



# Vermont Real Estate Commission

## Newsletter

### Governor

The Honorable James Douglas

### Secretary of State

Deborah L. Markowitz

### Office of Professional Regulation

Christopher D. Winters, Esq., Director

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Susan (Sam) A. Matthews, Salesperson, Chair  
 Tara Dowden, Public Member, Vice Chair  
 Gloria Rice, Attorney Member, Secretary  
 Herb Beggs, Non-Realtor Broker  
 Maretta Hostetler, Broker  
 Claire Porter, Public Member  
 Elizabeth Wilkel, Broker

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### Commission Staff

Rita Knapp, Administrator  
 Judith Griffen, Administrative Assistant  
 Kevin Leahy, Legal Counsel

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Vermont Real Estate Commission  
 Office of Professional Regulation  
 National Life Building, North FL2  
 Montpelier, VT 05620-3402  
 Phone: 802 828-3228  
 Fax: 802 828-2368

E-Mail: [jgriffen@sec.state.vt.us](mailto:jgriffen@sec.state.vt.us)

[http://vtprofessionals.org/opr1/real\\_estate/](http://vtprofessionals.org/opr1/real_estate/)

## Message from the Chair

It is with mixed emotions that I sit down to write my last article for the Real Estate Commission newsletter. For ten years I have had the distinct privilege of serving on the Real Estate Commission. During that time, I have seen licensees who practice the highest standards of their profession and those who have clearly lost their way. I have enjoyed the opportunity to work with the dedicated staff of the Office of Professional Regulation, the State's Attorneys Office, the State's Investigator Office and most importantly the honor to work with a group of fellow Commissioners dedicated to upholding the Statute charge of protecting the welfare of the public in the arena of real estate. Over the last decade we have seen the practice of real estate become increasingly complex and launch into the world of the Internet. The Commission responded with a complete review and rewrite of the Rules governing the licensees. That process brought our stakeholders and partners to the table to work with us. The excellent contributions from the Vermont Association of Realtors and their Real Estate Commission Liaison Committee, Education Providers, especially Randy Mayhew and dedicated licensees all contributed to a successful rewrite and update of the Rules. The Commission has worked diligently to offer as much transparency as possible regarding their actions and routine business. All meetings are public and they recently instituted a policy that awards credits for continuing education for licensees who attend Commission meetings.

In January, the Real Estate Commission will move forward into 2009 under the leadership of the new Chair, Maretta Hostetler. I have every

confidence that she will be an outstanding Chair. Marettta will now have the honor I have had of convening a wonderful group of dedicated fellow Commissioners.

Being a member of the Real Estate Commission and Chair for the past three years has been a meaningful and great experience. I have thoroughly enjoyed every minute and have tried to serve to the best of my ability.

Sam Matthews, Chair

### Foreclosures and Short Sales

Unfortunately both of these types of sales have a lot of meaning in the present market and can be very problematic for everyone involved. We have already received several complaints involving short sales. Not being fully informed and the timing seem to be the crux of the complaints. Noting the direction of the market, we expect the complaints in that regard will increase. While this mechanism to sell certainly is an improvement over the foreclosure proceedings and saves the consumer time and money, there are pitfalls. For a licensee participating in this type of sale, we suggest a few guidelines as below:

When listing a property if you haven't made it your practice to do a CMA prior to helping the seller price a property, now is the time to institute that practice. Have facts in hand. Secondly, find out whether there are mortgages (first mortgage, 2<sup>nd</sup> mortgage, equity loan or line of credit) and who the mortgage holders are, the amounts owed and written permission to speak to the lender. If the home has been purchased in the past 5 years it could very likely be upside down, that is, more mortgage than value. Sellers may be reluctant to discuss this issue with you. However, when they become your client you can assure them that they can rely on your fiduciary relationship in divulging those details and it is to their benefit to enable the sale. Otherwise, if strategic information is not disclosed, it is certain to develop into a problem later when an offer comes in.

If you proceed with a short sale premise, touching base with the lender of a possible short sale may be in order, although until there is a viable purchase offer the lender may be hesitant to discuss it. This would be an appropriate time to share your CMA with the lender in preparation for a future sale especially if those statistics indicate a lower value than your client's mortgage balance. You must protect your client from being forced into a legal position where they have accepted a purchase and sales agreement and are unable to sell the property because the lien holder won't accept it. Getting prepared for that prospective purchaser is key to being able to bring the property to a successful closing.

Also prepare all prospective purchasers and their agents for a longer period of time than normal to close. It may take 60 days or more for the lien holders to agree to the terms of the offer. If you are the listing agent, do not keep your cooperating agent and their customer/client in the dark on the procedure. You can keep them apprised without compromising your seller client's position. ***Knowledge that the property may not be able to close and keeping that from the consumer and consumer's agent could be considered a material fact.*** Noting on the listing & sales agreements that the contract is subject to either the seller's lender approval, a third party approval, or a right of first refusal is suggested. Those notations need to be conveyed both to consumers and cooperating agents. For the buyer client, a rescission provision limiting the time element for the lender's acceptance of the purchase and sales agreement might be an additional safeguard.

Finally in a short sale, prepare your seller clients that they may still be liable for any short fall with the lender and should investigate that possibility.

When foreclosure is imminent, listing agents should make notations on listing data sheets to cooperating agents that the sellers will not accept offers after a date certain. Any listing agreement and data sheet must have an expiration date no later than final day of that seller's ownership. This will ensure that

consumers are not under a false impression that the seller can accept their offer and that they and their agent are not working on a voided listing. It is not advisable to encourage carry over purchasers for any future possibilities until the foreclosure has taken place and the identity of the new owner becomes public record. The foreclosure procedure has its own time elements, which can be as much as 18 months.

When the foreclosure has taken place and the lender is now the owner, all listing agreements must have the duly authorized signature of the entity. Licensees must take care to remember that their clients, the lending institutions, require the same amount of confidentiality and fiduciary responsibility as an individual. A licensee working for the seller (directly or indirectly) who suggests a lower offer is in violation of that duty.

This discussion is meant to give guidance and help for licensees who have been struggling to protect their client and also trying to be fair to customers and colleagues. Above all, we want to remind everyone they must disclose material facts regardless of the sensitivity of the issue.

### **Mandatory Consumer Disclosures – when do they expire?**

Unlike real estate marketing agreements and buyer representation agreements which both have definitive beginning and ending dates, we have the rather unique situation presented by the Mandatory Consumer Disclosure. A pivotal question regarding the Disclosure is; if or when does the Consumer Disclosure form expire as you work with your customer?

Under VT REC Rule 4.6 we are required to provide the form, and then we are additionally bound by VT REC Rule 4.14(c) to retain it for seven years. Ok, so with both of these Rules in mind, exactly how long is a Consumer Disclosure actually good for? The requirement for obtaining the Consumer Disclosure is a 'black and white' issue, however if or when it expires is a 'shade of gray'.

There are a multitude of factors for each licensee to consider as they work with someone

in "customer" status. It's ultimately your professional judgment that will become the bright-line test of when you'll need to reinforce or otherwise refresh the disclosure with your customer. Listen to your customer, how they behave with you and refer to you. Have you become 'their agent' and/or have you similarly blurred the line of representation when discussing their needs, wants, and financial abilities with them? Have they ever said to you: "I'm not worried about it – I know you're looking out for me."

When an unprofessional conduct complaint comes in to the Commission, we always ask the Investigator to obtain a copy of the Consumer Disclosure. It's reviewed in the context of the complaint for both timing and the factual issues raised. Sadly, to this date, we continue to discover that the Consumer Disclosure form is either missing from the licensee's file, or had been presented to the customer late or after-the-fact by the licensee in an effort to clean-up their file.

Ultimately it will be your professional judgment as to when you determine there is a question of allegiance and confidentiality in your dealings with your customer. It's up to you, as the professional, to take the high road and reinforce the Consumer Disclosure with your customer as required.

### **Raffles**

This question was received by the office: "Our firm currently represents a client with a residence for sale. This client wishes us to sell his residence by means of a raffle. Specifically, the seller is requesting that we advertise the tickets for sale (\$100 each,) collect and record ticket sales, keep the funds in trust account and facilitate the drawing for a winner."

Title 13, § 2102 states: "Except as provided in section 2143 of this title, a person who sells or disposes of property by way of chance or, as an inducement to the sale of property, gives the purchaser or any other person other property to be drawn by way of chance or lottery shall be imprisoned not more than one year or fined not

more than \$10,000.00, or both, for the first offense and imprisoned not more than three years or fined not more than \$10,000.00, or both, for each subsequent offense.”

Therefore, under Vermont law a real estate licensee may not enter into an agreement to list a property for sale by holding a raffle.

### Keeping proof of CE courses

The recent audit of continuing education claimed by licensees on their renewals brought to light the fact that many licensees have not been retaining their certificates proving their completion of CE hours taken. In December 2008 the Office of Professional Regulation’s licensing database will be migrated to a new “web based browser” system. What does that mean? Well for one it means that the next time licenses are due to renew the option for renewing online will be available. In preparation for this transition the Commission intentionally requested that licensees not send in CE verification with the recent renewal and notified licensees on the renewal form that the Commission reserved the right to audit licensee’s claims of CE. This auditing process will take place following all future renewal cycles. This is a reminder that verification of completion of CE hours should be retained for a minimum of two years following your renewal.

### Web Advertising

Rule 4.12 defines the requirements for all types of advertising. For the most part the printed ads (newspapers, brochures, etc) are in compliance with those rules. However, it is very apparent that many brokerage firms using web based advertising either don’t think the rule applies to internet ads, or are unclear as to the Commission’s expectations as it relates to web advertising. The rules do not differentiate between printed advertising and web advertising the same rules apply to all advertising. To assist licensees in acceptable web advertising the Commission issues the following interpretations.

Rule 4.12(a) states: *Every real estate advertisement shall prominently indicate the brokerage firm's registered name.*

The Commission interprets this to mean that the name of the brokerage firm must appear on the first displayed page of the agency’s web site. The user should not have to scroll down in order to see the firm name. The firm name must be in a readily visible color and the typeface may not be smaller than any of the other type face used on that page.

Rule 4.12(d) states: *Advertisements which show properties listed by an agent other than the brokerage firm must also indicate that agents name, and firm.*

The Commission interprets this to mean that the name of the brokerage firm and listing agent must appear on the first page on which any listing data is displayed. The user should not have to scroll down in order to see the listing agent’s name, or firm name. The names must be in a readily visible color and the typeface may not be smaller than any of the typeface used in the display of the listing data.

If a complaint comes before the Commission they will use these interpretations to guide them in determining if the advertisement (web page) is in violation of the rules, and therefore subject to disciplinary action.

### PSI – Computer Based Testing

Beginning in early 2009 the Commission will be moving to computer based testing. Although this change will eliminate the Barre testing site it will allow testing at any of the other PSI sites, even ones in New Hampshire and New York. In addition, the test will be offered daily at the PSI sites, instead of only once a month.

**Licensees as of October 2008**

Type of License	Resident	Non-Resident	Total
Broker	1,037	156	1,193
Salesperson	1,112	110	1,222
Office	416	56	472

**Unprofessional Conduct Activity  
September 2007 thru February 2008**

<b>New cases opened</b>	5
<b>Cases investigated</b>	17
<b>Cases concluded without action</b>	20
<b>Formal charges filed</b>	13
<b>Disciplinary Actions Taken</b>	4

**Disciplinary Actions Taken Since April 2008**

Wayne Mills  
REC18-1107

Mills was found to have, on several occasions, allowed the IORTA to have funds insufficient to cover contract deposits placed into it, and he disbursed money for purposes not related to the proper use of the trust account. Mr. Mills license was suspended until he completes the 40 hour broker course after which his license may be reinstated with additional conditions.

Robert Gaboriault  
REC17-1005

Gaboriault failed to perform his fiduciary duty to his client the seller. He claimed to have advertised the property, and provided information regarding the property to several prospective buyers when in fact he had not done so. The Commission suspended his license for 60 days and required he retake the 40 hour broker course before he may resume practice.

Susan Quatrini  
REC10-1006

Quatrini failed to disclose a material fact to a prospective buyer. Specifically, she failed to inform the buyer that the property did not hold a deeded Right of Way over the Town land. The Commission reprimanded Quatrini and imposed an administrative penalty of \$750.00.

Michael Maniery  
APP-REC10-0708

Maniery is an applicant for a salesperson's license. Based on his disclosure of a prior criminal conviction the Commission preliminarily denied his application. He requested the Commission reconsider its decision and following that hearing the Commission voted to vacate their preliminary denial and to issue his license with conditions.

**Commission Meetings**

The Commission meets once a month beginning at 10:00 a.m. Meetings are posted on the Office web page found at:  
[www.vtprofessionals.org/meetings/meetingslist.htm](http://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.

**Vermont Real Estate Commission  
Office of Professional Regulation  
National Life Building North FL2  
Montpelier, VT 05620-3402**

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