North Carolina Real Estate Commission

REAL ESTATE BULLETIN

Volume 47 • February 2017 • Number 3

Patrice Willetts Appointed To Commission

Patrice Willetts of Wilmington was appointed to the North Carolina Real Estate Commission on October 12, 2016 by then Governor Pat McCrory for a term ending July 31, 2018.

Willetts succeeds Everett "Vic" Knight of Raleigh.

A broker with The Property Shop of the Carolinas in Wilmington, Willetts, formerly from New York and with 30 years of experience as a REALTOR®, is

(See **Willetts**, *page 3)*

Commission Members Reappointed

In October 2016, then Governor Pat McCrory reappointed three members of the Commision for terms ending July 31, 2019: George Bell, Chair, of Winston-Salem; Leonard H. "Tony" Craver, Jr., of Durham; and Anna Gregory Wagoner of Winston-Salem.

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Commission Education Rules Simplified; New Subchapter H Effective July 1

By Melissa A. Vuotto, Rulemaking Coordinator

At its January 2017 meeting, the Commission adopted the proposed education reform rules. Under this rulemaking action, the 94 education rules found in Subchapters C and E will be repealed and replaced by 36 newly adopted rules located in the new Subchapter H - Real Estate Education. Subject to the Rules Review Commission's approval, this rulemaking action will be effective July 1, 2017.

The Commission's primary intent of this rulemaking action is to eliminate redundant rules, create a unified subchapter for all educators, and incorporate many of the Commission's Instructor Development and Improvement Task Force recommendations.

The new rules are grouped into four sections within Subchapter H:

- Section .0100 – General/ Definitions rule;
- Section .0200 – Real Estate Schools;
- Section .0300 – Approved Instructors; and
- Section .0400 – Continuing Education.

By streamlining the education rules, it is the Commission's goal to improve the understanding each rule, ease the process of searching for a particular rule, and increase the quality of real estate education in North Carolina.

Thank you to all who attended the public hearing on December 13, 2016,

(See **Education,** *page 3)*

The proposed education reform rules may be reviewed on the Commission's website: https://www.ncrec.gov/Pdfs/Rules/Education_Reform_Rulemaking_Post.pdf.

Diagrams of the organization of the current and reformed rules appear on page 8 of this *Bulletin*.

Corean Hamlin Named Education and Licensing Director

Corean E. Hamlin has been named Director of Education and Licensing for the Commission, effective December 14, 2016.

Hamlin joined the Commission as Education and Licensing Officer in 2014.

Hamlin holds a Master's Degree from UNC-Greensboro and the Distinguished Real Estate Instructor (DREI) designation from the Real Estate Educators Association.

After a decade as a professional educator in other industries, Hamlin entered the real estate business, joining her family's Asheville-based real estate firm as a residential sales broker in 2003. From 2007-2014, Hamlin served as Instructor, Education Director, and Communication Director for the Asheville Board of Realtors®. She taught real estate prelicensing, postlicensing, and continuing education courses at Cumbie and Trull School of Real Estate from 2010-2014.

The primary responsibility of the Director of Education and Licensing is to plan and direct the Commission's education, examination, and licensing programs and operations statewide.

REAL ESTATE BULLETIN

Published as a service to real estate licensees to promote a better understanding of the Real Estate License Law and Commission rules, and proficiency in real estate practice. The articles published herein shall not be reprinted or reproduced in any other publication without specific reference being made to their original publication in the Commission's Real Estate Bulletin.

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Staff Update

People

Miriam Baer Elected ARELLO® President

Miriam J. Baer, Executive Director of the Commission, has been elected President of the Association of Real Estate License Law Officials (ARELLO® for a one-year term beginning in January 2017.

ARELLO® is an international organization dedicated to promoting better administration and enforcement of real estate license and regulatory laws by its members.

During her 29 years with the Commission, Baer held numerous positions with ARELLO®, including Senior District Vice President, member of the Board of Directors, and Chair of various committees.

ARELLO® membership is organized into five districts with four comprised of the 50 states, U.S. territories, Bahamas and Bermuda, and Canadian provinces and one of members from Europe, Africa, Asia, Australia, and the Far East.

Working committees, the Board of Directors, and the Executive Committee carry out the organization's mission to support jurisdictions in the administration and enforcement of real estate license laws and to promote excellence in real estate regulation.

Baer is the fifth person affiliated with the Commission to serve as President of ARELLO®. Mary Frances Whitley, former Director of Administration, served as President in 2007; Phillip T. Fisher, former Executive Director, in 1991; A. P. "Red" Carlton, former Commission member and Chair, in 1985; and Joseph Schweidler, Commission Secretary-Treasurer, in 1972.

Appearances

Miriam J. Baer, Executive Director, spoke to the Triangle Chapter of the National Association of Residential Property Managers and the Risk Management Committee of NC REALTORS®.

Janet B. Thoren, Director, Regulatory Affairs Division and Legal Counsel, spoke to the Annual Business and and General Membership Meeting of the Outer Banks Association of REALTORS®.

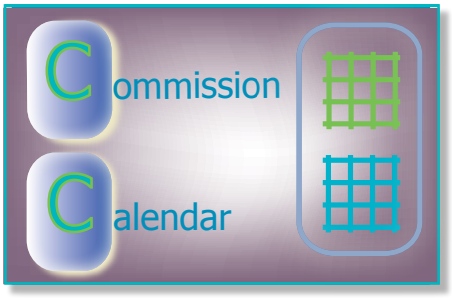
Frederick A. Moreno, Deputy Legal Counsel, spoke to the Greenville-Pitt Association of REALTORS®.

Sarah E. Herman, Consumer Protection Officer, spoke to the Allen Tate Company in Charlotte.

Glenn W. Wylie, Consumer Protection Officer, spoke at the Property Management Seminar and to the general membership of the Fayetteville Regional Association of REALTORS®.

Peter B. Myers, Information Officer, spoke to the Albemarle Area Association of REALTORS®, Century 21 Patriot in Fayettetille, the Cleveland County Association of REALTORS®, the Greensboro Regional REALTOR® Association, the Harnett Council of REALTORS®, Trademark Residential in Raleigh, and Weichert REALTORS® - Team Metro in Hickory.

Elizabeth W. Penney, Information Officer, spoke to the Central Carolina Association of REALTORS®.



February 15-16
March 15-16
April 12-13
May 10-11
June 14-15

All meetings, unless otherwise noted, begin at 9:00 a.m. and are held in Raleigh in the Commission's Conference Room at 1313 Navaho Drive (27609). Occasionally, circumstances necessitate changes in meeting times and locations.

Willetts

(Continued from page 1)

a former president of the Wilmington Regional Association of REALTORS® and the North Carolina Association of REALTORS®.

She has been a member of the Wilmington Board of Adjustment and currently serves on the City of Wilmington/UNCW Community Relations Task Force.

Willetts is an approved instructor for the North Carolina Real Estate Commission and for the National Association of REALTORS®.

A past president of the Wilmington Rotary Club, she was active with the Honor Flight program that works to take WWII Veterans to Washington, DC, to visit their memorial and Paws4people, which provides service dogs to veterans and children with medical needs.

The North Carolina Real Estate Commission is responsible for the regulation of approximately 100,000 real estate brokers and and firms in the state.

Education

(Continued from page 1)

and submitted written comments. The Commission considered comments and rule revisions at its meeting on January 18, 2017. Revisions are indicated at www.ncrec.gov under 'Licensing Law and Rule Changes.' If you would like to receive notifications of any rulemaking proceeding, you can sign up at www.ncrec.gov/Home/Subscribe or by contacting Melissa A. Vuotto, Commission Rulemaking Coordinator.

Follow us on

Broker-in-Charge and Basic Trust Account Procedures Courses

Register online at the Commission Web site, *www.ncrec.gov,* under Education/Course Registration.

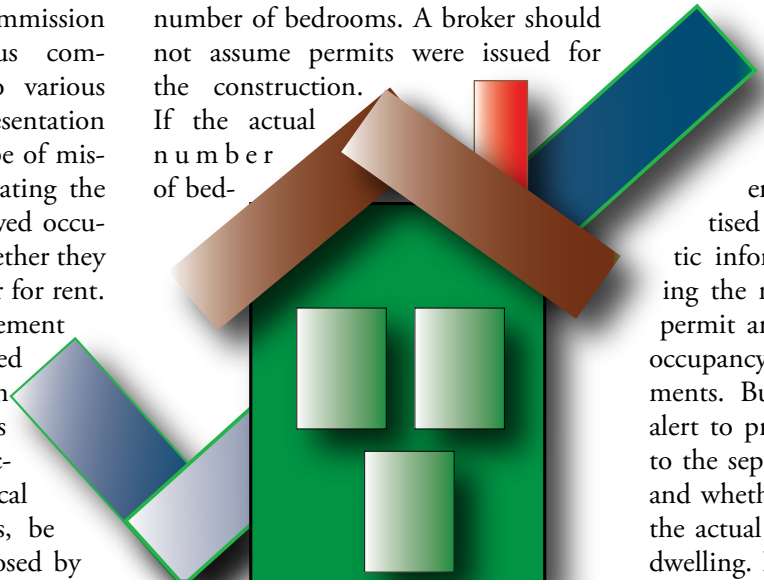
Broker-in-Charge Course (Two days) Day 1: 1 - 5 p.m.; Day 2: 8:30 a.m. - 5:30 p.m.		
Asheville	Western Carolina University Biltmore Park	February 21-22 May 16-17
Kannapolis	NC Research Campus, Kannapolis	March 1-2 April 18-19 May 22-23
Greensboro	Deep River Event Center	April 5-6
Raleigh	McKimmon Center	February 13-14 March 21-22 May 3-4 June 5-6
Wilmington	Best Western Coastline Center	May 8-9
Basic Trust Account Procedures (Commission Offices, Raleigh) (All classes 1 - 5 p.m.)		
Raleigh	Commission Offices 1313 Navaho Drive, Raleigh	February 13 April 10 June 7

See Commission Web site to confirm course dates.

Check Allowed Occupancy Limits Before Advertising Property

By Peter B. Myers, Information Officer

Each year, the Commission receives numerous complaints related to various types of misrepresentation by brokers. One common type of misrepresentation involves overstating the number of bedrooms or allowed occupancy limits of properties, whether they are being advertised for sale or for rent. Either way, a broker's advertisement must NOT overstate or exceed the allowed limits and design parameters of the property's sewage disposal system or occupancy permitted by the local municipality. In other words, be sure to check the limits imposed by the septic permit, specifically the number of bedrooms the septic permit allows, and occupancy limits of the local municipality.



When residential properties are built and served by on-site septic systems, the local permit department typically evaluates the site and determines the maximum number of bedrooms allowed based on the design of the system and the land's ability to percolate wastewater into the ground. That's why the evaluation was historically referred to as a "perc" test. The results of the test determine the maximum number of bedrooms allowed on the site.

Brokers must be aware of both bedroom and occupancy limitations in the sale, resale, and rental of properties with on-site sewage disposal systems. The Real Estate Commission expects all brokers to possess the skills and knowledge to accurately represent facts about such properties regarding the number of bedrooms and/or maximum occupancy. The septic permit generally can be checked by making a phone call to the local permit department or by checking the department's website. Checking the permit is especially important when there has been an addition or remodel to the property to increase the original number of bedrooms. A broker should not assume permits were issued for the construction. If the actual number of bedrooms in the property exceeds the number of bedrooms allowed on the septic permit, the listing broker may NOT represent the dwelling as having any more bedrooms than are indicated on the septic permit, even if there is a disclaimer made.

Many municipalities have occupancy limits for residential dwellings. For properties being advertised for rent, the occupancy level is generally calculated by multiplying the number of bedrooms on the septic permit by two, based on a maximum of two occupants per bedroom. The maximum is, of course, calculated regardless of the actual number of beds the landlord might have set up inside the dwelling. Therefore, claiming a three-bedroom property "sleeps 12" because it has six sets of bunk beds is a misrepresentation if the local municipality limits occupancy to two persons per bedroom. If the licensee overstates the maximum occupancy in a rental home, the tenants might over-occupy the dwelling and overload the septic system, causing the system to fail. Such system failure could result in not only the contamination of surrounding groundwater but also the potential condemnation of the property, not to mention costly repairs that would have to be made by the property owner.

Brokers must take reasonable steps to discover and disclose material facts and to ensure everything being advertised is correct, including the septic information. That means checking the number of bedrooms on the permit and calculating the maximum occupancy based municipality requirements. Buyer's agents should also be alert to problems and red flags related to the septic system and septic permit, and whether the imposed limits match the actual number of bedrooms in the dwelling. It might be necessary for the buyer's agent to verify the information advertised by the listing agent, and to therefore potentially alert the buyer client of problems.

In some cases, the permit department might not keep records permanently or the records might not be available for other reasons. In that case, it is reasonable to advertise based on the existing number of bedrooms but with the disclosure that the permit records are not available and therefore certain assumptions have been made by the listing agent. Both listing and buyer agents should be able to explain to their clients the value of obtaining a septic permit and what information such permits provide. Disclosures must always be made so that the potential buyer is made aware of material facts before the potential buyer makes an offer.

CAVEAT: Real Estate License Law prohibits misrepresentation, omission, or concealment of material facts; a course of misrepresentation through false advertising; and improper, dishonest, or fraudulent conduct. Willful or negligent misrepresentation of the occupancy design limits of a property's on-site sewage disposal system violates the Real Estate License Law and may result in disciplinary action by the Commission.

rec·on·cile: to make peace, adjust

Reconcile Trust Accounts Monthly

By Marcia M. Waldron, Auditor/Investigator

If you keep any funds related to a real estate transaction, an easy way to make some peace in your life is to reconcile your trust account records on a monthly basis.

While many see this as a daunting task, once the process is set up and completed properly, it does not need to be difficult or time consuming. However, reconciling does need to be a priority. There are so many seemingly mundane tasks in our life that, if ignored, lead to large and costly problems. If you don't brush your teeth, you have pain and costly dental bills (or worse); if you don't service your car, the repairs can be astronomical; if you don't balance (reconcile) your Trust Account on a regular basis, the result can be missing client/tenant funds, the loss of your real estate license, and even criminal charges.

So begin with the basics: Step 1 is to reconcile your bank statement to your Trust Account or your 'Books'; this might be your general ledger cash account, your trust account journal, a check register, or even your checkbook for your trust account. Stated simply, you are resolving differences between the bank and your Books: errors (yours or the bank's), bank charges or interest earned, and timing differences. To minimize timing differences, always use the bank statement ending date, ideally, the last day of the month, as your cut-off date for your Books. This is the same process used to balance a personal checkbook.

Always begin the process by marking (or 'ticking') each cleared item either by hand or using software. You can't skip this first step of checking each matching item on your Books and each matching item on your bank statement. All unticked entries are your adjustments (i.e., your reconciling items). Post interest earned, bank charges, and other reconciling items to your Books, then adjust the bank statement balance for bank errors (if any). If all reconciling items haves been addressed (and your beginning bank balance was reconciled to the Books), this formula will be correct:

Ending Bank Balance + Deposits in Transit – Outstanding Checks = Your Book Balance.

Once the bank statement has been reconciled to the Books, you are ready for step 2, which is balancing the reconciled figures from Step 1 to the Property Trial Balance (this is your client liability balance). The Property Trial Balance itemizes whose funds you are holding; that is, the monies being held in trust belonging to other people. It is an accounting of every dollar in the Trust Account by the tenant or client; this is a critical report since every dollar held in a Trust Account needs to be identifiable by owner. The Property Trial Balance is created by listing of each of your property (or owner) ledgers and their month-end balance (assuming month-end is the cut-off).

As long as reconciliations are being performed monthly, it will be only the current month's transactions (or prior period adjustments, if any) that need to be reviewed to locate discrepancies. If reconciliations have not been performed in the past, the first reconciliation could be a long process, but it is essential to have this reconciliation on file (as required by Real Estate Commission Rule A.0117 (e)).

If you want an easier – or even seamless – reconciliation, improve the record keeping. Think of bank reconciliation as a monthly report card on the state of your accounting records. With the possible exception of credit card processing fee issues or large high volume firms, if your bank reconciliation process is difficult, chances are good that improvements are needed in your accounting.

Key Points

- The only way to ensure that a sufficient balance of funds is on hand to cover your client liability is to reconcile on a monthly basis. Retain a worksheet for each monthly reconciliation showing the balancing of the Bank Statement, the Books (the cash account), and the Property Trial Balance.
- While not an NCREC requirement, an important best practice is to perform this three way reconciliation within 48 hours of the receipt of your bank statement. There will be fewer reconciling items; errors and/or missing monies, if any, will be identified quickly.
- For property management companies handling vacation rentals, there is a fourth step of reconciling the subsidiary ledgers to the property (or owner) ledgers.
- If you aren't already performing this reconciliation, start today. If you need an extra incentive, just read 'the back of the *Bulletin*.'
- The broker in charge is responsible for the safeguarding of trust monies. While the reconciliation and bookkeeping can be delegated, the fiduciary responsibility remains with the BIC: remember, '*The Buck Stops with the BIC.*'
- The Commission offers a Basic Trust Account Procedures Course multiple times throughout the year; go to www.ncrec.gov to view the class schedule and register online.

HUD Issues Guidance on Use of Criminal Background Checks

By Janet B. Thoren, Legal Counsel

Diligent property managers often run criminal background checks on prospective tenants before allowing them to lease a landlord's property. In April 2016, HUD issued guidance on how the Fair Housing Act ("the Act") impacts the use of such a background check by all providers of housing, including property managers. When designing a process for screening tenants, it is important for brokers to consider this guidance and how the use of such background checks might violate fair housing laws.

Before getting into the HUD guidelines, there are a few terms brokers should recognize and understand. The Act includes the following seven protected classes: race, color, religion, national origin, sex, disability, and familial status. A landlord or property manager may not discriminate against anyone in one or more of the protected classes. Another term, "disparate impact", is often used in housing discrimination cases and refers to a policy or practice that is neutral on its face, but its application actually has a discriminatory impact on a protected class.

The use of a criminal background check as part of a tenant screening process seems to be a neutral process as long as it is required of all potential tenants, not just certain ones selected by the landlord or property manager. However, HUD has determined that due to higher than average incarceration rates among certain races relative to their percentage of the total population, and when compared to incarceration rates of other races, the use of criminal background checks to deny housing may actually cause a disparate impact on certain races and therefore be discriminatory.

What does all of this mean for a landlord or property manager? First, criminal background checks should only be used for a non-discriminatory business objective, and there cannot be an alternative to the background check that is less discriminatory. There should be some evidence that the background checks actually accomplish the goal. Does a refusal to rent to individuals with criminal convictions actually mean fewer criminal acts or property destruction in the properties being managed? A blanket prohibition against anyone with any type criminal record likely would not survive a charge of discrimination. There are a couple of exceptions. The Fair Housing Act specifically states that landlords do not have to make housing available to persons with convictions for the manufacture or distribution of controlled substances. Just remember, though, other drug-related convictions are not specifically exempt from fair housing requirements. In addition, project-based HUD subsidized properties must prohibit anyone subject to a lifetime registration requirement under a state government sex offender registration program.

For anything outside the exceptions, HUD suggests that landlords and property managers should consider the following factors when using criminal background checks for prospective tenants:

- Do not consider charges or arrests that did not result in conviction. Arrest records should not be used as a basis for denying an applicant for housing. Such a record does not indicate that the applicant actually engaged in any criminal activity. Remember - innocent until proven guilty.
- Do not have a blanket policy against renting to anyone with any type of criminal conviction. Explain to landlord-clients the dangers of such a policy and advise them to use a more tailored approach.
- Consider the type of conviction. Look at the nature and severity of each conviction. A shoplifting conviction should not carry the same weight in a housing decision as a conviction for distributing cocaine. While fishing without a license is not good, an applicant participating in that type of activity will likely be a lesser risk to residents and property than someone selling drugs, which often brings more dangerous people and illegal drugs into the neighborhood.
- Consider the timing of the conviction. How long ago did the event happen and how long ago was the conviction? Research tends to show that the likelihood that a person with a prior criminal conviction will commit another offense decreases over time. HUD offers no insight into how long might be a reasonable period to consider, so consider a reasonable amount of time that you feel you can defend if challenged.
- Consider each offense individually. Create an assessment plan that is fair and takes into account mitigating factors such as the surrounding events, the age of the individual at the time, rehabilitation efforts, and the rental history of the individual. In other words, each instance should be reviewed on a case-by-case basis and narrowly tailor any refusals.

As a property manager, you have a duty to discuss these issues with your landlord clients and create a program that will help keep you and your clients out of trouble and will allow all housing applicants fair access to available housing. To see the HUD guidelines in full, use the link below.

https://portal.hud.gov/hudportal/documents/huddoc?id=HUD_OGC-GuidAppFHAStandCR.pdf

RESPA

Referrals

You

By Sarah E. Herman
Consumer Protection Officer

...whether a referral is prohibited under RESPA depends greatly on the specific transaction.

A pest control company solicits real estate brokers to join what they refer to as a "Preferred Broker Program." Among other listed benefits of becoming a Preferred Broker, the company offers all broker participants quarterly pest control services at their personal homes at no charge. In order to receive the free pest control, the broker must refer their buyer clients to the pest control company for the completion of lender-required pest inspections.

The question posed to the Commission's legal staff was whether this type of program is in violation of the Real Estate Settlement Procedures Act (RESPA). RESPA prohibits kickbacks and unearned fees in any real estate transaction involving a federally related mortgage loan. The kickback provision is generally referred to as RESPA's "Section 8."

Section 8 prohibits anyone, including real estate brokers, from "…accept[ing] any fee, kickback, or thing of value…" as "…part of, a real estate settlement service involving a federally related mortgage loan…" 12 U.S. Code Chapter 27 § 2607(a).

A "thing of value" is any payment, advance, funds, loan, service, or other consideration with more than nominal value.

"RESPA also defines the term "Settlement service" as any service provided in connection with a real estate settlement for which the buyer or seller will pay. These services include, but are not limited to, the following:

- title searches,
- title examinations,
- the provision of title certificates,
- title insurance,
- services rendered by an attorney,
- the preparation of documents,
- property surveys,
- the rendering of credit reports or appraisals,
- pest and fungus inspections,
- services rendered by a real estate agent or broker,
- the origination of a federally related mortgage loan (including, but not limited to, the taking of loan applications, loan processing, and the underwriting and funding of loans), and
- the handling of the processing, and closing or settlement.

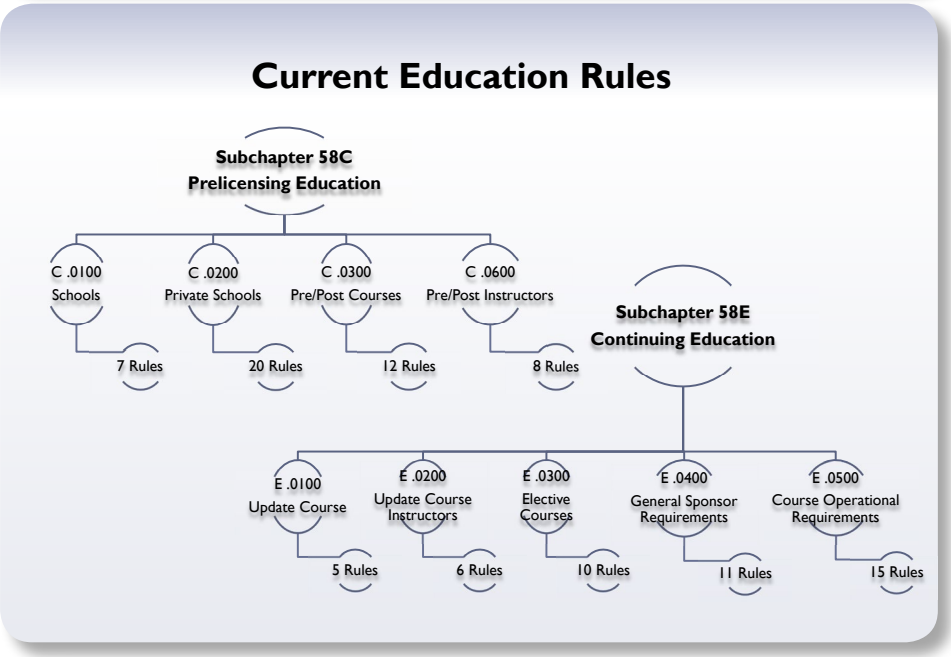
When a lender requires a buyer to have a pest inspection as part of the loan qualification process, the inspection is considered a settlement service. On the other hand, if a seller independently chooses to have a pest inspection as part of the listing process, and pays for that service separately from the settlement process, it is not related to the real estate settlement and is not considered a settlement service.

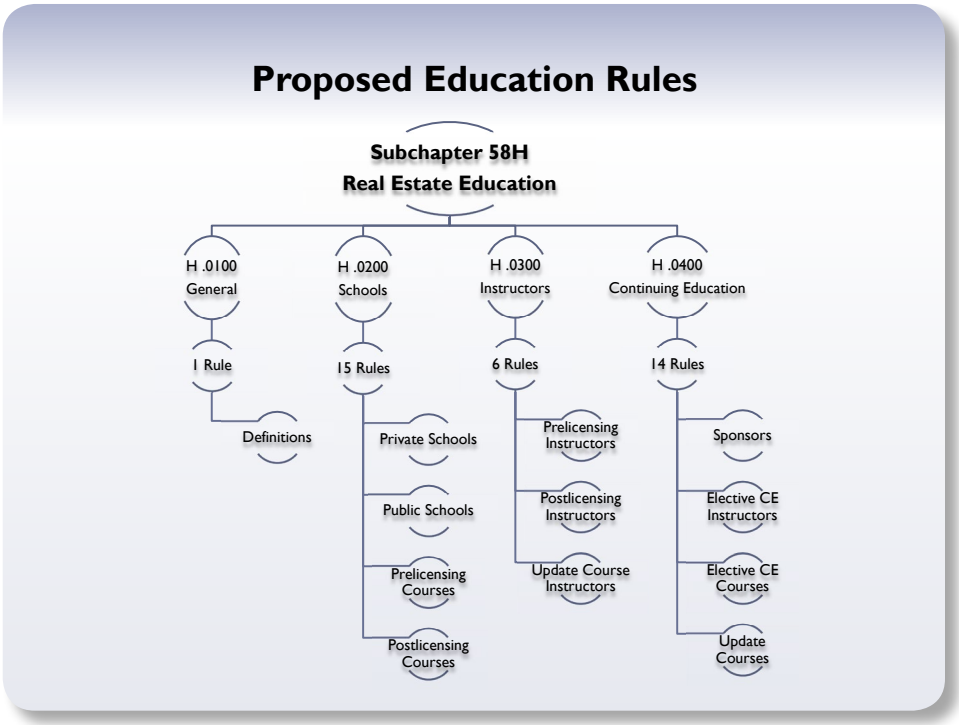
If a broker receives a quarterly pest control from the pest control company at no cost, a service that would typically have an associated cost, they have received a "thing of value." And if that broker receives that thing of value for referring a client to the pest control company to do a lender-required pest inspection, there is very likely a RESPA violation.

Even if the broker is referring a client to the pest control company for services unrelated to a closing and there is no apparent problem with RESPA, the broker must fully disclose their arrangement with the pest control company to their client per Commission Rule A .0109.

As you can see from the example above, whether a referral is prohibited under RESPA depends greatly on the specific transaction. If you are confronted with a business referral program, use the following fill-in-the-blank sentence as a test to determine whether the program may be in violation of RESPA: *As part of this program, I will receive _____, which will enrich or benefit me or my firm, in exchange for referring clients to _____ for services related to a real estate settlement.* If you can fill in these blanks, the safest course is to consider the program a no-go.

Reorganization of Education Reform Rules





The 94 Commission rules relating to education in Subschapters C and E of the Administrative Code are being replaced by 36 rules in a new Subchapter H adopted by the Commission at its January meeting. The reform and reorganization are subject to Rules Commission Review approval and, if approved, take effect July 1, 2017. As shown in the lower diagram, the rules are grouped under four sections: General, Schools, Instructors, and Continuing Education.

GENUP, BICUP Topics Include Radon, Property Management

Property management, radon, and protecting confidential consumer information are among the topics for the General Update Course (GENUP) and the Broker-in-Charge Update Course (BICUP) for the 2017-2018 license year beginning July 1.

GENUP

Property Management – changes in the Vacation Rental Act and the Landlord/Tenant statutes; HUD guidelines concerning use of criminal records in leasing; duties of a broker/owner ("unintended property manager"); and surcharges paid to brokers on service/repairs.

Radon – in conjunction with the North Carolina Radon Program of the Department of Health and Human Services (DHHS).

Protecting Confidential Consumer Information – broker's duty to protect client/consumer confidential information; identity theft; scam alerts; use of email; Craig's List; etc.

License Law and Rule Updates - application and reinstatement fee increases and rules relating to registering assumed names and delivery of instruments, and Consumer Finance Protection Bureau updates including the release of closing disclosures to brokers.

BICUP

All GENUP topics plus three-way trust account reconciliation, BIC duty to supervise, and breaking issues and updates.

North Carolina/South Carolina Boundary Re-Surveyed Effective January 1, 2017

By Will Martin, NC REALTORS® Legal Counsel

NOTE: Much of the following information has been taken from a memo from the Real Property Section of the NC Bar Association and the NC Land Title Association. The full memo is available on the Bar Association's website and may be viewed at http://www.ncbar.org/media/727134/nc_sc_boundarymemonovember2016.pdf.

In 1995, North and South Carolina created a Joint Boundary Commission to research and tweak the 334-mile border between them. The original border was established in the 1700s, but over many decades, the landmarks for the original boundary have disappeared or become corrupted. What people thought was the state line in some counties wasn't the actual state line. People have developed, conveyed and improved properties based on an erroneous assumption of the location of the legal boundary.

After 20 years of negotiations, surveys, and research, the governments of the two states reached an agreement about where the state border lies. The boundary has been re-surveyed based on historical monumentation and research back to original colonial records. Effective January 1, 2017, some parcels (or portions of larger tracts) previously believed to be in South Carolina are now confirmed to be in North Carolina, and vice versa.

The re-survey could affect properties in any of the counties along the NC/SC boundary from Polk County east (including a portion of Polk County). Although some counties may not have very many properties that show the line incorrectly, a case-by-case determination will need to be made by an attorney reviewing a property's title.

A "Notice of Affected Parcel" based on taxpayer listings has or will be recorded in the office of the Register of Deeds of each county, along with the re-survey maps. The Notice should contain certain information concerning each parcel potentially affected by the boundary certification, including the following:

- The recording reference for the final survey of the confirmed boundary.
- The names of the record owners of the affected parcel.
- The property address of the affected parcel.
- A tax parcel identification number or other applicable identifier for the affected parcel used by a county tax office, if available.
- A brief description of the affected parcel, if available.

The Notice should be indexed in the names of all record owners of the affected parcels (or at least the names of the taxpayers identified in the county's property tax rolls).

Information regarding the surveys is available on-line at the office of the North Carolina Geodetic Survey at http://www.ncgs.state.nc.us/Pages/County-and-State-Boundaries.aspx. These surveys do not indicate owners or tracts. They only show the location of the monuments of the border found. Surveyors will have access to these surveys to be able to identify them on the ground when they do a survey.

Heed this Advice About Surveys, Titles, and Transaction Planning

Real estate brokers involved in the purchase or sale of property near the NC/SC state line should advise their clients to get a survey, or at least some professional location of their property in relation to the state line, if there is any question at all about whether the property has been affected by the re-survey.

Anyone involved with properties affected by the re-survey should be sure to discuss title issues and the necessary certifications of title in detail with professionals who are knowledgeable about the many legal issues involved in these titles, whether the property is now all in North Carolina or is still partially in South Carolina, or vice versa.

Planning for transactions involving affected properties should take place much farther in advance than usual, as such transactions may require dual title examinations, dual recordings, potential delays and very importantly may affect TRID disclosures.

Broker Numbers

As of January 1, 2017, there are 98,681 brokers and firms licensed by the Real Estate Commission in the following categories:

Active Brokers 61,352
(Active Provisional Brokers 6,859)
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Firms 11,268
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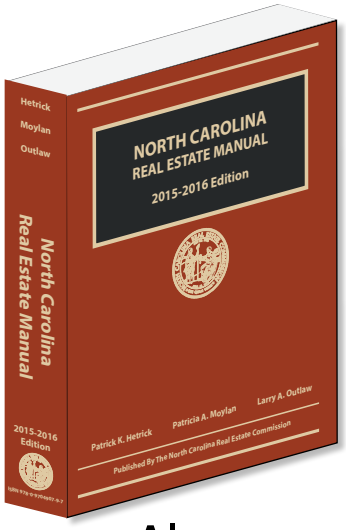

2015-2016 Edition

NORTH CAROLINA REAL ESTATE MANUAL

The *North Carolina Real Estate Manual*, published by the Real Estate Commission, is a comprehensive reference addressing real estate law and brokerage practice, the North Carolina Real Estate License Law and Commission rules. It serves as the authorized textbook for the real estate broker postlicensing courses and is highly recommended for licensees, attorneys, instructors and anyone else engaged or interested in real estate law and brokerage practice.

The 2015-2016 edition covers a wide variety of topics including the new Mineral and Oil and Gas form and portions of the new federal Loan Estimate and Closing Disclosure documents to replace the HUD-1 and GFE as well as coverage of revisions to standard forms.

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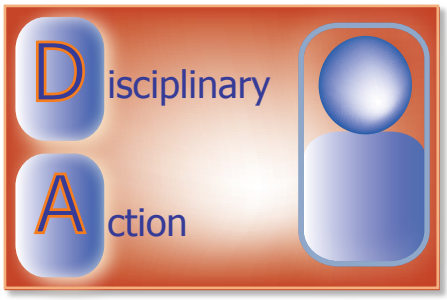

Penalties for violations of the Real Estate License Law and Commission rules vary depending upon the particular facts and circumstances present in each case. Due to space limitations in the Bulletin, a complete description of such facts cannot be reported in the following Disciplinary Action summaries.

JAMES MICHAEL BANKS (Raleigh) – By Consent, the Commission reprimanded Mr. Banks effective January 1, 2017. The Commission found that Mr. Banks, acting as the listing agent for the sale of a single-family residence, represented to his buyer that repairs were complete when the potential buyer discovered that repairs had not, in fact, been made prior to closing.

WANDA T. CANADY (Wallace) – By Consent, the Commission permanently revoked the broker license of Ms. Canady effective December 14, 2016. The Commission found that Ms. Canady, acting as the qualifying broker and broker-in-charge of a licensed real estate firm engaged in property management, failed to provide all of the requested trust account documentation requested by the Commission, failed to perform trust account reconciliations, failed to maintain a general ledger, and failed to maintain a trust account journal; that Ms. Canady could not account for all rents and security deposits received by the firm and failed to deposit all rent payments and security deposits received in cash into the trust account; and that Ms. Canady admitted to spending entrusted funds on expenses, other than for which the funds were intended, which led to deficit spending and a shortage in excess of $80,000 in the trust account

JOSEPH TREVOR CHERRY (Charlotte) – By Consent, the Commission suspended the broker license of Mr. Cherry for a period of 24 months effective September 1, 2016. The Commission found that Mr. Cherry, acting as the broker-in-charge and qualifying broker of a licensed real estate brokerage firm, managed a property ("property A") from which he collected from the tenant $295 extra each month in rent and $100 each month for use of the washer and dryer from the tenant without the knowledge of the owner landlord; that Mr. Cherry charged the owner landlord for repairs made to the dryer and did not receive approval from owner landlord for repairs exceeding $150, in violation of the management agreement; that Mr. Cherry also managed four properties for another landlord owner ("property B") and spent in excess of $250 on repairs without receiving approval from landlord owner, in violation of the management agreement; that Mr. Cherry was paid twice for some repairs that were already paid; and failed to give an accounting to the landlord owner within the time required by the management agreement; that an audit discovered that Mr. Cherry failed to maintain all records as required by Commission rules and evidence of deficit spending and comingling of funds in his firm's trust accounts; and that Mr. Cherry failed to deposit cash into a trust account within three banking days of receipt. The Commission notes that Mr. Cherry's trust accounts are now fully funded.

Don't Forget!
Write your real estate broker license number on all agency agreements.

DOROTHY M. COLESTOCK (Murphy) – By Consent, the Commission suspended the broker license of Ms. Colestock for a period of 12 months effective November 1, 2016. The Commission then stayed the suspension for a probation period from November 1, 2016 through October 31, 2017. The Commission found that Ms. Colestock, acting as the qualifying broker and broker-in-charge of a licensed real estate brokerage firm, had posting errors in the firm's trust account software accounting system going as far back as 2006 that were never corrected; that this caused an inaccurate set of books which led to deficit spending on at least two occasions; that Ms. Colestock's firm managed both long term rentals as well as vacation rentals, yet did not maintain a subsidiary ledger for those accounts; that no personal funds ledger was used to account for funds used to cover bank service charges; and that Ms. Colestock acted as a dual agent in one transaction, but was unable to provide a copy of the buyer agency agreement to Commission staff. The Commission notes that no evidence of a shortage was found in the accounts and Ms. Colestock's firm has transferred all of its remaining rentals to another licensed firm and that Ms. Colestock has affiliated with another licensed firm to engage solely in sales transactions.

JONATHAN H. ELLIOT (Fayetteville) – Following a hearing, the Commission permanently revoked the broker license of Mr. Elliot effective December 1, 2016. The Commission found that Mr. Elliot, acting as broker-in-charge of a sole proprietorship, failed to respond to Letters of Inquiry sent by the Commission; that Mr. Elliot failed to provide owner ledgers for the properties he was managing, copies of cancelled checks, or a trial balance; that Mr. Elliot paid "bonus" checks based on 25% of the total rent payments mandated in leases to an unlicensed company as compensation for getting leases signed by tenants; that Mr. Elliot failed to list a property for sale for the owner as required under the listing agreement and placed a tenant in the subject property without the knowledge of the property owner; that Mr. Elliot collected rent from the tenant monthly for over two years and placed this money in his trust account; that Mr. Elliot never disbursed this money to the property owner and the balance owed to the owners in this account ballooned to over $20,000; that Mr. Elliot did not have a property management agreement with the owner; that the owner was unaware of a tenant being in the property because Mr. Elliot failed to provide owner statements during the tenancy and failed to provide the owner with a copy of the lease; that checks written

Continued

Licensees Must Report Convictions

Commission Rule A.0113 requires any licensee who is convicted of a misdemeanor or felony or who has disciplinary action taken against him or her by any occupational licensing board to file a report with the Real Estate Commission.

The reporting requirement includes convictions for driving while impaired ("DWI"). The report must be filed within sixty (60) days of the final judgment or board action.

If you have questions about this rule, please call the Commission's Regulatory Affairs Division at 919-875-3700 for more information.

on the trust account failed to identify the subject property, property owner, and the purpose for the disbursement; that Mr. Elliot failed to maintain copies of the canceled checks and the deposit slips failed to identify the purpose for the deposit; that Mr. Elliot failed to maintain a personal funds ledger and the account lacked an audit trail; that Mr. Elliot's previously licensed firm was administratively dissolved by the North Carolina Secretary of State on July 21, 2011 and that Mr. Elliot failed to notify the Commission of this and the firm continued to operate until October 1, 2015, when the firm's license was cancelled by the Commission; and that Mr. Elliot declared himself broker-in-charge of a sole proprietorship under the same name as the formerly licensed firm.

MITCHELL LEE EUDY (Charlotte) – By Consent, the Commission suspended the broker license of Mr. Eudy for a period of five months effective November 1, 2016. The Commission then stayed the suspension for a probationary period until March 31, 2017. The Commission found that Mr. Eudy, on May 27, 2015, entered into an Exclusive Right to Sell listing agreement for a property; that the listed property contained a small cemetery and Mr. Eudy was aware at the time of the listing agreement that there was a cemetery located on the property; that Mr. Eudy failed to disclose the cemetery to potential buyers of the property; that Mr. Eudy asserts that he directed the sellers to inform the buyers of the existence of the cemetery; and, the buyers assert that they were not made aware of the cemetery prior to closing.

FREEDOM REALTY INC. (Murphy) – By Consent, the Commission suspended the firm license of Freedom Realty for a period of 12 months effective November 1, 2016. The Commission then stayed the suspension for a probationary period from November 1, 2016 through October 31, 2017. The Commission found that Freedom Realty had posting errors in the trust account software accounting system going as far back as 2006 that were never corrected; that this caused an inaccurate set of books which led to deficit spending on at least two occasions; that Freedom Realty managed both long term rentals as well as vacation rentals, yet a subsidiary ledger for those accounts was not maintained; that no personal funds ledger was used to account for funds used to cover bank service charges; and that Freedom Realty acted as a dual agent in one transaction, but was unable to provide a copy of the buyer agency agreement to Commission staff. The Commission notes that no evidence of a shortage was found in the accounts and that the firm has transferred all of its remaining rentals to another licensed firm and that Broker has affiliated with another licensed firm to engage solely in sales transactions.

CHARLES LESLIE GIEZENTANNER III (Asheville) – By Consent, the Commission suspended the broker license of Mr. Giezentanner for a period of one month effective January 1, 2017. The Commission found that, on June 29, 2016, Mr. Giezentanner was convicted of a Level 2 DWI and DWLR After Impaired Revocation Notice; that Mr. Giezentanner failed to report the conviction; and that Mr. Giezentanner failed to respond to three Letters of Inquiry.

GOLDEN KEY REALTY INC d/b/a RCA REALTY (Wallace) – By Consent, the Commission permanently revoked the firm license of Golden Key Realty effective December 14, 2016. The Commission found that Golden Key Realty, engaged in property management, failed to provide all of the requested trust account documentation requested by the Commission, failed to perform trust account reconciliations, failed to maintain a general ledger, and failed to maintain a trust account journal; that Golden Key Realty could not account for all rents and security deposits it received and failed to deposit all rent payments and security deposits received in cash into the trust account; and that Golden Key Realty's broker-in-charge admitted to spending entrusted funds on expenses, other than for which the funds were intended, which led to deficit spending and a shortage in excess $80,000 in the firm's trust account.

PATRICIA OLIVIA GONZALEZ (Fayetteville) – By Consent, the Commission suspended the broker license of Ms. Gonzalez for a period of 18 months effective September 1, 2016. The Commission found that Ms. Gonzalez, acting as broker-in-charge and qualifying broker of her firm, failed to perform monthly reconciliations of her firm's trust accounts and that one trust account was overdrawn twice in 2014, indicating a shortage; that Ms. Gonzalez was unable to produce the ledgers for individual properties and/or property owners, despite multiple requests; and that Ms. Gonzalez' firm was administratively dissolved by the North Carolina Department of the Secretary of State in September 2015 and Ms. Gonzalez failed to notify the Commission.

KEVIN J. MCVICKER (Durham) – By Consent, the Commission reprimanded Mr. McVicker effective December 1, 2016. The Commission found that Mr. McVicker, in 2015, was affiliated with a licensed firm for which his wife was broker-in-charge/qualifying broker; that in August 2015, the firm and Mr. McVicker's wife were revoked by Consent by the Commission for, among

Continued

Your Pocket License Card is your ticket for admission to Continuing Education classes. Allow at least 10 days to process a replacement request or purchase and download a replacement immediately from the Commission's Web site.

other things, failure to maintain funds in a trust account, conversion of trust monies, and failure to provide transaction records to a Commission representative; that during the investigation bank records obtained by a subpoena showed trust monies and rents were deposited into a personal account held by Mr. McVicker and his wife and that Mr. McVicker wrote checks for personal expenses from the same account; that Mr. McVicker submitted a new firm application, designating himself as a broker-in-charge on the same day that his firm's broker license was revoked; and that Mr. McVicker agreed to supply transaction and account records but failed to do so in a timely manner.

PATRICK KEVIN MONAGHAN (Charlotte) – By Consent, the Commission suspended the broker license of Mr. Monaghan for a period of four months effective November 1, 2016. The Commission then stayed the suspension for a probationary period ending March 1, 2017. The Commission found that in May 2015 Mr. Monaghan, acting as the broker-in-charge of Northpoint Asset Management, entered into a residential property management agreement for property; that according to the agreement, the monthly rent was to be $1000; that in July 2015, Mr. Monaghan procured tenants who agreed to rent the property for $140/month and, in exchange for the low rent, perform renovations, a violation of North Carolina Landlord and Tenant Law; that the lease contained no description of the work tenants were to complete in exchange for the lower rent; that the lease provided by Mr. Monaghan included a late fee beyond the statutory limit; that Mr. Monaghan collected a security deposit in excess of the statutory limit; that an addendum to the lease permitted Mr. Monaghan to use tenants' security deposit for costs not permitted and allowed the tenant security deposit to be disbursed during the tenancy in violation of Landlord and Tenant Law; and that Mr. Monaghan failed to inform the tenants and property owner which bank held the security deposit.

Real Estate Education and Recovery Fund Reimburses Victims

At its December 14, 2016 meeting, the Commission approved a payment totaling $3,100 out of the Real Estate Education and Recovery Fund to one applicant who suffered financial loss due to the misconduct of Alicia A. Christian.

By Consent, the Commission ordered permanent revocation of the real estate license of Ms. Christian effective October 15, 2014.

At its October 13, 2016 meeting, the Commission approved payments of $46,006.89 to six applicants who suffered financial losses due to the misconduct of Rebecca L. Niemchak.

The Commission, following a hearing, ordered the permanent revocation of the broker license of Rebecca L. Niemchak effective October 24, 2014.

At its May 5, 2016 meeting, the Commission approved payments of $75,000 to 17 applicants who suffered financial losses due to the misconduct of Cheryl B. Wilkins.

By Consent, the Commission ordered the permanent revocation of the broker license of Cheryl B. Wilkins effective November 12, 2014.

Commission Speakers Available

Real Estate Commission staff members are available to speak to your local board, office or special group. You can request a presentation relating to a specific subject or a general discussion on topics of interest to those attending.

To schedule a speaker, submit the "Request for Program Presenter" form available on the Commission's website, www.ncrec.gov. Please allow at least four weeks prior to your group's meeting.

NORTHPOINT ASSET MANAGEMENT LLC (Charlotte) – By Consent, the Commission suspended the firm license of Northpoint Asset Management for a period of four months effective November 1, 2016. The Commission then stayed the suspension for a probationary period ending March 1, 2017. The Commission found that Northpoint Asset Management in May 2015, entered into a residential property management agreement for property located in Charlotte, NC; that according to the agreement, the monthly rent was to be $1000; that in July 2015, Northpoint Asset Management procured tenants who agreed to rent the property for $140/month and, in exchange for the low rent, perform renovations, a violation of North Carolina Landlord and Tenant Law; that the lease contained no description of the work tenants were to complete in exchange for the lower rent; that the lease provided by Northpoint Asset Management included a late fee beyond the statutory limit; that Northpoint Asset Management collected a security deposit in excess of the statutory limit; that an addendum to the lease permitted Northpoint Asset Management to use tenants' security deposit for costs and allowed the tenant security deposit to be disbursed during the tenancy in violation of Landlord and Tenant Law; that Northpoint Asset Management failed to inform the tenants and property owner which bank held the security deposit.

CHRISTINA L. PITZ (Surf City) – By Consent, the Commission reprimanded Ms. Pitz effective January 2, 2017. The Commission found that Ms. Pitz, acting as a listing agent, failed to obtain a copy of a septic permit to verify the number or bedrooms allowed by the septic system despite being informed that her seller-clients did not know whether the septic system was permitted as a four-bedroom house; that the buyers closed on the house under the impression it was permitted as a four-bedroom house instead of a three-bedroom house; and that the buyers discovered the discrepancy while performing remodeling work on the house and had to purchase a septic system to accommodate four-bedroom house. The Commission noted that Ms. Pitz has reached a settlement with the buyers for an undisclosed sum.

PROPERTY ADMINISTRATORS, INC. (Greensboro) – By Consent, the

Continued

If you are a BIC or BIC eligible, to maintain your BIC status you must take the *Broker-in-Charge Update Course* (BICUP) + an Elective.

Do not take the General Update Course - it will not satisfy your BIC CE requirements.

Commission suspended the firm license of Property Administrators for a period of 18 months effective September 30, 2016. The Commission found that Property Administrators failed to prepare monthly reconciliations and failed to maintain ledgers and deposits in full compliance with Commission rules such that a clear audit trail could not be determined; and, that an audit of both trust accounts was performed and showed overages in both accounts.

RSK MOUNTAIN RESORT LLC (Blowing Rock) – By Consent, the Commission suspended the firm license of RSK Mountain Resort for a period of 36 months effective January 1, 2017. The Commission found that RSK Mountain Resort changed its legal name, but failed to notify the Commission; that from 1999 to 2016, RSK Mountain Resort operated under a name other than the name on its license; that RSK Mountain Resort regularly deposited trust money belonging to others into its operating account; that RSK Mountain Resort did not enter or maintain proper agency agreements in both sales and property management transactions; that RSK Mountain Resort failed to provide vacation rental agreements to tenants; and failed to maintain its trust account records in compliance with the Real Estate License Law and Commission Rules.

KATIE ELIZABETH SINGLETON (Surf City) – By Consent, the Commission reprimanded Ms. Singleton effective October 13, 2016. The Commission found that Ms. Singleton was convicted in district court of Level III DWI on June 30, 2016, and was sentenced to 12 months of supervised probation and required to complete 72 hours of community service. The Commission noted that Ms. Singleton timely reported the conviction to the Commission and is in compliance with the court's order.

KARYN B. SPREEMAN (Hendersonville) – By Consent, the Commission suspended the broker license of Ms. Spreeman for the period of 18 months effective December 1, 2016. Two months of the suspension shall be active with the remainder stayed for a probationary period from February 1, 2017 through June 1, 2018. The Commission found that Ms. Spreeman listed a vacant lot for sale under a listing agreement which expired on July 31, 2015; that on September 9, 2015, Ms. Spreeman submitted an offer to purchase the lot, on behalf of a prospective buyer, to the seller; that Ms. Spreeman told her buyer client that the seller verbally accepted the offer and sent the offer in the mail to the seller for signature; that the seller claims she never verbally accepted the offer; that on September 8, 2015, Ms. Spreeman signed the seller's name on a document which gave the buyer authorization to obtain septic and/or well permits on behalf of the seller; that Ms. Spreeman did not have written authorization from the seller or a power of attorney document allowing her to sign on the seller's behalf; that the seller's land was then clear cut and permits were pulled by the buyers; and that the seller later rejected the buyer's offer and the company that performed the work, on the buyer's behalf, filed a lien against seller for over $7,000. The Commission notes that Ms. Spreeman has paid the lien which has now been released.

KENNETH L. TARBUTTON (Blowing Rock) – By Consent, the Commission suspended the broker license of Mr. Tarbutton for a period of 36 months effective January 1, 2017. The Commission found that Mr. Tarbutton, acting as the qualifying broker and broker-in-charge of a licensed real estate brokerage firm, changed the legal name of the firm, but failed to notify the Commission; that from 1999 to 2016, the firm operated under a name other than the name on its license; that Mr. Tarbutton acted as the broker-in-charge of two offices, his sales office and rental management office, that were not in the same physical location; that Mr. Tarbutton regularly deposited trust money belonging to others into his firm's operating account; that Mr. Tarbutton did not enter or maintain proper agency agreements in both sales and property management transactions; that Mr. Tarbutton failed to provide vacation rental agreements to tenants; and failed to maintain his firm's trust account records in compliance with the Real Estate License Law and Commission Rules.

ROBERT CRAIG THRIFT, JR. (New Bern) – The Commission accepted the voluntary surrender of the broker license of Mr. Thrift for a period of 10 years effective November 9, 2016. The Commission dismissed without prejudice allegations that Mr. Thrift violated the Real Estate License Law and Commission rules. Mr. Thrift neither admitted nor denied misconduct.

RICHARD TOCADO (Charlotte) – By Consent, the Commission suspended the broker license of Mr. Tocado for a period of one month effective October 1, 2016. The Commission found that Mr. Tocado, in and around 2014, acted as a buyer agent in a new construction real estate transaction; that Mr. Tocado, in order to secure the transaction, offered to rebate $3,000 of his commission to the buyer-client; that Mr. Tocado disclosed the rebate to the original lender, but failed to disclose it to the second lender until the day of clos-

Continued

Brokers Should Ask Closing Attorneys to Not Disburse Proceeds Without Confirming Disbursement Instructions

Brokers are urged to encourage closing lawyers in each transaction not to disburse proceeds other than as specifically authorized in a written document signed by the seller. There have been instances of hackers diverting funds from real estate transactions, i.e., criminals hacked into a real estate broker's computer database and monitored email traffic to learn about an impending closing. They send an email to the lawyer instructing the lawyer to wire the seller's proceeds to a bank account other than the one originally identified. That email comes from an address that looked like the broker's. The lawyer wires the seller's proceeds to the criminals' account. By the time the lawyer learns of this crime, the criminals have wired the funds to a foreign bank account.

Attention
BIC's and BIC eligible brokers!

Please update your record to include your current phone number. You can designate your phone number as "public" or "private." Log on to your record at www.ncrec.gov and provide your phone numbers!

Broker Login

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ing, which would delay the closing by three days; that rather than delay closing, Mr. Tocado and the buyer-client agreed that Mr. Tocado would donate the $3,000 to the buyer-client's favorite charity; and that after closing, Mr. Tocado failed to make the agreed donation.

TREVOR CHERRY REAL ESTATE LLC (Charlotte) – By Consent, the Commission suspended the firm license of Trevor Cherry Real Estate for a period of 24 months effective September 1, 2016. The Commission then stayed the suspension for a probationary period from September 1, 2016 through August 31, 2018. The Commission found that Trevor Cherry Real Estate managed a property ("property A") from which it collected from the tenant $295 extra each month in rent and $100 each month for use of the washer and dryer from the tenant without the knowledge of the owner landlord; that Trevor Cherry Real Estate charged the owner landlord for repairs made to the dryer and did not receive approval from owner landlord for repairs exceeding $150, in violation of the management agreement; that Trevor Cherry Real Estate also managed four properties for another landlord owner ("property B") and spent in excess of $250 on repairs without receiving approval from landlord owner, in violation of the management agreement; that Trevor Cherry Real Estate was paid twice for some repairs that were already paid; and failed to give an accounting to the landlord owner within the time required by the management agreement; that an audit discovered that Trevor Cherry Real Estate failed to maintain all records as required by Commission rules and evidence of deficit spending and comingling of funds in its trust accounts; and that Trevor Cherry Real Estate failed to deposit cash into a trust account within three banking days of receipt. The Commission notes that Trevor Cherry Real Estate's trust accounts are now fully funded.

DAVID J. WELSH (Boone) – The Commission accepted the voluntary surrender of the broker license of Mr. Welsh for a period one year effective December 14, 2016. The Commission dismissed without prejudice allegations that Mr. Welsh violated Commission rules and the Real Estate License Law. Mr. Welsh neither admitted nor denied misconduct.

MARY S. WILSON (Greensboro) – By Consent, the Commission suspended the broker license of Ms. Wilson for a period of 18 months effective September 30, 2016. The Commission then stayed the suspension on certain conditions. The Commission found that Ms. Wilson, acting as broker-in-charge of a licensed real estate brokerage firm, failed to prepare monthly reconciliations and failed to maintain ledgers and deposits in full compliance with Commission rules such that a clear audit trail could not be determined; and that an audit of both trust accounts was performed and showed overages in both accounts.

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