



Regulatory Corner - April 2019

More lessons from the trenches

Readers of this column know that it has always focused on recent disciplinary cases that have been (or are about to be) reported in the Real Estate Commission's "Real Estate Bulletin." Many readers may now have realized that the Commission is no longer mailing out a printed version of Real Estate Bulletin. Instead, starting in February, the printed Bulletin was replaced by a new "eBulletin" that the Commission is emailing to all licensees once a month. Like the printed version, each eBulletin includes a list of recent disciplinary actions. Archived versions of these eBulletins are available on the Commission's website under the tab for "Publications."

Not surprisingly. Each of the three eBulletins published thus far includes at least one summary describing the discipline of a property manager. Each of the following cases provides an opportunity for property managers to learn from the mistakes of others.

The February eBulletin references a case decided in August of last year in which a property manager from Lake Gaston who served as his firm's qualifying broker and broker-in-charge received a "stayed" 12-month suspension of his license, was prohibited from acting as a broker-in-charge or qualifying broker of a firm for two years, and was barred from engaging in property management for seven years. This obviously serious discipline was based on the property manager's failure to supervise the two (unlicensed) co-owners of the business. As it turns out, the Commission had revoked the license of one of those co-owners in January 2013 when it found that she had used trust monies for personal expenses, and collected insurance premiums from vacation tenants without actually purchasing the insurance. A Commission audit determined that both of these co-owners had withdrawn funds from the firm's trust accounts and used those funds for their own purposes. The Commission found that the owners' actions were not detected because the broker-in-charge had failed to supervise the unlicensed co-owners and also failed to adequately monitor the trust accounts for suspicious activity. This case is yet another reminder of the importance of conducting monthly reconciliations of the firm's trust accounts. The obligation to do so is set forth in Rule A.0117(e) of the Real Estate Commission's rules. Had regular reconciliations been completed, any suspicious activity would almost certainly have been detected right away, and discipline could have been avoided.

The March eBulletin describes the case of a Charlotte property manager who was the broker-in-charge of a property management firm. One of the properties being managed by the firm was owned by the property manager as trustee for a third party under a trust agreement or "land trust." The firm did not enter into a property management agreement relating to that property, a violation of Real Estate Commission Rule A.0104(a). That rule requires every agreement for

brokerage services in a real estate transaction to be in writing and signed by the parties thereto. In addition to this violation the Commission found that while the property manager was acting as broker-in-charge, he did not have access to the firm's trust accounts and otherwise failed to ensure that they were being maintained in compliance with Commission rules. This case is a reminder that, under the Commission's broker-in-charge rule (A.0110), it is the broker-in-charge who is responsible for maintaining the trust or escrow account of the firm and the records pertaining thereto. While the BIC may authorize additional persons to have signature authority on any trust accounts, the BIC is ultimately responsible for those accounts.

The April eBulletin describes a property manager in Jamestown who received a stayed three-month suspension of her license. Like the Charlotte case discussed above, the Commission's investigation disclosed that the property manager had agreed to manage a rental property but failed to enter into a written agency agreement. In this case, the owner-client was a friend. It goes almost without saying that there is no "friend exception" to the requirement for having all agency agreements confirmed in writing and signed by the parties. The Jamestown case had another facet. The Commission found that the property manager had accepted a \$1500 cash deposit but had never deposited the funds in a trust or escrow account, and had no records confirming that the deposit had been disbursed to the property owner. Commission Rule A.0116 governs the handling of trust money. Subparagraph (a) of that rule notes that, with a few limited exceptions, all monies received by a broker acting in his or her fiduciary capacity shall be deposited in a trust or escrow account no later than three banking days following the broker's receipt of those monies. While subparagraph (b) allows earnest money or tenant security deposits received by a broker in connection with a pending offer to purchase or lease to be deposited no later than three days following acceptance of the offer, that exception only applies to earnest money or tenant security deposits paid by means other than currency. In other words, if a licensee receives "trust money" in the form of cash, that cash must always be deposited in a trust account – no exceptions. In this case, had the property manager properly deposited the currency she received, she would then have had documentation from her bank to support her contention that the funds had been properly disbursed to her owner-client.

According to the Real Estate Commission's website, the Commission is now offering its "Basic Trust Account Procedures" course every month at its offices in Raleigh. Property managers who would like a refresher on the proper handling of trust accounts, and who would like to avoid the fate of property managers like the ones discussed above, might consider signing up for that class.

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