

Major Legislative and Regulatory Issues for 2008

Repeal of the Transfer Tax

After organizing public education campaigns to defeat the transfer tax in all 19 counties that placed the issue on the ballot, the NC Association of REALTORS® will be pressing legislators to repeal the transfer tax. It is clear that voters greatly dislike the transfer tax, after soundly rejecting it across the state.

Three bills have been introduced to repeal counties' authority to place a transfer tax on the ballot:

- **HB 2097 (Repeal Transfer Tax)** was introduced by **Rep. Pryor Gibson (D-Anson), Rep. Jim Harrell (D – Surry), Rep. Bruce Goforth (D – Buncombe)** and **Rep. David Lewis (R – Harnett)**.
- **SB 1951 (Repeal County Land Transfer Tax)** was introduced by **Sen. David Hoyle (D – Gaston)**.
- **SB 1830 (Repeal Transfer Tax)** was introduced by **Sen. Eddie Goodall (R - Union)**.

There is large bi-partisan support for repealing the transfer tax. The question is whether the leadership of each chamber will allow the issue to be considered. Hopefully legislators will have an opportunity to vote on the issue in response to the huge level of public opposition to the tax.

Transfer Tax Election Results of May 6, 2008

<u>County</u>	<u>Against</u>	<u>For</u>	<u>Percentage</u>	<u>Precincts</u>
Ashe	4,088	3,321	55% to 45%	100%
Gates	2,015	843	70% to 30%	100%
Orange	28,053	14,288	66% to 34%	100%
Tyrrell	685	568	55% to 45%	100%

Transfer Tax Election Results of November 6, 2007

<u>County</u>	<u>Against</u>	<u>For</u>	<u>Percentage</u>	<u>Precincts</u>
Brunswick	15,234	3905	80% to 20%	100%
Pender	6,774	2,062	77% to 23%	100%
Washington	1,629	651	71% to 29%	100%
Gates	709	485	59% to 41%	100%
Hoke	2021	359	85% to 15%	100%

Harnett	6,458	507	93% to 7%	100%
Johnston	10,671	1,938	85% to 15%	100%
Moore	12,467	3,688	77% to 23%	100%
Chatham	7,492	3,167	70% to 30%	100%
Davie	5,006	1,417	78% to 22%	100%
Union	16,725	3,432	83% to 17%	100%
Rutherford	7,688	680	92% to 8%	100%
Macon	5,178	1,681	75% to 25%	100%
Henderson	6,969	2,807	71% to 29%	100%
Graham	1,490	45	97% to 3%	100%
<u>Swain</u>	<u>1,458</u>	<u>392</u>	<u>79% to 21%</u>	<u>100%</u>

Coastal Stormwater

The newly proposed Coastal Stormwater Rules continue to be a hot topic of discussion among interested parties across North Carolina. The Coastal Stormwater Rules Working Group has been meeting weekly in Raleigh to discuss pros and cons of the proposed rules and develop alternative language that will be acceptable to the stakeholders.

While there is some recognition on behalf of state regulators that numerous ambiguities and flaws exist in the language as it is currently written, the process to address those concerns continues to move very slowly. Some of the major sticking points in the Rules continue to be a landowner's inability to use existing CAMA wetlands in their impervious surfaces calculations, significantly increased vegetated buffer requirements (30' to 50') and the volume of stormwater that must be controlled by either an engineered stormwater control device or best management practices outlined by the Department of Water Quality.

At the same time the "Working Group" has been meeting, several coastal legislators have introduced bi-partisan legislation in both the House and the Senate to disapprove the current rules. Legislation to delay and study the rules will also be introduced.

North Carolina Association of REALTORS® Legislative Staff continues to monitor the proposed legislation in addition to participating in the Coastal Stormwater Rules Working Group. We will of course continue to provide our members with the most up-to-date information possible as the situation develops.

Pervious Pavement Requirements

The 2007 Budget bill contained a provision that as of October 1, 2008, would require that 20 percent of all vehicular parking areas to be pervious. Pervious means that the material allows stormwater to penetrate and enter the ground below rather than running off into storm drains or collection ponds. The NC Association of REALTORS® joined other business interests in successfully amending the provision to require the Environmental Review Commission to study the issue and report its findings to the 2008 General Assembly.

REALTORS® staff have been working to improve this provision and **HB 2504 (Limit Impervious Pavement in Parking Lots)** has been introduced by **Reps. Pryor Gibson (D – Anson)** and **Lucy Allen (D – Franklin)** that should do just that.

Legislation Banning APFO Impact Fees

During this session, the NC Assn. of REALTORS® will strongly advocate for legislation that would prohibit local governments from adopting adequate public facility ordinances (APFOs) that include impact fees. An APFO is an ordinance that bans development when a particular infrastructure (usually schools) has met "capacity." However, most APFOs allow for development to proceed if the developer pays an impact fee. The jurisdictions who have enacted these disguised impact fees are attempting an end run around the law that requires explicit authority to adopt an impact fee.

The bill, **SB 1180 (No Monetary Exaction for Development)**, introduced by **Sen. Walter Dalton (D – Rutherford)** and **Sen. A.B. Swindell (D – Nash)**, would prohibit any local government impact fee, including those included as part of an APFO, unless the local government has explicit authority from the legislature. **SB 1180** passed the Senate, but was never heard in the House. It is eligible for consideration this session and the NC Assn. of REALTORS® will continue to push for its passage.

REALTORS® Secure Money for the NC Housing Trust

Last session the NC Assn. of REALTORS® was successful in lobbying for more money for the North Carolina Housing Trust Fund. \$18.6 million was allocated for the Housing Trust Fund for fiscal year 2008, including a record high \$8 million in recurring funds (recurring funds are appropriations that will continue in the same amount year after year). The NC Association of REALTORS® is extremely pleased with this much needed infusion of funds for affordable housing and will continue to lobby for an even larger appropriation this year.

Steep Slope Legislation

The North Carolina Assn. of REALTORS® has halted legislation that would have dramatically affected construction in the mountain regions of the state and imposed unworkable disclosure obligations. **HB 1756 (Safe Artificial Slope Construction Act)**, introduced by **Reps. Ray Rapp (D - Madison)**, **Phil Haire**

(D - Jackson), and **Susan Fisher (D - Buncombe)**, would establish restrictions and regulations for development in the mountains.

Rep. Rapp (D-Madison) told his constituents that the General Assembly won't consider the legislation this session. Rep. Rapp stated that his bill would not be considered because a legislative study committee didn't have time for a third and final hearing on the bill before the legislative session began. REALTORS® turned out in large numbers for the two hearings held in the mountains earlier this year to comment on the problems with the legislation.

Rep. Rapp's bill would have required local governments to set rules for development on certain slopes and amend the residential property disclosure statement to include disclosure of certain mountain property. The bill would have had many negative effects on homeowners and many mountain legislators led opposition to the proposal saying it would drastically raise building costs.

The NC Association of REALTORS® staff attended previous public hearings on this issue in western North Carolina and will remain involved in any further discussion about steep slope regulations.

Carbon Monoxide Detectors

Sen. William Purcell (D - Scotland) introduced **SB 1924 (Require Carbon Monoxide Detectors)** and **Reps. Jennifer Weiss (D-Wake), Rick Glazier (D - Cumberland) and Becky Carney (D - Mecklenburg)** introduced **HB 2471 (Require Carbon Monoxide Detectors)**, at the recommendation of the Child Fatality Task Force Study Commission. These bills, which are identical, would require carbon monoxide detectors to be installed in all residential rental dwelling units which have fossil-fuel burning appliances or heaters, a fireplace or an attached garage. Additionally, the bills give the North Carolina Building Code Council the authority to require detectors in any owner-occupied dwelling with the same amenities.

The NC Association of REALTORS® staff is reviewing and evaluating the standards applicable to installation and various other questions. We are working with the Property Management Division and our allies, and we will remain actively engaged as this bill is evaluated.

Real Estate Commission Rule on Disclosure of Incentives, Rebates and Compensation

Over the last several months the Real Estate Commission has been considering changes to the rule regarding brokerage fees and other compensation earned by agents during real estate transactions (21 NCAC 58A.0109). These changes were prompted by recent allegations of a failure to disclose home builder paid incentives to buyers' agents in a property sales transaction. An article published in the *Charlotte Observer* is included for your reference.

During the review of the proposed rule changes by the NC Association of REALTORS®, staff sought input and analysis from the Risk Management Advisory Group and several other members to determine how the rule might impact REALTORS®. At the Real Estate Commission's public hearing on the rule on Wednesday, April 16th NC Association of REALTORS® staff commented that the NC Association of REALTORS® had reviewed the proposed rule and was supportive of the rule's application to the home builder paid incentive situation. Additionally, we explained that NC Association of REALTORS® staff had heard concerns from REALTORS® active in property management and vacation rental management, as well as from commercial REALTORS®.

The Real Estate Commission took no action on the proposed rule at the meeting on April 16th and instead, was to convene a meeting in early May of commercial REALTORS®, property managers and vacation rental managers to further discuss, evaluate and negotiate the proposed rule. Prior to this meeting's occurrence, the Real Estate Commission staff revised the draft to make the changes apply only to disclosure requirements in sales transactions, thereby excluding all lease transactions and negating the necessity of the meeting.

The Real Estate Commission held a public hearing on the proposed rule changes on Wednesday, May 15th. At that meeting, REALTORS® staff commented that the Association had reviewed the proposed rule and requested only a technical change to the language. At that meeting, the Commissioners determined the best course of action was to table the proposed rule and continue deliberations.

A special meeting was called in response to public concerns, and concerns expressed by the Governor, regarding the Commissioners' decision to table the rule change. In response to the Commissioners' concerns, the Commission staff further modified the rule. At the special meeting on May 28th, the Commission voted to approve the included draft of the rule change (please note that a clean copy of the rule is not yet available from the Commission and the handwritten technical amendment on line 25 was made at the meeting). The rule is effective October 1, 2008. This will give our Forms Committee time to review the revised rule and implement any changes necessary to our form.

It is important to note that the NC Association of REALTORS® was supportive of the Commission's action and is appreciative of the thoughtful manner in which the Commission addressed this issue. In a press release distributed after the rule change was adopted, Rick Zechini commented that "The top priority for NC REALTORS® is the well-being of the clients they serve. There is zero tolerance for agents who do not follow the rules and the strict code of ethics that guide our profession. We applaud today's thoughtful action by the N.C. Real Estate Commission. It sends a strong message that we are all on the same page in protecting North Carolina citizens seeking to achieve the American Dream of homeownership."

Jordan Lake Rules

At the May 8th meeting of the Environmental Management Commission, the Commission unanimously approved a revised set of rules for Jordan Nutrient Strategy. The revised rules are slightly less burdensome than the original draft, but are still very problematic as they require the retrofitting of existing development with stormwater controls within a 10 year period, continue to impose onerous buffer rules on property owners and fail to adequately address the actual sources of pollution.

The proposed Jordan Lake rules will now be sent to the Rules Review Commission for approval. During the Rules Review Commission phase, we intend to work closely with local REALTOR® Associations and other concerned stakeholders to submit the requisite number of letters (10) required to obtain legislative review of the rules. We also intend to challenge the rules before the Rules Review Commission. Once the 10 letters have been received and assuming that the Rules Review Commission ultimately approves them, the rules would then be before the General Assembly during its 2009 session. The rules would go into affect unless the General Assembly takes action. NC Association of REALTORS® staff, in coordination with local REALTOR® Associations and allies, is researching various issues and educating legislators and other leaders on the negative implications of these rules.

Draft approved 5.28.08 by Commission

DRAFT Created on 5/21/08

1 21 NCAC 58A .0109 is proposed to be amended as follows:

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4 21 NCAC 58A .0109 BROKERAGE FEES AND COMPENSATION

5 (a) A licensee shall not receive, either directly or indirectly, any commission, rebate or other valuable
6 consideration of more than nominal value from a vendor or a supplier of goods and services for an
7 expenditure made on behalf of the licensee's principal in a real estate transaction without the written
8 consent of the licensee's principal.

9 (b) A licensee shall not receive, either directly or indirectly, any commission, rebate or other valuable
10 consideration of more than nominal value for services which the licensee recommends, procures, or
11 arranges relating to a real estate transaction for a party, without full disclosure to such party. ~~Nothing in~~
12 ~~this Rule shall be construed to permit a licensee to accept any fee, kickback or other valuable consideration~~
13 ~~that is prohibited by the Real Estate Settlement Procedures Act of 1974 (12 USC 2601 et. seq.) or any rules~~
14 ~~or regulations promulgated by the United States Department of Housing and Urban Development pursuant~~
15 ~~to such Act.~~

16 (c) In a real estate sales transaction, a broker shall not receive any compensation, incentive, bonus, rebate,
17 or other consideration of more than nominal value:

18 (1) from his principal unless the compensation, incentive, bonus, rebate, or other consideration is
19 provided for in a written agency contract prepared in conformity with the requirements of 21 NCAC 58A
20 .0104.

21 (2) from any other party or person unless the broker provides full and timely disclosure of the
22 incentive, bonus, rebate, or other consideration, or the promise or expectation thereof to the broker's
23 principal. Full disclosure shall include a description of the compensation, incentive, bonus, rebate, or other
24 consideration including its value and the identity of the person or party by whom it will or may be paid. A
25 disclosure ~~under this rule~~ is timely when it is made in sufficient time to aid a reasonable person's decision-
26 making. The disclosure may be made orally, but must be confirmed in writing before the principal makes
27 or accepts an offer to buy or sell.

28 Nothing in this rule shall be construed to require a broker to disclose to a person not his principal the
29 compensation the broker expects to receive from his principal or to disclose to his principal the
30 compensation the broker expects to receive from the broker's employing broker. For the purpose of this
31 rule, nominal value means of insignificant token, or merely symbolic worth.

32 (e) (d) The Commission shall not act as a board of arbitration and shall not compel parties to settle
33 disputes concerning such matters as the rate of commissions, the division of commissions, pay of brokers,
34 and similar matters.

35 (f) (e) Except as provided in (e)-(f) of this rule, a licensee shall not undertake in any manner, any
36 arrangement, contract, plan or other course of conduct, to compensate or share compensation with
37 unlicensed persons or entities for any acts performed in North Carolina for which licensure by the
38 Commission is required.

DRAFT Created on 5/21/08

- 1 ~~(e)~~ (f) A broker may pay or promise to pay consideration to a travel agent in return for procuring a tenant
2 for a vacation rental as defined by the Vacation Rental Act if:
- 3 (1) the travel agent only introduces the tenant to the broker, but does not otherwise engage in
4 any activity which would require a real estate license;
 - 5 (2) the introduction by the travel agent is made in the regular course of the travel agent's
6 business; and
 - 7 (3) the travel agent has not solicited, handled or received any monies in connection with the
8 vacation rental.

9 For the purpose of this Rule, a travel agent is any person or entity who is primarily engaged in the business
10 of acting as an intermediary between persons who purchase air, land, and ocean travel services and the
11 providers of such services. A travel agent is also any other person or entity who is permitted to handle and
12 sell tickets for air travel by the Airlines Reporting Corporation (ARC). Payments authorized hereunder
13 shall be made only after the conclusion of the vacation rental tenancy. Prior to the creation of a binding
14 vacation rental agreement, the broker shall provide a tenant introduced by a travel agent a written statement
15 advising him or her to rely only upon the agreement and the broker's representations about the transaction.
16 The broker shall keep for a period of three years records of a payment made to a travel agent including
17 records identifying the tenant, the travel agent and their addresses, the property and dates of the tenancy,
18 and the amount paid.

19 (g) Nothing in this rule shall be construed to permit a licensee to accept any fee, kickback or other valuable
20 consideration that is prohibited by the Real Estate Settlement Procedures Act (12 USC 2601 et. seq.) or any
21 rules and regulations promulgated by the United States Department of Housing and Urban Development
22 pursuant to said Act or to fail to make any disclosure required by said Act or rules.

23
24 *History Note: Authority G.S. 93A-3(c);*
25 *Eff. February 1, 1976;*
26 *Readopted Eff. September 30, 1977;*
27 *Amended Eff. April 1, 2006; July 1, 2005; September 1, 2002; August 1, 2000; August 1,*
28 *1998; April 1, 1997; July 1, 1989; November 1, 1987.*

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Promises upfront, deals on the side

BINYAMIN APPELBAUM AND PETER ST ONGE

The stores sat facing the food court at Eastland Mall, near the Sears at Carolina Place, just down from the movie theater at Concord Mills. "Realty Place," said the blue-and-yellow signs. "Your Home Superstore." It was 2002, the middle of the subprime mortgage boom. A young real estate agency was fishing for customers in an unlikely place.

Realty Place was, its principal owner says, the most progressive and aggressive agency in Charlotte. It targeted people with modest incomes and ragged credit, many of whom had been shunned by other companies.

Inside its stores, agents signed contracts with customers promising to represent their interests exclusively. Realty Place said it would take care of them and defend them against home builders seeking to prey on their inexperience.

"Their goal is to beat you up financially," agents were trained to say. "Our goal is to beat them up for you."

But an Observer investigation shows Realty Place worked closely with the builders it had vowed to beat up. The company funneled buyers into low-priced starter-home developments, many of which are now plagued by foreclosures.

Realty Place's marketing, sometimes subsidized by builders, regularly and dramatically understated the cost of buying a home.

Its agents helped customers qualify for loan programs, funded by builders, that were seldom appropriate for lower-income families.

Most of all, the company collected millions of dollars in bonuses from builders in exchange for finding buyers for their homes.

The Observer found that Realty Place sometimes failed to ensure that those bonus payments appeared on settlement statements. Federal law requires bonus payments to be recorded. More broadly, in more than 50 interviews with Realty Place customers, the Observer found no one who was aware of the bonuses. Failing to tell a customer about a bonus violates state regulations.

The payments also raise questions about the company's presentation of itself as a buyer's agency.

"It's supposed to be like your mother helping you out on a real estate transaction," said Jon Boyd, president of the National Association of Exclusive Buyer Agents. "The idea that your mother would take a kickback in your transaction, well, that's not appropriate."

Between 2002 and 2005, Realty Place guided more than 4,000 people into a first home in Mecklenburg and surrounding counties.

Nationwide, less than 3 percent of all home purchases historically end in foreclosure. But a disaster is unfolding in starter-home neighborhoods in Mecklenburg County. About 14 percent of starter-home buyers in 2002 have lost their homes to foreclosure. The rate among Realty Place customers that year is higher, at about 17 percent.

John Heinemann, the principal owner of Realty Place, said his customers were responsible for their own financial decisions. He said several thousand people were able to buy homes only with Realty Place's help, and it was inevitable that some would lose those homes. "We filled the void due to our willingness to work with anyone who wanted to buy a home," Heinemann said.

Of the company's relationship with builders, he added, "It was a business relationship where the terms were understood upfront, that we were representing the buyer."

Kris Boschele, who ran the company's daily operations, and a third partner, Randy Jordan, provided statements to the Observer that both said in part, "Realty Place has always strived to provide the best,

most competent services to our clients within the constraints of all legal and ethical guidelines."

Realty Place was the creation of Heinemann, a marketing veteran who decided he could build a better real estate company after a frustrating homebuying experience.

Boschele was the engine, intense and gregarious, who bought a home with Heinemann's help and then became his personal assistant.

Both are competitive men -- Heinemann a former boat racer, Boschele an ex-college football star. Both sought an edge on competitors, homebuyers and home builders -- and ultimately on each other.

In a few years, they expanded Realty Place into one of Charlotte's largest real estate companies.

And then, almost as quickly, it was struggling to survive.

A new system

John Heinemann saw himself as an analyst, not a salesperson. He had a background in manufacturing systems and an inventor's confidence, and in 1994, he decided the real estate industry needed a fix. Heinemann, now 51, had been galled by inefficient sales agents when he relocated from California to Charlotte. He created a real estate system: software and sales scripts and binders filled with organizational plans.

In 1996, he put his ideas to work for Lester McGary, who owned one of Charlotte's first exclusive buyer's agencies.

The concept of buyer's agency originated more than a decade earlier on the West Coast. Traditional real estate agents were beholden to the seller, who paid the commission. Buyer's agents, although still paid by the seller, signed contracts promising to represent buyers. "We like to think of ourselves as advocates for those people wanting to become homeowners," McGary said in a recent e-mail.

The philosophy appealed to Heinemann. But he soon butted heads with McGary, who he felt limited the potential of his real estate system, and left after a year.

The relationship devolved into a McGary lawsuit alleging Heinemann had continued to advertise as if he were still associated with McGary's company. A jury ruled for McGary.

"I really learned very little from McGary," says Heinemann.

Says McGary: "You can only lead a horse to water."

In 1997, Heinemann joined a new buyer's agency started by a friend: Performance Realty, later known as Realty Place. His timing was excellent. A revolution was beginning.

The federal government, seeking to expand home ownership dramatically, was loosening restrictions on mortgage lending. Home builders were responding with new, low-priced developments.

The missing ingredient: companies that would go tell lower-income families the news.

Selling to renters

Realty Place left sales brochures at apartment doors. It invited renters to its offices for a homebuying seminar and dinner, paid for by a builder. It opened stores in every Mecklenburg mall except affluent SouthPark, and used the windows as billboards.

The company's marketing was grounded in an observation: Many buyers focus on the monthly mortgage payment, not the price. As managers often reminded agents, "We don't sell homes, we sell payments."

The company also aimed to convince people that owning was cheaper than renting. An ad distributed at a Concord apartment complex showed a \$126,000 home with the slogan, "Compare \$643 To rent!"

The number wasn't real. The projected monthly payment actually was about \$1,000.

Between 1999 and 2003, Realty Place and its predecessor Performance Realty were admonished five times by the N.C. Real Estate Commission for misleading customers with compare-to-rent ads that lacked required disclosures. The company apologized each time, then continued to publish ads that understated the true cost of home ownership.

Tom Miller, director of legal services for the N.C. Real Estate Commission, which enforces state real

estate regulations, said the pattern of violations was unusual and troubling.

How did Realty Place justify "\$643" in the Concord ad? The company claimed it was an "effective monthly payment," reflecting adjustments including a projected deduction on federal income taxes.

The government lets everyone take a standard deduction from their taxable income. Homeowners can also deduct mortgage interest payments that exceed the standard deduction, a major benefit of home ownership. But the tax benefit diminishes for people with smaller mortgages.

Kenneth Porter, a Charlotte accountant, was paid by Performance Realty to calculate actual tax savings for hundreds of customers. Not once, Porter said, did anyone come close to saving \$221 a month, the amount reflected in the Concord ad.

"No way," said Porter. "That's pie in the sky."

Few saved more than \$100 a month, he said. Some saved nothing.

Eventually, Porter said, the company stopped sending him customers.

Builders and bonuses

Customers flocked to Realty Place. On some Saturdays, the lines of hopeful people stretched back into the malls. "We had folks that were ready to write up contracts before they ever saw anything," said former agent John McQueen. Between 2002 and 2005, about 85 percent of Realty Place's customers bought new homes. The company referred to existing homes as "used homes."

New construction was an unusual focus for a real estate agency, but Heinemann says it was a natural fit for his clients. Builders could help marginal buyers qualify for loans by providing money for down payments and more money to help with mortgage payments.

New homes also were more lucrative for Realty Place. In addition to a standard commission, builders paid Realty Place a bonus on more than 60 percent of transactions, company records show. The average bonus increased from about \$1,400 in 2002 to more than \$2,400 in 2005.

Builder representatives regularly attended Realty Place's internal sales meetings, where they would pitch their developments, and latest bonus offers.

"They loved us, there's no question," said King Baldwin, one of Realty Place's most successful agents and later a part-owner of the company.

Paying bonuses to real estate agents is legal and fairly common, though it is unfamiliar to many buyers.

Realty Place signed contracts with its customers that said it might receive a bonus. But N.C. real estate regulations still require the agent to tell the customer specifically about the bonus on a particular home before the buyer signs a contract to purchase that home.

"If I'm a buyer, and if you are motivated by something other than loyalty to me, I want to know that," said Miller of the N.C. Real Estate Commission. He said it was a "serious problem" that so many customers said they were never told that the company was receiving a bonus.

Heinemann said he was not aware agents were required to tell customers about bonuses on specific homes.

"I trained my agents to be honest, to be ethical and to disclose everything," Heinemann said. "I don't remember if I had a line in there saying, 'Make sure you tell them that you're going to be receiving a bonus.'"

He said his agents did list bonuses on settlement statements, as required by federal law.

Settlement statements are not public records, but the Observer obtained documents from 11 Realty Place customers. Six of the statements show no bonus; in each case, company records show a bonus was paid.

In several additional instances, company records suggest the bonus was not on the settlement statement, also known as a "HUD."

A note on one transaction reads, "Bonus not on HUD. Will come separately."

Another, "HUD reflects only \$1,000 realtor bonus, add'l \$2,000 being sent."

Family ties

John Heinemann trained Kris Boschele with index cards. As his protege talked to customers on the phone, Heinemann would slip him tips on selling. "He paid attention," says Heinemann. "He wrote notes. You can't help but like Kris."

Boschele, now 32, had just graduated from Slippery Rock University in Pennsylvania, where he was an all-conference wide receiver. He was confident and aggressive and the kind of employee Heinemann treasured -- a hard worker who always answered Heinemann's calls.

In 2002, Heinemann put Boschele in control of daily operations after Performance Realty absorbed Realty Place, a rival company that had been run by Randy Jordan. Some agents didn't like the decision.

"A lot of people left because they didn't like Kris," says Baldwin, one of the agents who stayed. "He was young and brash, and he'd walk in there like he owned the world."

Heinemann had also hired Natalie Botsis, Boschele's girlfriend and later his wife.

He said he soon helped her find a new job. Beazer Homes USA was one of the largest starter-home builders in the Charlotte area, but the company had no sales representative dedicated to Performance Realty. Heinemann recommended Botsis for the role.

Beazer became Realty Place's largest client. Between 2002 and 2005, more than 420 Realty Place customers bought Beazer homes.

In turn, Realty Place records show Beazer paid the company more than \$2.2 million, including about \$700,000 in bonuses.

On average, Beazer paid Realty Place 3.9 percent of the sales price in commission and bonus, compared with Realty Place's overall average of 3.4 percent. In 2003, real estate agents in the Southeast averaged 2.7 percent of the sales price, according to REAL Trends, a Colorado data firm.

In Mecklenburg County, one-third of Beazer homes purchased through Realty Place in 2002 have been lost to foreclosure.

Of the six settlement statements that showed no bonuses, all were for sales of Beazer homes. Federal law also holds the seller responsible for disclosing a bonus.

Beazer declined to comment, citing an ongoing federal criminal investigation of its business practices.

The relationship between Kris Boschele's agents and his wife came to exemplify the blurred lines between Realty Place and home builders.

Though she worked for Beazer, Natalie Boschele sometimes worked from an office at the Realty Place location in University City.

Customers describe her as polished and persuasive. Many remember her black Mercedes, which seemed impressively out of place in Beazer's starter-home developments. They also remember her confidence that they could afford a home.

Some customers remember being introduced to her without being told that she worked for Beazer. In some cases, they say they went with her to see homes, believing that she was their real estate agent.

A lawyer for Natalie Boschele provided a statement to the Observer denying any wrongdoing.

A few homebuyers interviewed by the Observer said it became obvious that Realty Place effectively was acting as a sales agent for builders such as Beazer. But many more say they believed they were having a normal experience.

Linda and Clyde Bower bought a Beazer home from Natalie Boschele in 2002 under the guidance of Realty Place agent Terry Brock.

Clyde Bower, now 36, is a freelance Web developer. His wife is an X-ray technician.

They say Brock showed them Beazer developments and Eastwood developments. "We flat-out refused to buy from Eastwood because the first sales manager we met was a complete jerk," Clyde Bower

recalled "So we just saw Beazer homes after that."

They paid \$157,000 for a home in Steeplecroft Place, a neighborhood in southwest Charlotte. They say Brock never mentioned that she was receiving a \$2,000 bonus on top of a commission of \$3,900. The bonus was not shown on their settlement statement.

"She wasn't really working for us, but we thought she was working for us," said Clyde Bower. "We didn't understand. This was our first home."

Brock said she was generally careful to list bonuses on settlement statements, and any omission was innocent. No longer with the company, she said she regrets her involvement in helping marginal customers buy homes. "They had responsibility," she said. "But we were culpable."

Decorating the cake

McQueen says he decided to work for Kris Boschele after selling him a car at a high-end dealership. Realty Place offered a chance to make more money, Boschele told him. It was a high-volume business. It was also a high-pressure environment. Agents faced fines of \$10 a minute for being late to work; maximum fine, \$1,000. They were required to call prospects every two days until they bought a home.

And to make money, they had to help customers qualify for loans. No loan, no sale, no bonus. The company instructed agents to tell customers, "No problem at all!"

"It was doing whatever it took to get someone in the house," said McQueen.

Heinemann said his agents became experts on mortgages. A company training manual included tips on "Decorating the Cake" to improve customers' credit scores, and "Stretching Ratios" to help customers qualify for larger loans.

The company encouraged customers to use loans insured by the Federal Housing Administration. The Observer has previously reported that the government program's rules were easily bent or ignored.

Builders regularly provided the money for down payments that the FHA required customers to make. They also regularly contributed to customers' mortgage payments, a practice known as a buydown, which lowered the customer's initial payments and allowed them to qualify for a larger loan. FHA rules restricted the use of buydowns to special circumstances -- not broad use by lower-income families.

For customers still unable to secure a loan, Heinemann and Boschele started a "lender of last resort" in 2002. Universal Mortgage, an in-house broker, arranged financing for about 10 percent of Realty Place customers between late 2002 and early 2005. "We would try to do it because it made sense for us to try to get them a loan," Heinemann said.

Some agents were troubled by the lengths the company was going to, including McQueen. He was making good money, he remembers, but his mother-in-law was on the Charlotte Board of Realtors. She taught ethics to new agents.

"She was telling me, 'John, this is bottom feeding. You've just got to stop,'" he said. "Eventually, it just sunk in."

He quit in 2003.

In 2007, McQueen was suspended for three months by the N.C. Real Estate Commission for failing to disclose a payment to a client on a 2004 settlement statement. He maintains his innocence.

The breakup

In early 2003, Heinemann said in a later lawsuit, he heard rumors that Boschele had opened real estate stores in other cities.

Heinemann had moved to Florida in 2003. He says he was no longer involved in the company's daily operations. He visited North Carolina occasionally.

During an April 2003 business trip to Greensboro, he walked into a store called "Your New Home Realty." It looked like Realty Place. The brochures used pictures that Heinemann remembered taking for Realty Place.

"You have probably seen our store in Concord Mills," a sales agent told Heinemann, referring to a Realty Place store.

In the lawsuit, Heinemann said he confronted Boschele, who told him he had planned to work out a royalties arrangement. The suit said the pair then reached an agreement.

The suit, filed against Boschele in 2006, claimed Heinemann was never paid and that his former protegee told him, "You'll never find my money."

Boschele, through his attorney, denied all allegations in the lawsuit and said Heinemann's recollection of events was incorrect.

Heinemann dismissed the suit earlier this year, and Boschele left the company.

By then, Realty Place's business model was in trouble.

The company was a creature of the subprime lending boom, which broadened the pool of homebuyers. Most real estate agencies rely on repeat business. As a buyer's agency, the company needed new clients to keep lining up at its stores. As foreclosures mounted and lending standards tightened, the pool of potential customers dried up.

By last month, the company had shut all of its mall stores except Northlake Mall, and it had closed that store temporarily. It also maintained a University City store and a headquarters in Huntersville.

Looking back on the boom, Heinemann says he blames lenders for making loans that people could not afford. He blames home builders for financing deals that were doomed to fail. He blames customers for failing to pay their bills. He depicts his own business as honorable work.

"We did try to help people when other people wouldn't try to help them," Heinemann says. "Maybe that was a bad choice, but we tried to help everyone that we could."

"I looked at it as our responsibility. It was a duty that we took seriously."

Kris Boschele now runs GB Homes, a home-building company. Natalie Boschele, now a sales agent for HomeLife Communities, was named the 2006 salesperson of the year by the Home Builders Association of Charlotte. They live in a million-dollar house on Lake Norman. Randy Jordan lives nearby, also on the lake.

John Heinemann returned to actively running Realty Place this summer, seeking to update the business model. He has a new idea: For \$399, he will list the homes of people who don't want to pay for a full real estate agent. He says the service could help people who feel trapped in their neighborhoods or who can't pay their mortgages.

Perhaps, he says, some of Realty Place's former customers could benefit.

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From a Realty Place 'Phone Spiel'

Are you renting now -----?

How many bedrooms and baths -----?

What are you paying in rent -----?

\$-----

WHOAH*^=@\$#!!!

We need to get you in a house soon! (name)!

Over the past two years, the Observer has reported extensively on the foreclosures afflicting a crescent of new development west, north and east of uptown Charlotte. The reporting has focused on the role of builders and mortgage companies who helped some lower-income families buy homes they could not afford.

Realty Place delivered many of those buyers. Observer
Investigation

REALTOR® Legislative Link

Legislative advocacy is a very important aspect of the North Carolina Association of REALTORS®. NCAR is fortunate to have REALTOR® members who reside in every district of the North Carolina House and Senate. This statewide membership provides us with a force of REALTORS® to contact legislators when the voice of the real estate industry needs to be heard.

To strengthen NCAR's legislative grassroots network, the REALTOR® Legislative Link program has been established. The goal of the Legislative Link program is to secure at least one REALTOR® Legislative Link for every member of the North Carolina General Assembly. The ideal REALTOR® Legislative Link is a member of NCAR who is politically active in the community, has established a relationship with one or more local legislators, and is willing to contact legislators when issues arise before the General Assembly that require REALTOR® input. All REALTORS® are encouraged to volunteer for this important statewide network. For legislative districts where more than one REALTOR® is interested in serving as a link, a team of REALTORS® will be established. The time commitment required for this job is small but the importance is immeasurable.

If you are interested in becoming a REALTOR® Legislative Link for one or more members of the North Carolina General Assembly, please return the following form via fax to the NCAR Legislative Department at 919-856-9157. For more information, contact David McGowan, NCAR Political Specialist, at 1-800-443-9956 ext. 304.

Name: _____ Local Board: _____

Home Address: _____

Phone: _____ Fax: _____ Email: _____

Please fill in the name(s) of legislators whom you know and mark each box that applies. *Use reverse side of form for any additional comments.*

Name of Legislator	Campaign Supporter	Constituent	Business Associate	Personal Friend	Relative	Other (please explain)