



Vermont Real Estate Commission

Newsletter

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Office of Professional Regulation

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Message from the Chair

The topic I would like to touch on in this newsletter is the Real Estate Commission's Inspector. Re-established last year, the Commission requested that a Real Estate Inspector again be assigned to travel throughout Vermont and conduct inspections at randomly selected Real Estate Offices.

Many of you will remember Mr. Whipple, the Inspector who traveled around Vermont when I first started in the profession. His purpose was to review the files and bank accounts of Real Estate Offices to insure that the Statutes and Rules were being observed. Our inspector will follow similar protocol.

To clarify the Inspector's purpose and purview, please review the Real Estate Commission's Proposed Rules, Section 4.14 (d) "Records"; "The principal broker, broker in charge, or their designee must cooperate in good faith with the Commission's agent during any inspection, and may remain present during any inspection. The Commission's agent may not be refused access to the records if the principal broker, broker in charge, or their designee is not present." The function of the Inspector's review is not to identify issues that are to be charged under the Statutes and Rules but rather to identify a discrepancy that needs correction. Only the lack of correction or a repetition of the discrepancy found during a subsequent inspection may be deemed to be chargeable. If the issues are corrected, the matter will be considered closed with no formal action taken.

This is an opportunity for licensees to correct issues and remain in compliance. We consider it a proactive measure, not a punitive one and hope that all Real Estate professionals will agree.

Susan (Sam) Matthews, Chair

Advertising and On Premise Signs

We are encouraged to see that licensees are heeding our warnings to remove their illegal off-premise signs from the roadways and to adhere to the sign law. There are still many out there who haven't removed those signs and our investigators are continuing to issue warnings to the transgressors. Should you receive a notice from the investigator or the Commission Office, remove your sign in a timely fashion. A second offense could result in an Administrative Penalty of up to \$ 1,000.00. As a reminder, the brokerage firm is the responsible party for the signage. It is up to each individual firm as to how they want to handle the issue with their agents.

The signage offense that is still occurring is the directional arrow signs that read, "House for Sale" with the identifying brokerage firm's logo. When those are anywhere other than on the property, it is illegal and must be removed. Licensees may not encourage owners to place signs to serve that purpose.

In some of the condominium and subdivision development projects signs are being posted on what appears to be common land. Signs on common land, land that is owned by all the home owners in a subdivision, are considered to be on-premise.

The exception to our efforts to clean up the illegal signs is the "Open House" signs placed off site to direct consumers to the property. Those signs may only be displayed for the 24 hours immediately preceding the open house, and must be removed promptly after the open house is over.

Advertising continues to present us with new challenges, particularly web advertisements. Each advertisement whether in print or on the web, must prominently identify the brokerage firm's name as it is registered with the Commission. In both web advertising and print advertising, we are seeing names other than the brokerage firm's name. In many cases it is improperly done. If you are "The Smith Group" at "XYZ Agency", "XYZ Agency" must be the prominent identity. For example, "The Smith Group" should not be the predominant heading. In web advertising, we do not want to see pages and pages of advertising without a mention of the brokerage firm's name.

If you are advertising another brokerage firm's listings, the permission must be granted by the listing agency and must be properly identified. When someone is viewing the advertising, it should be

clearly understood what company is doing the advertising and whose listing is being advertised. We don't consider it proper identification if it is obscured and is there is some minimal attempt to identify the listing agency by some code, pages away. We have observed that kind of identification and consider it to be an attempt to mislead the consumer to believe that the listing is that brokerage firm's listing.

Maretta Hostetler, Broker

Disputed Deposits

Recent changes in banking practices have made it difficult, if not impossible, to comply with current Rule 4.6(d) requiring a disputed deposit to be transferred into an individual trust account.

The proposed Rule (now 4.7 (d)) addresses this dilemma, providing "when the principal broker learns of a dispute concerning the proper party to receive a deposit held in a pooled account, the broker shall notify the parties, in writing, that the deposit will remain in the trust account until (1) the parties to the disputed deposit give written authority to the broker to disburse the funds, or (2) a court of competent jurisdiction determines the proper party entitled to the proceeds of the disputed deposit." Until this new Rule takes effect, any broker who handles a disputed deposit according to the procedures outlined above will not be considered by the Commission to be engaged in unprofessional conduct or in violation of our Rules.

Gloria Rice, Esq.

What to Keep - Originals, or Copies

Whether to keep fax copies or executed originals is a matter left to a licensee's judgment. At a minimum, the Commission expects its licensees to maintain records consistent with Administrative Rule 4.13, which states:

Copies of all offers, executed contracts, deposit receipts, statements, trust account records, and any other pertinent memoranda concerning a transaction . . . for at least seven years and shall be available for inspection by the Commission and its duly authorized agents upon request during regular business hours. The principal broker or designee is entitled to be present during

any inspection, and shall cooperate in good faith with the Commission's agent.

It is possible a broker may have legal or contractual obligations to keep records in addition to those required by the Commission, in which case they should consult their legal counsel.

Kevin Leahy, Legal Counsel

Safety First

For 2007, Vermont has been ranked as the second safest state in the country. However, it is still best practice to use common sense and good judgment to protect yourself and those with whom you work. In this industry, licensees are frequently called upon to drive to remote locations and to spend time alone in a vehicle or home with someone unfamiliar.

Please consider employing a policy for yourself or your office to always let someone else know where you are going and what time you plan to return. Work smart - stay safe!

Tara Dowden, Public Member

When Listings Expire...

The seller said the listing renewal is in the mail... It's happened to all of us at one time or another. Despite our very best efforts to get the listing extension into the seller's hands and then back from them signed before the listing expires, for whatever reason it didn't happen. Maybe they've been away, maybe it's simply been sitting on their kitchen table, but now time has run out and they tell us that the extension is "in the mail", but the listing expires before it gets back to us. What are we supposed to do now?

The short, correct and only answer is that there is no listing. Good intentions don't count. Until the listing extension is fully signed, and in your hands, you simply don't have a valid listing, and all marketing efforts for this property must stop. You may be asking yourself what about the ad that's running on our website, the newspaper ads, the flyers, and the sign? No exceptions - you'll need to immediately remove or take the property off of your personal and/or company's website, the sign has to be picked-up and any scheduled newspaper ads have to be pulled.

The property is not on the market - it's not listed - it's just that simple. Zero tolerance: No listing = No advertising or marketing of any kind!

Elizabeth Wilkel, Broker

HUD 1 Statements

There is a misconception that seems to be making the rounds regarding HUD 1 Statements. Apparently some licensees are under the impression that the Real Estate Commission requires licensees to obtain a copy of the HUD-1 Settlement Statement at a closing. This is not the case. The Commission has strongly recommended that the licensees try to have a copy of the HUD statement in their file, but the Commission does not have a specific rule that makes it mandatory.

FAQ's for Licensees

The Office fields questions relating to practice, and encourages licensees to call if they are unable to find the answer in the Statutes and Rules. We hope to develop a frequently asked questions page for the web to assist licensees in finding answers to those questions. In the meantime, we will try to include a few in our Newsletters.

Question: Is disclosure required from the listing broker to the buyer, if the buyer has already received disclosure from their buyer/broker?

Answer: No, disclosure is not required from the listing broker IF the buyer is accompanied by a buyer's broker, or cooperating broker's agent.

Question: If the buyer and seller agree, can I hold the deposit for more than five days?

Answer: NO, all deposits must be deposited within five business days of executing the P&S agreement.

Licensees as of October 2007

Type of License	Resident	Non-Resident	Total
Broker	1,125	183	1,308
Salesperson	1,262	126	1,388
Office	410	57	467

***** Important Reminder *****

The Commission will hold a public hearing to receive comments on the Proposed Rules Changes. The hearing will be on October 31st, at 2:00 p.m., at the National Life Building, Conference Room M2-D.

**Disciplinary Actions Taken
Since February 2007**

Joel Berg, Salesperson

REC04-0906 / May 17, 2007

Berg was found to have received a felony conviction for fraud under federal law. The Commission Revoked his license.

Katherine N. Dowd, Broker

REC15-0905 / June 29, 2007

Dowd failed to provide an agency disclosure form until approximately a month after her first contact with the buyers. The Commission issued a Warning, and an Administrative Penalty in the amount of \$400.00.

Brent Libby, Broker

REC23-1198 / June 29, 2007

Libby improperly handled a disputed deposit. The Commission issued a Reprimand, and Conditioned his license requiring him to take eight hours of education.

**Vermont Real Estate Commission
Office of Professional Regulation
National Life Bldg., North FL2
Montpelier, VT 05620-34**

**Unprofessional Conduct Cases
For Fiscal Year 2007**

Cases open at start of Fiscal Year	61
New cases opened	39
Cases investigated	33
Cases concluded without action	27
Formal charges filed	14
Disciplinary Actions Taken	10

Commission Meetings

The Commission usually holds its meetings on the fourth Thursday of each month, beginning at 9:00 a.m. Meetings are posted on the Office web page found at:

www.vtprofessionals.org/meetings/meetingslist.htm

We encourage anyone who has an interest to attend. Meetings are open to the public. We also post the upcoming meeting Agenda, and Minutes on the Commission's web page.

On a final note, we have made changes to the Commission's web page and hope you will find some time to take a look.

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