



## **Regulatory Corner - April 2018**

### **Lessons offered by recent disciplinary cases**

In every issue of the Real Estate Commission's *Real Estate Bulletin*, there are summaries of disciplinary cases brought against property managers from every corner of the state. These cases provide an excellent opportunity to learn from, and hopefully avoid, the mistakes of others.

A case that will be reported in the May issue of the *Real Estate Bulletin* involves a Gastonia firm and its broker-in-charge. According to the Consent Orders signed by the BIC, the firm and its BIC admitted to three distinct violations of the Real Estate License Law and the Real Estate Commission's Rules.

First, the firm admitted that it failed to properly inspect properties that it managed and that significant damage resulted from its inattention. Earlier this year, we shared some guidance offered by the Commission regarding the duty of property managers to inspect the properties they manage. The Commission expects property managers to inspect rental properties on a regular basis; at a minimum (a) prior to renewal of a lease, and (b) any time anyone expresses a concern about the condition of a rental property or conduct by a tenant. The Commission has also stated that it expects property managers to be diligent in monitoring the conditions of rental properties and to take swift action to resolve problems when they arise.

The Gastonia firm also admitted that it allowed an unlicensed employee to sign Property Management Agreements on behalf of the firm. It goes without saying that it is unlawful to engage in real estate brokerage without a license. The Real Estate License Law includes in its definition of a real estate broker anyone who, for compensation, offers to lease any real estate for others. In its "License Law and Rules Comments", the Commission has made it clear that preparing property management agreements constitutes the offering of real estate for rent. Therefore, that task must be handled by a licensed broker.

The third basis for discipline was the firm's failure to maintain sufficient company funds in its trust account to cover the bank's service fees. As a result, the funds used to pay those fees were client funds, and the fee payments resulted in a shortage in the trust account. While brokers may not mix trust money with their own money, there is an exception to that rule: it is permissible to deposit and maintain \$100.00 (or such other amount as may be required) to cover bank charges. The existence of this exception is confirmed in the Commission's Broker-in-Charge Guide.

As a result of the three violations admitted by the firm and its BIC, both licensees received a one-year suspension. By agreement, that suspension was stayed in its entirety after the Commission received evidence that the firm's trust account was fully funded, and that its BIC had completed an extra four hours of continuing education in Raleigh. Nevertheless, the firm and its BIC will both see their names, and their conduct, published in the May 2018 *Bulletin*.

The February 2018 *Real Estate Bulletin* includes eight pages of disciplinary action summaries. A substantial number of those summaries involve property management firms and their brokers-in-charge. By far the most common reason these licensees were disciplined was the failure to follow the Commission's trust account rules and guidelines.

Licensees in Charlotte and Corolla received serious discipline because they failed to properly monitor the firms' trust accounts. In the Charlotte case, this resulted in an unlicensed assistant converting over \$200,000.00 to her personal use. Even though the firm fully funded the trust account when it discovered the missing money, the broker-in-charge had his license suspended for three years, with six months of that suspension active. In the Corolla case, a licensee who worked at the firm authorized a \$20,000.00 payment from the firm's trust account to her brother-in-law to repay a personal loan. Not surprisingly, the licensee had her license revoked permanently. However, the broker-in-charge also received a one-year suspension, with two months of that suspension active. The lesson here is obvious: brokers-in-charge are responsible for the maintenance of their firm's trust account, and the records pertaining thereto. BICs will face serious discipline if they fail to take these responsibilities seriously.

In addition to these embezzlement cases, firms in Lake Lure and Statesville received published discipline for failing to maintain the trust account records required by Commission Rule A.0117 and by their property management agreements.

Property managers are reminded that subparagraph (c)(4) of Commission Rule A.0117 specifically requires that property managers create and maintain a separate ledger for each property, or each owner of property, managed by the broker. Each ledger must identify the particular property or owner, the tenant, the amount, date and purpose of each deposit (including from whom received), and the amount, date, check number and purpose of each disbursement.

Brokers managing properties used for vacation rentals are required to create and maintain additional trust account records. The additional requirements are outlined in Rule A.0117(f): brokers must maintain either a "subsidiary ledger sheet" for each property or owner, or an accounts payable ledger for each property or owner.

Property managers using NC REALTORS® Standard Property Management Agreements for long term rentals and vacation rentals are obligated by those agreements to provide their owner clients with monthly statements of all monies received and disbursed. In the Statesville case, the property manager's failure to comply with this obligation was one of the bases cited for the discipline imposed.

Last but not least, subparagraph (e) of Rule A.0117 mandates that brokers reconcile their trust accounts **monthly**. The reconciliation process is summarized in that subparagraph. Any brokers

who are not performing this task, or are confused about the reconciliation process, are strongly urged to take the Commission's four hour Basic Trust Account course.

The cases summarized above are reminders that firms and their brokers-in-charge must regularly and properly perform their monthly trust account reconciliations. Doing so will (a) substantially reduce their risk of loss due to embezzlement; and (b) increase the chances of surviving a spot audit by the Commission without any adverse consequences.

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