies
Requested

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

Residential Square Footage Guidelines

(Please limit request to one copy per agent per firm.)

Questions and Answers on: Tenant Security Deposits

Questions and Answers on: Fair Housing

Questions and Answers on: Condos and Townhouses

Questions and Answers on: Who Agents Represent

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

Questions and Answers on: Renting Residential Real Estate

*Preguntas y Respuestas sobre Alquiler de Inmuebles
para Vivienda*

Name

Phone Number (including Area Code)

Street Address (NOT P.O. BOX)

City

State

Zip

Instructions

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

Commission approves recommendations of Home Inspection Advisory Committee

By Phillip T. Fisher, Executive Director

Following a series of meetings during the summer and fall, the N.C. Real Estate Commission and N.C. Home Inspector Licensure Board's joint *Home Inspection Advisory Committee* submitted its report and recommendations to the Commission and Board.

With regard to real estate brokers and salespersons, the committee recommended that a committee-developed informational brochure on the home inspection process be published and made available to real estate licensees and consumers. The committee also recommended that the Commission develop and deliver to its licensees through its continuing education program instruction on home inspection subjects, including instruction designed to promote a better

understanding and awareness of the duties and requirements of real estate agents and home inspectors in the home inspection process. The Real Estate Commission approved these recommendations.

Also, at the suggestion of the committee, the Commission agreed to recommend to the North Carolina Association of REALTORS® a committee-developed form which homebuyers could use to request home inspectors to identify and report on the condition of those property systems and components specifically listed in Provision 12(b) of the standard *Offer to Purchase and Contract* form.

The Commission expresses its appreciation to the members of the *Home Inspection Advisory Committee*:

Clifford Bond (Winston-Salem), Connie M. Corey (Greenville), Steve Elder (Pittsboro), Home Inspector Licensure Board Member John W. Hamrick (Durham), Ted E. Kelly (Winston-Salem), William A. Scurry (Charlotte), Assistant Attorney General Barbara Shaw, and Augustine Stasi (Chapel Hill); Real Estate Commission Member Raymond A. Bass, Jr. (Fayetteville), Home Inspector Licensure Board Chairman Stephen C. Smallman (Raleigh) and Board Member and Staff Director Grover Sawyer (Raleigh) who served as *ex officio* members; Real Estate Commission Legal Counsel Thomas R. Miller who assisted the committee; and Commission Executive Director Phillip T. Fisher who served as *Facilitator*. ◻

Commission presents *New Instructors' Seminar* for prelicense instructors

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

The Real Estate Commission's first *New Instructors' Seminar* was held at the North Raleigh Hilton on November 1, 2000. Twenty-four prelicense instructors were in attendance for the six-hour session. Approximately half of the attendees were instructors whom the Commission had approved since October 1, 2000 to teach salesperson and broker prelicensing courses.

The Commission's contract instructor, Vicki Ferneyhough, D.R.E.I., teamed with Licensing and Education Officer Ginger L. Schultz-Lamitie to conduct the course. They presented materials which are covered in the 67-hour *Fundamentals of Real Estate* salesperson course and the 60-hour *New Broker Course*, along with educational methodology.

Group activities and discussions utilized the skills and experiences of veteran instructors - both prelicensing and continuing education. New instructors had an opportunity to network with other instructors and to discuss their concerns and ideas.

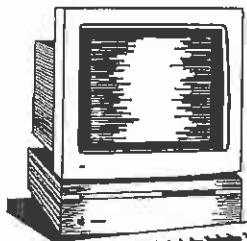
Each attendee received a notebook with camera-ready originals from which they may produce transparencies for classes. At their request, instructors also received on diskette the *PowerPoint* presentation used by the presenters. This will enable instructors to produce transparencies, handouts and worksheets, or to project the slide images.

Also at the seminar, the Commission obtained e-mail addresses in an effort to promote the free exchange of materials, ideas, and information;

e.g., when a question is asked regarding procedure or interpretation of a rule, the question and answer are posted for the entire *Prelicense Instructor Mail List*. Memos and other correspondence are also being transmitted electronically. This form of communication is being utilized to maximize staff's time and energies.

The Commission now has e-mail addresses for 85 of the 107 currently-approved prelicensing instructors. E-mail addresses are being obtained for the remaining 22 instructors as well as the applicants whose requests are pending processing.

The Commission's first *New Instructors' Seminar* received favorable reviews and suggestions for future seminars. The next seminar will be held in Charlotte. ◻



The Commission Online: What's available at our web site

Go to www.ncrec.state.nc.us - your Internet source for Commission information.

By Carrie D. Worthington, Publications Officer

When you access the North Carolina Real Estate Commission's web site at www.ncrec.state.nc.us, you see a state map with the Commission's seal in the center - identifying the Commission's "home page." Underneath, as a pledge to consumers, is the Commission's *Mission Statement*, "To protect the public interest in real estate brokerage transactions." In separate icons below the *Statement*, you'll find the complete text of the *Mission* and general information about the Real Estate Commission and staff.

A scroll bar offers timely information. Currently, it's a reminder of the \$5 late filing fee, plus the \$35 renewal fee, for a total of \$40 to late-renew a license. And speaking of license renewal, you now have the option of renewing your real estate license online by selecting the "Licensees Only" icon. [See *Bulletin Volume 31, Number 1, Spring 2000.*]

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

By choosing the "Licensee Data"

icon, consumers as well as licensees may inquire about active real estate brokers, salespersons and firms in North Carolina. You may search for a licensee in a particular county by choosing from a list of counties or by "clicking" on the county in a state map provided in the database.

Under the "Schedules" icon, you'll find continuing education course schedules and sponsors, schedules for examinations as well as exam reviews, and online course registration.

"Schedules" icons, the home page allows you to access certain information from more than one database. For example, the Real Estate License Law, Commission Rules, Trust Account Guidelines and Fair Housing Act are available in *Real Estate Licensing in North Carolina* under "Licensing" or they can be accessed from their respective icons.

Other Commission publications, including "Questions and Answers" brochures and all volumes of the *Real Estate Bulletin* are available under icons on the home page.

The Commission's newest publication, the *North Carolina Real Estate Manual*, can be ordered online by clicking on the "Manual" icon. [Please see article on page 6 of this *Bulletin*.]

The home page also offers links to the Association of Real Es-

tate License Law Officials (ARELLO) and the North Carolina Association of REALTORS® (NCAR). Other links are added as needed.

The Commission's web site is updated periodically to ensure that it remains "user friendly" and that real estate licensees as well as consumers are kept informed, in a timely manner, about matters of interest and concern to the real estate industry in North Carolina. □

North Carolina Real Estate Commission



"To protect the public interest in real estate brokerage transactions."

You can also get online registration forms by clicking on the "Forms" icon. (Attention brokers-in-charge: Please be aware that you can use your credit card and register online for the *Broker-in-Charge Course*.) Other forms available under this icon include *Residential Property Disclosure* statements, *Disclosure to Buyer from Seller's Agent or Subagent*, order forms, and various forms for updating licensee records.

As explained with the "Forms" and

How to upgrade your license from salesperson to broker status

Recent changes in the License Law offer new opportunities.

By Anita R. Burt, Education and Examination Officer

Changes in the Real Estate License Law effective October 1, 2000 provide new opportunities and incentives for licensed salespersons to upgrade to broker status. Most significantly, the broker license examination requirement has been eliminated for licensed North Carolina salespersons who complete the new 60-hour broker prelicensing course and pass the final course exam. As a further incentive for licensed salespersons to become brokers, the Commission will recognize completion of all three 30-hour Commission-approved broker courses that were offered prior to October 1, 2000 in lieu of the new 60-hour course, provided the courses were completed within three years of application filing. The Commission is pleased that so many salespersons have already accepted these new opportunities to gain additional education and become licensed brokers.

The new 60-hour broker prelicensing course is available through licensed private real estate schools and approved community colleges, colleges and universities. Students in the course use the Commission's newly published *North Carolina Real Estate Manual* for authoritative and up-to-date coverage

of essential real estate topics. A popular aspect of the new course is its coverage of "Introduction to Commercial Real Estate Brokerage."

Newly licensed real estate brokers get a break on continuing education for the license period during which they obtain their broker license. Because new brokers are presumed to be up-to-date in knowledge of real estate law and practice, they are not required to demonstrate completion of the annual eight-hour CE requirement until their *second* license renewal.

With the license law changes effective October 1, 2000, the option that allowed a salesperson to take a broker licensing examination upon verification of two years' experience as a licensed salesperson has been discontinued in favor of additional real estate education for aspiring brokers. *The Commission prefers and expects an overwhelming majority of salespersons wanting to become brokers to qualify by completing the 60-hour broker course.*

Combinations of real estate education and experience in lieu of the prescribed broker prelicensing course may be considered only in rare instances where a broker license applicant possesses and is able to document

exceptional levels of real estate education and experience not typically found among real estate salespersons. Applicants bear the burden of satisfying the Commission that their education and/or experience justifies a course waiver. Waiver of the broker course based on experience alone will require filing a formal application and submitting proof that the applicant has substantial total real estate experience, *including experience in residential property management and commercial brokerage as well as in residential sales*, and any such experience must be relatively recent. An evaluation of experience qualifications cannot be provided unless a salesperson submits a formal application and detailed documentation of his/her experience.

Further details about licensing options, qualification criteria, documentation of qualifications and a license application form are available in the information booklet, *Real Estate Licensing in North Carolina*, published October 1, 2000 and available free of charge upon request to the Commission. The booklet is also distributed by approved schools to their broker course students. ■

North Carolina Real Estate Manual: How to order it

The Commission's newest publication, the *N.C. Real Estate Manual* was introduced in the last *Bulletin* [please see *Volume 31, Number 3, Fall 2000*] and is featured in the article above. To order it, you may use the form on page 7 of this current *Bulletin*. As you will see in the instructions accompanying the form, you may either mail or fax your completed form to the indicated address.

Please make special note of the address and observe that you are instructed **NOT to send orders to the Real Estate Commission.**

You will see on the form that you may use your *Master Card* or *Visa* or that you may pay by cashier's or certified check or money order made payable to the North Carolina Real Estate Manual. Please do not send personal checks.

Also on the form you will see that the manual is available at the Commission's web site. To order it online, go to www.ncrec.state.nc.us and "click" on the "Manual" icon. You'll be linked to the book distributor and may use your credit card to place your order.

Additional forms are available at the Commission office. ■

NORTH CAROLINA REAL ESTATE MANUAL

1. You may use the **Order Form** below or place your order on-line by going to the Commission's Web Site at www.ncrec.state.nc.us and selecting the *Manual* icon which will link you to the book distributor.
2. Mail (or fax) this form with your check or credit card information, or e-mail your order to:

North Carolina Real Estate Manual

P.O. Box 7484

Winston-Salem, NC 27109

Fax: 1-800-529-9162

E-mail: manual@ncrec.state.nc.us

DO NOT SEND ORDERS TO REAL ESTATE COMMISSION

3. Make your cashier's or certified check or money order payable to:

North Carolina Real Estate Manual

4. The sales price of the *Manual* is \$29.95. To assist in placing your order, the applicable tax (\$1.80) and shipping charges are included below. [Note: The shipping charge is reduced when ordering more than one copy.]
5. Please allow 7 business days from receipt of payment for delivery.

NORTH CAROLINA REAL ESTATE MANUAL

Order Form

NAME: _____

DELIVERY (STREET) ADDRESS:

(Street)

(City, State, Zip)

() _____

Telephone Number

E-mail Address

Price (inc. tax, shipping)

Number of Copies

1 Manual \$37.75 x 1 = \$37.75

Additional
Manuals \$32.75 ea. x _____ = \$ _____

TOTAL _____ = \$ _____

☐ Master Card ☐ Visa

--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--

Credit Card Number

--	--	--	--	--

Exp. Date

Signature: _____

Broker-in-Charge Course is up . . . and running!

By Patricia Moylan Sullivan, Legal Education Officer

The Real Estate Commission recently adopted a rule requiring brokers-in-charge to complete a 4½-hour course of instruction prescribed by the Commission. After noting over the years that brokers-in-charge frequently do not understand their responsibilities, the Commission determined that every broker-in-charge should be required to complete a *Broker-in-Charge Course* that addresses the duties of a broker-in-charge and how to effectively perform those duties.

Brokers-in-Charge Designated On or After October 1, 2000

Brokers designated as brokers-in-charge on or after October 1, 2000 must complete the course **within 90 days after designation** and at least once every five years thereafter as long as they remain brokers-in-charge. All newly designated brokers-in-charge are sent a notice advising them of this requirement when the expiration date of the 90-day period expires, and how to register for the course.

Brokers-in-Charge Designated Prior to October 1, 2000

Brokers who were designated broker-in-charge of their current real estate offices *prior to October 1, 2000* have **five (5) years** (i.e., until September 30, 2005) to complete the *Broker-in-Charge Course*. Thereafter, they must take the course every five years if they continue to serve as

a broker-in-charge. Note, however, that if a broker's status as broker-in-charge of a particular office is terminated for any reason (e.g., leaving a firm, allowing the broker license to expire or become inactive, changing offices, etc.), and the broker is subsequently redesignated broker-in-charge of the same office or a different office, *the broker will be considered to be a newly designated broker-in-charge who must complete the course within 90 days of designation* (unless the broker already has taken the course within the previous five years).

Brokers-in-charge who receive the 90-day notice are strongly urged to register promptly for the course because course sessions are filling up 5 - 6 weeks in advance!

Failure to Complete Required Course

When a broker-in-charge fails to complete the course within the prescribed time period, the Commission will terminate the broker's status as broker-in-charge. The licenses of any salespersons under the broker's supervision will be placed on "inactive status" and the addresses of record of all brokers associated with the office will be changed to their residence addresses.

Course Information

The 4½-hour *Broker-in-Charge Course* is intended to acquaint brokers-in-charge with their general administrative and supervisory duties,

including their responsibilities for trust account oversight. As such, it is intended primarily for newly designated brokers-in-charge and current brokers-in-charge who need to have a better understanding of their duties; however, other licensees who anticipate becoming a broker-in-charge may also attend the course on a space-available basis.

The 4½-hour *Broker-in-Charge Course* is offered by the Commission several times monthly at various locations around the state. Tuition is \$35. Brokers-in-charge who receive the 90-day notice are strongly urged to *register promptly* for the course because course sessions are filling up 5 - 6 weeks in advance!

You may register for the course online at www.ncrec.state.nc.us by using your credit card. The registration form is also available from the Commission's "Fax on Demand" system at 919/850-2757; request document #370. [Note: When using "Fax on Demand," use your touchtone phone to key-in only your area code and the fax number to which you want the form sent. Do not key-in the number "1" as a prefix to your area code.] If you mail in a registration form and check, please indicate a first, second and third choice of course dates/locations.

(continued on page 9)

**It's time to schedule the
continuing education
courses necessary to
renew your license
on active status for
2001 - 2002!**

Broker-in-Charge Course is up. . .and running!

(continued from page 8)

Continuing Education Credit

Brokers-in-charge will receive 4 hours of continuing education elective credit for completing the course. Licensees who have already met their elective requirement for the current license year (or new licensees who are exempt from the continuing education requirement for their first year of licensure) can "carry over" elective credit for the following license year (if they do not already have such credit).

The Commission is pleased at the favorable response from licensees who have completed the *Broker-in-Charge Course*. Designed, written and taught by Commission staff, the course will be updated periodically to ensure that brokers-in-charge are well-instructed in fulfilling the duties that come with the broker-in-charge designation.

Special Exception for Certain Sole-Broker Firms

Under Commission rules, every firm engaged in real estate brokerage in North Carolina must designate a broker-in-charge for each office, and a broker practicing alone must also designate himself or herself as broker-in-charge if he or she wants to maintain his or her license on active status. Please note, however, that there is one exception to the broker-in-charge designation requirement that may affect some brokers who are currently designated as broker-in-charge. A real estate firm (e.g., a "Subchapter S" corporation) with only a principal broker and no other

person affiliated with it does not have to designate a broker-in-charge if the firm can demonstrate to the Commission that its sole purpose for licensure as a firm is to receive compensation earned by its principal broker through another real estate firm.

If you have a "Subchapter S" corporation or other firm which qualifies for exemption from the broker-in-charge designation requirement, and you are presently designated as broker-in-charge of that firm, you may notify the Commission of your firm's limited purpose and request to be removed as broker-in-charge by completing the following form and returning it to the Commission.

REQUEST TO REMOVE BROKER-IN-CHARGE (Exempt Firms Only)

I, the undersigned principal broker of the real estate firm named below, hereby notify the North Carolina Real Estate Commission that I am the only person affiliated with the firm, and that the sole purpose for licensing the firm was and is to receive compensation earned by me through another real estate firm with which I am affiliated.

I elect not to designate a broker-in-charge for the firm and hereby request the Real Estate Commission to remove from its records my name as broker-in-charge of the firm.

(Exempt Firm Name)

(Firm License No.)

(Principal Broker Name)

(Principal Broker License No.)

(Principal Broker Signature)

(Date)

(Firm with which I am primarily engaged in the real estate business)

(Address of firm with which I am affiliated in real estate business)

(Broker-in-Charge of firm with which I am affiliated in real estate business)

Mail or fax this form to: N.C. Real Estate Commission, P.O. Box 17100, Raleigh, NC 27619-7100, Attention Records Section (Fax 919/877-4221).

2001 Trust Account Caravan Registration Form

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

Asheville - Renaissance Asheville Hotel 1 Thomas Wolfe Plaza

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

Banner Elk - Holiday Inn-Banner Elk NC Highway 184

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

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

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

Fayetteville - Holiday Inn Bordeaux 1707 Owen Dr.

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

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

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

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

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

Wilmington - Coast Line Convention Center 501 Nutt Street

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

Complete this form (*make copies for additional persons*) and mail with a check for \$35 tuition fee to be received by the Commission no later than 10 working days prior to date of preferred session. Each session is limited to 40 participants, scheduled according to date received. Walk-ins will be accepted on a space available basis only.

Name _____ Phone _____
(Daytime)

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

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

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



- ☐ REQUEST TO ACTIVATE BROKER OR SALESPERSON LICENSE
☐ NOTIFICATION OF SALESPERSON SUPERVISION
☐ NOTIFICATION OF CHANGE OF BROKER'S BUSINESS ADDRESS

After reading the instructions on page two of this form,
check the appropriate box(es) above and provide all information requested below.

TO BE COMPLETED BY LICENSEE

CERTIFICATION REGARDING LICENSE ACTIVATION:

1. **Resident:** (Do not send course completion certificates.)

By signing below I certify that I have completed the continuing education course(s) required to place my license on Active Status (check one)

☐ within the last 30 days. ☐ more than 30 days before the date shown below.

2. **Nonresident:** (Please refer to the enclosed description of options.)

Activation is requested under (check one) ☐ Option #1 ☐ Option #2 ☐ Option #3 ☐ Option #4

For Option 1: By signing below I certify that I hold license # _____ in the state of _____ and that it is on active status.

For Option 2: By signing below I certify that I have completed the continuing education course(s) required to place my license on Active Status (check one)

☐ within the last 30 days. ☐ more than 30 days before the date shown below.

TO BE COMPLETED BY BROKERS AND SALESPERSONS
(Salespersons refer to certification description and detailed instructions on page two of this form.)

LICENSEE SIGNATURE: _____ DATE: _____

FULL NAME: _____ LIC #: _____ TYPE: _____
(Type or Print) (B/S)

RESIDENCE ADDRESS: _____
(Street Address) (P O Box)

(City) (State) (Zip)

PHONE: _____ FAX: _____ E-MAIL: _____

☐ CHECK HERE IF YOUR RESIDENCE ADDRESS IS NEW.

TO BE COMPLETED BY BROKER-IN-CHARGE

ARE YOU THE ☐ NEW BROKER-IN-CHARGE ☐ CURRENT BROKER-IN-CHARGE

SIGNATURE: _____ DATE: _____

FULL NAME: _____ LICENSE #: _____
(Type or Print)

FIRM NAME: _____ FIRM LICENSE #: _____

FIRM STREET ADDRESS: _____

BUSINESS MAILING ADDRESS: _____

(City) (State) (Zip) (County)

TYPE OF FIRM: _____
(Corporation/Sole Proprietorship/Partnership/LLC/Other)

PHONE: _____ FAX: _____ E-MAIL: _____

☐ CHECK HERE IF YOUR BUSINESS ADDRESS IS NEW.

OVER

REC. 2.08
REV 1/01

Instructions

I. REQUEST TO ACTIVATE BROKER OR SALESPERSON LICENSE

1. To request that your real estate license be placed on Active Status, YOU AND THE BROKER-IN-CHARGE OF THE OFFICE WHERE YOU WORK SHOULD COMPLETE PAGE 1 OF THIS FORM.
2. To activate your license, you must **have completed** the real estate continuing education required in NCGS 93A-4A and 21NCAC58A.0504, [Note: New licensees are not subject to the continuing education requirement until the second license renewal after the date of their initial licensure]
3. If you have a North Carolina real estate license, you may begin working when this properly completed form has been either mailed or delivered to the Commission. (No fee required.) The Real Estate Commission will send you an acknowledgment confirming that this form has been received and that your license has been placed on Active Status. **If you have not received the acknowledgment by 30 calendar days after the date entered on this form, you must immediately cease any further activity for which a real estate license is required until the acknowledgment has been received.**

II. NOTIFICATION OF SALESPERSON SUPERVISION

CERTIFICATION REGARDING NOTIFICATION OF SALESPERSON SUPERVISION

Salesperson: By signing page one of this form, salesperson certifies that he/she is engaged in the business of a real estate salesperson under the supervision of the broker-in-charge named on page one of this form, and that salesperson shall engage in acts which require a real estate license only while under the active, personal supervision of that broker-in-charge.

Broker-in-charge: By signing page one of this form, broker-in-charge certifies that the salesperson named on page one of this form is (as of the date shown) engaged in the business of a real estate salesperson under his/her active, personal supervision and will remain under his/her supervision until subsequent written notice is given to the Real Estate Commission. Further, broker-in-charge certifies that 30 calendar days following the date shown on this form, such salesperson shall discontinue any and all license activity in the event the named broker-in-charge has not received from the Commission written acknowledgment of the receipt and acceptance of this form.

1. To notify the Commission that a real estate salesperson has become supervised by a new broker-in-charge, THE SALESPERSON AND THE BROKER-IN-CHARGE OF THE OFFICE WHERE THE SALESPERSON WILL BE WORKING MUST COMPLETE PAGE ONE OF THIS FORM.
2. If the salesperson has a North Carolina real estate license, the salesperson may begin working under the supervision of the broker-in-charge when the broker-in-charge has either mailed or delivered this properly completed form to the Real Estate Commission. (No fee required.)
3. The Real Estate Commission will send the broker-in-charge a written acknowledgment confirming that this form has been received and accepted. (The broker-in-charge should retain the acknowledgment for his/her files.) **If the salesperson and broker-in-charge have not received the acknowledgment by 30 calendar days after the date entered on this form, the salesperson must immediately cease any further activity for which a real estate license is required until the acknowledgement has been received.** (Brokers-in-charge are advised to contact the Records Section at the Commission Office if the acknowledgment has not been received by 25 days after the date entered on this form.)
4. **Upon termination of the salesperson's association with the broker-in-charge or firm, the broker-in-charge must immediately notify the Real Estate Commission in writing,** giving the salesperson's current residence address and date of termination. The Commission will furnish the broker-in-charge and salesperson a written acknowledgment confirming that the notification has been received and that the broker-in-charge has been released from further supervisory responsibility over the salesperson's real estate activities. (The broker-in-charge should retain this acknowledgment for his/her files.)

III. NOTIFICATION OF CHANGE OF BUSINESS ADDRESS (Brokers Only)

To notify the Commission that you will be engaging in the real estate brokerage business at a new address, YOU AND THE BROKER-IN-CHARGE OF THE OFFICE WHERE YOU WORK SHOULD COMPLETE PAGE ONE OF THIS FORM.

Do you remember?

Problem-areas addressed in earlier issues of the *Bulletin* are revisited.

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

Judging by the number of calls and letters received by the Commission staff, and the complaints which result in disciplinary action by the Commission, certain real estate topics which have been addressed in earlier issues of the *Bulletin* continue to be problem-areas. Perhaps, therefore, it is time to briefly revisit these topics for the benefit of new licensees who may not have read the earlier articles on the subjects as well as to refresh the memory of experienced real estate agents.

Trust Account Violations

Be aware that all funds of others received by a real estate agent must be deposited and maintained in a designated trust account. This includes, but is not limited to, earnest money deposits, rents, tenant security deposits, homeowner dues, closing expenses, sales tax for short term rentals, and repair costs or reserves.

The Commission has detailed record-keeping requirements which, if followed, ensure proper disposition of trust monies. Rule A.0107 requires brokers-in-charge to maintain trust account ledgers and journals with accurate running balances and to reconcile these records to their bank statements and canceled checks on a monthly basis. If this is done, funds can be expended for the proper reasons, and fraud by others in the firm can be detected quickly.

Failure to comply with the rule can result in the unlawful practices of "deficit spending" (using the money held for one person to pay another person's obligations), commingling (by leaving the broker's funds in the same account with the funds of

others), or outright embezzlement of trust monies. The Commission employs Auditor/Investigators to make "spot" inspections and routine audits and to investigate complaints involving trust accounts.

The Commission offers two different trust account courses, one for general brokerage and another focused on issues related to resort rental operations. The "Trust Account Procedures for Resort Property Managers" course is available only during the *Spring Trust Account Caravan*, but the "Basic Trust Account Procedures" course is also available each month in Raleigh at the McKimmon Center. [Please see the registration forms on pages 2 and 10.] In addition, the Commission offers a broker-in-charge course which focuses on all the duties of a broker-in-charge, including oversight of the trust accounts. The Commission reminds you that four hours of continuing education elective credit are awarded for completion of each course.

Violations of the statutes and rules governing trust accounts remain the principal cause of disciplinary actions. In many instances these actions include sanctions against "ghost brokers" who did not actually take any money for their own use.

"Ghost Brokers"

In parody of a once popular comedy and its theme song, Commission staff apply the term "ghost brokers" to persons who are designated as "brokers-in-charge" but do not provide the supervision required by Commission rules. In some extreme cases, the "ghost broker" actually holds a job somewhere else and rarely even visits the office for which he or she has

assumed broker-in-charge responsibilities. In other cases, the "ghost broker" works as a sales agent with the firm and does not assume the responsibility necessary to perform the necessary broker-in-charge duties. Still other brokers manage to find some mid-point, voluntarily limiting their authority to some part of an operation while allowing another person to exercise control over matters for which the broker-in-charge is responsible. In each of the above cases, the broker has failed to fulfill his/her duties.

Every real estate firm in North Carolina must have a designated broker-in-charge for each office, and that broker is responsible for supervising all salespersons in the office, as well as *unlicensed and licensed employees* who exercise control over the firm's trust accounts. Personal and adequate supervision is required. Delegation of responsibilities does not relieve the broker-in-charge of his or her duties under the *Real Estate License Law*. This point has been brought home to an increasing number of brokers who have for years trusted the management of their escrow account to someone else in the office, then later discovered that their escrow funds have been misapplied, embezzled or cannot be found.

Problems resulting from improper management of a real estate office eventually come to the attention of the Commission. And who do we call when it's time to impose a disciplinary sanction? *The Ghost Broker!*

Misrepresentation in Advertising

Another common cause for disciplinary action by the Commission is misrepresentation of material fact -

(continued on page 14)

Do you remember?

(continued from page 13)

generally involving the advertising of a property. The Commission's position, as expressed in a 1977 *Bulletin* article, is that it is "essential that the listing broker, whenever possible, confirm all information given to him [or her] by the property owner, and this entails more than a 30 minute question and answer session with the owner."

For example, if a licensee elects to advertise square footage, the size is a material fact that must be accurately disclosed. The responsibility for providing this accurate information is that of the listing agent. [For detailed instructions on calculating and reporting square footage, see the Commission's publication, *Residential Square Footage Guidelines*.]

Similarly, licensees ordinarily should be able to identify the heating and cooling systems for the property, determine how water and sanitary sewer are provided, and know how to determine the zoning and tax value for the property when it is an issue. Likewise, clearly and correctly identifying personal property which will stay or be conveyed is crucial to a successful transaction.

When it is not possible for a listing agent to personally confirm information about a property, the agent should avoid making any affirmative statements about it and should advise prospective buyers to make their own investigations.

Caveat

As a competent real estate agent, you must obtain a solid foundation in the basic requirements of the Real Estate License Law and Commission rules. It is your responsibility to evaluate all aspects of your real estate transactions and to ensure the proper application of the duties imposed by law. ■

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.

BB & P MANAGEMENT CORPORATION (High Point) - By Consent, the Commission suspended BB & P Management Corporation's broker license for one year effective December 1, 2000. The Commission then stayed the suspension for a probationary term of one year. The Commission found that BB & P Management Corporation had failed to sufficiently account for the trust monies in its care and custody, thereby creating a situation whereby an associate with the firm was able to embezzle trust monies. The Commission further found that the firm engaged in occasional deficit spending and that its records contained certain inaccuracies. The Commission noted that upon discovery of the embezzlement and accounting deficiencies, BB & P Management Corporation immediately replaced the funds, corrected the trust account software, notified the Commission of these events and cooperated fully with the Commission's investigation.

JERRY E. BENNETT (Fayetteville) - The Commission revoked Mr. Bennett's salesperson license effective September 1, 2000. The Commission found that Mr. Bennett had failed to submit to supervision by his designated brokers-in-charge. The Commission also found that Mr. Bennett had failed to provide agency disclosure of any kind to the buyer in a real estate transaction, had made false promises regarding repairs he was to perform on a property in order to induce or persuade the buyer to close the transaction, and had assisted the buyer in obtaining a VA loan requiring owner occupancy even though

he knew the buyer had no intentions of occupying the property herself. The Commission further found that Mr. Bennett failed to retain records of the transaction, failed to make transaction records available for inspection by the Commission or its authorized representatives, and failed to respond to a Letter of Inquiry from the Commission within 14 calendar days.

J. HENRY BROWN, JR. (Raleigh) - By Consent, the Commission revoked Mr. Brown's broker license effective October 10, 2000. The Commission will issue a salesperson license to Mr. Brown upon certain conditions. On or after October 10, 2001, Mr. Brown may apply for reinstatement of his broker license. The Commission found that Mr. Brown, while engaged in brokerage at a real estate firm and having signature authority on all the firm's trust accounts, had been aware of trust account problems including shortages and checks that had been returned for insufficient funds, but that he had failed to correct these problems and failed to adequately account for the funds he held on behalf of others. The Commission also found that Mr. Brown had written and signed several checks from the trust account to pay for personal expenses. The Commission further found that Mr. Brown had assumed broker-in-charge duties for two years without notifying the Commission.

JAMES H. BROWN, SR. (Raleigh) - By Consent, the Commission revoked Mr. Brown's broker license effective February 1, 2001. The Commission found that Mr. Brown had failed to properly designate trust accounts and otherwise failed to properly account for the funds of others while managing subsidized housing projects for the elderly, and that he had engaged in commingling of funds and deficit spending and repeatedly deposited personal funds into his trust accounts to alleviate shortages. The Commission also found that Mr. Brown had failed to properly complete sales contracts,

(continued on page 15)

Disciplinary action

(continued from page 14)

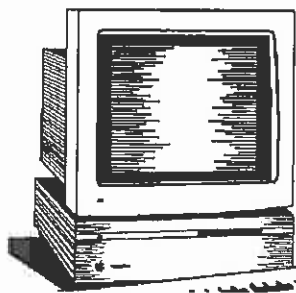
failed to obtain written listing agreements and failed to provide either agency disclosures or residential property disclosures. The Commission further found that Mr. Brown failed to notify the Commission that he was unable to perform his broker-in-charge duties for approximately two years due to health reasons and appoint a new broker-in-charge and that he operated a real estate brokerage firm from March 1999 until November 1999 without first obtaining a broker license for the firm, and that he failed to disclose a prior criminal conviction/disciplinary action when he applied for firm licensure.

BARBARA L. CRITES (Kill Devil Hills) - By Consent effective October 10, 2000, the Commission suspended Ms. Crites' broker license for 36 months and suspended Ms. Crites' approval as a continuing education update course instructor until July 1, 2001. Ninety days of the license suspension were active and the remaining period stayed for a probationary term of thirty-three months. The Commission found that during 1997, Ms. Crites was convicted of driving while intoxicated, that she neglected to report this violation to the Commission as required by Commission rule or in connection with the renewal of her license and education-related approvals, and that she failed to disclose her conviction when she applied to become approved as a pre-licensing course instructor in 2000. The Commission further found that in 2000, Ms. Crites terminated the tenancy of two tenants occupying a property under her control because she objected to their upkeep of the property, their rental payment history and their display of literature and other items of a religious nature inside the property.

CYNTHIA C. DOUGLAS (Manteo) - By Consent, the Commission suspended Ms. Douglas' broker license for three years effective October 1, 2000. Four months of the suspension are to be active and the remaining period stayed

for a probationary term of two years and eight months. The Commission found that Ms. Douglas, while broker-in-charge of a rental management firm, had a shortage in her trust account in 1997, which she promptly replaced. The Commission further found that in April 1998, trust monies handled by Ms. Douglas were wrongly deposited to her operating account. Ms. Douglas subsequently transferred the bulk of these funds into her trust account, leaving a shortage. An audit of Ms. Douglas' accounts by the Commission in January 1999 revealed a remaining shortage, which she then replaced. The Commission noted that Ms. Douglas

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www.ncrec.state.nc.us

cooperated with the Commission in its investigation and corrected her trust account record-keeping practices, and that all persons for whom Ms. Douglas held trust monies were fully paid.

20/20 REALTY, LTD. (Manteo) - By Consent, the Commission suspended 20/20 Realty, Ltd.'s broker license for three years effective October 1, 2000. The Commission then stayed the suspension for a probationary term of three years. The Commission found that 20/20 Realty, Ltd., a rental management firm, had a shortage in its trust account in 1997 which was promptly replaced. The Commission further found that in April 1998, trust monies handled by the firm were wrongly deposited to its operating account. 20/20 Realty, Ltd. subsequently transferred

the bulk of these funds into its trust account, leaving a shortage. An audit of 20/20 Realty, Ltd.'s accounts by the Commission in January 1999 revealed a remaining shortage, which the firm then replaced. The Commission noted that 20/20 Realty, Ltd. cooperated with the Commission in its investigation and corrected its trust account record-keeping practices, and that all persons for whom 20/20 Realty, Ltd. held trust monies were fully paid.

GANSON L. KNIGHT (Indian Trail) - By Consent, the Commission suspended Mr. Knight's broker license for two years effective October 15, 2000. The Commission found that Mr. Knight had used a listing contract that did not contain required non-discrimination language when he listed a property for sale, that he had lent both the buyer and seller money to close the transaction, and that he had drafted promissory notes but had not disclosed these notes to the buyer's primary lender. The Commission also found that as of the summer of 1999, Mr. Knight had failed to maintain all required trust account records including deposit tickets, ledger sheets and bank statements and that he had failed to make all earnest money deposits in a timely manner, had failed to reconcile his trust account, and had failed to maintain records for three years and in sufficient detail to create a clear audit trail.

EDGAR S. MINCEY (Thomasville) - The Commission accepted the permanent voluntary surrender of Mr. Mincey's broker license effective October 19, 2000. The Commission dismissed without prejudice charges that

(continued on page 16)

Be prepared!

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

Commission amends rules

(continued from page 1)

will also be held responsible for assuring that brokers and salespersons employed at their offices adhere to all agency agreement and disclosure requirements (Rule A.0110).

The Commission also amended its rules to permit private real estate schools greater flexibility in facilities used for classroom purposes (Rule C.0207) and to require continuing education course sponsors to give prospective students a description of their cancellation and refund policies (Rule E.0505).

If approved by the General Assembly, these changes will become effective July 1, 2001.

For a complete text of the amended rules, contact the Commission office. ■

On the inside...

Commission amends rules

ARELLO honors Commission

New publication

Commission approves recommendations of Home Inspection Advisory Committee

New Instructors' Seminar

What's available at www.ncrec.state.nc.us

How to upgrade your license from salesperson to broker status

Problem-areas revisited

... and more.

Disciplinary action

(continued from page 15)

Mr. Mincey had violated provisions of the Real Estate License Law and Commission rules in connection with the handling of the trust accounts of the firm for which he was broker-in-charge. Mr. Mincey neither admitted nor denied any misconduct.

MARY L. STEVENSON (Greenville) - By Consent, the Commission revoked

Ms. Stevenson's broker license effective October 11, 2000. On or after April 1, 2001, the Commission shall reinstate her salesperson license upon certain conditions. The

Commission found that in 1998, Ms. Stevenson failed to deposit into a trust account a \$500 earnest money deposit belonging to a buyer in a real estate sales transaction, and that she instead converted it to her own use.

The Commission also found that during 1999, Ms. Stevenson received another \$500 earnest money deposit and subsequently failed to account for the money to the buyer and seller. The Commission further found that Ms. Stevenson failed to produce trust account records for inspection by the Commission's auditor. ■



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

Mail

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

Interactive Voice Response
(919) 850-2753



Fax
(Area Code 919)

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



Phone
919/875-3700

Web Site
www.ncrec.state.nc.us

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