



Help! The Real Estate Commission is After Me!

by Will Martin & Bill Gifford

If it is not your worst nightmare, it is probably near the top of the list: on your desk when you arrive in the office is a brown envelope from the North Carolina Real Estate Commission. You know it is not time to renew your license and when you open the envelope, your fears are confirmed; at the top, in bold black letters: "LETTER OF INQUIRY." What do you do?

The first thing you should do is take a deep breath and resist the impulse to panic. Just because the Commission has opened a file does *not* mean that disciplinary action is inevitable. It only means the Commission is doing its job; it is investigating the potential of wrongdoing. North Carolina law gives you the opportunity to present your side of the story before the Commission staff decides whether to proceed with a formal hearing.

If you are affiliated with a firm, you should immediately bring the matter to the attention of your broker-in-charge. Many agents and firms have errors and omissions coverage which pays for the defense of regulatory proceedings. While this coverage may be limited (perhaps to \$2500), it is often not subject to any deductible. Such coverage would allow the immediate involvement of an attorney at no additional cost to you.

The Commission's Letter of Inquiry will give you 14 calendar days to submit a response. Extensions of this deadline can be obtained. The letter will ask you to provide a written statement describing your involvement in the subject transaction. You may also be asked to provide copies of specified documents.

Responding to the Letter of Inquiry is a critical stage, and extreme care should be given to provide accurate information to

the Commission. If mistakes were made in your transaction, this is the time to admit them. The Real Estate License Law demands honesty; it does not demand perfection. If the complainant has misrepresented something in the complaint, be sure to bring that to the Commission's attention. The Commission may be reluctant to proceed to a contested hearing if the credibility of its witness is in doubt. Keep in mind that your response will be shared with the complainant. You should be prepared to back up, with testimony or documents, all of the statements in your response.

After reviewing your response, the Commission's legal staff has several options. One is to close the file because of insufficient evidence of wrongdoing. The staff can also "Close and Warn". This means that the file will be closed without disciplinary action but you will receive a letter advising you to exercise greater caution in the future. A third option is for the matter to be referred to the full Commission for a "probable cause" determination.

Should legal staff elect the third option, it will present a brief summary of the facts to the Commission. The Commission must decide, based solely on the presentation of its legal staff, whether probable cause exists to believe that you have violated either the Real Estate License Law or the Commission's Rules. If the Commission finds probable cause, the case will be assigned to a Commission attorney for prosecution.

The next step in the process is the settlement phase. The Commission attorney will submit a settlement proposal to you, generally within 30 days of the probable cause determination. You will have an opportunity to

accept or reject that proposal, or submit your own proposal. At this point, the assistance of an attorney is advisable. We often suggest that our clients meet face-to-face with the Commission's lawyer to discuss possible settlement, and we have had good success in negotiating acceptable outcomes.

There are several levels of discipline that can be agreed upon, including a so-called "conditional dismissal" of the case, a reprimand, and a license suspension with all or some part of the suspension "stayed" (not active). If the settlement involves any disciplinary action, the Commission will publish a summary of that action in its Real Estate Bulletin. If the discipline involves a license suspension or revocation, the Commission will also issue a press release to newspapers in the county where the agent does business.

If the parties are unable to negotiate a resolution of the case, a contested hearing will be scheduled. The hearing will be conducted much like a trial. You or your attorney will be given the opportunity to make an opening statement, to present evidence, and then to make a closing argument. Typically, a disciplinary hearing lasts no more than one day, and decisions are issued that same day. If you are not satisfied with the decision, you will have the right to appeal to the Superior Court in your home County.

The bottom line is that a consumer complaint is just the beginning of a multi-staged process. Each stage of this process provides an opportunity for you to present your side of the story. In a significant percentage of cases, if the true facts are presented to the Commission in a clear and organized fashion, the end result of the process is no discipline whatsoever. ■