North Carolina Real Estate Commission

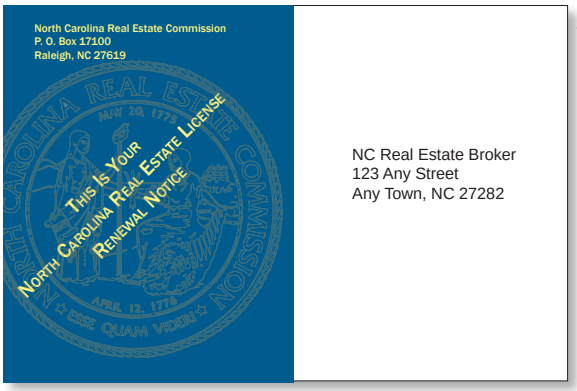
REAL ESTATE BULLETIN

Volume 44 • May 2013 • Number 1

Annual Renewal Period Begins May 15; Take Time Now to Renew Your License

The familiar blue and white postcard reminding you to renew your real estate license may already have reached your mailbox, or your reminder email may have arrived in your inbox. Either way, the reminder is your "cue" to visit the Commission's Web site, *www.ncrec.gov*, login, and renew your license.

We encourage you to renew early to avoid any oversight which will cause a change in your status on June 30 to expired. The license renewal fee is $45, a $5 increase, and the first increase in more than 10 years.



There are two ways to renew your license: 1) go to the Commission's Web site on or after May 15 and log into your record using your personal identification number (PIN). Your PIN has been set as the last four digits of your Social Security Number unless you have changed it; or 2) return the blue and white postcard with your check so that it reaches the Commission office prior to the June 30 deadline. Please

(See **Renewals**, *page 5)*

Update Course, BICAR Topics

To assist licensees in helping their clients and customers in sales transactions understand when the parties "have a deal," i.e., are under contract, one of the primary topics of next year's *Update Course* will be a review of offer and acceptance, the effect of oral and written negotiations, the scope of a broker's authority to bind the principal, the purpose and distinction between the due diligence fee and earnest money deposit, and a broker's obligations in handling those monies under Commission rules.

Another hot topic, based on inquiries, has been a broker's duties to his seller/lessor when seeking the owner's permission to publish property information in the MLS and in selecting other aggregators to whom the information may be released. These duties, as well as a broker's responsibility for the accuracy of the information once it is disseminated to various outlets, will be reviewed.

(See **Update** *page 10)*

Rule Changes Effective April 1

Changes to Commission rules relating to trust account management, broker price opinions, the real estate license renewal fee, the license activation form, and fees relating to timeshares became effective April 1.

Two additional rules changes relating to brokers-in-charge and the Real Estate Education and Recovery Fund are effective May 1.

Trust Accounts – The former single rule, A. 0107, was repealed and rewritten

(See **Rules**, *page 5)*

Richard Sullivan Appointed To Real Estate Commission

Richard L. Sullivan of Raleigh has been appointed by then Governor Beverly E. Perdue to the North Carolina Real Estate Commission, it was announced by Miriam J. Baer, Executive Director.

Sullivan succeeds Jerry A. Mannen, Jr., of Wilmington for the three-year term ending July 31, 2015.

Sullivan is a founding partner of Capitol Counsel LLC, which provides public affairs, government relations and business development services to a broad range of Fortune 500 companies and leading trade associations. Capitol Counsel has offices in Raleigh and Washington, DC.

Sullivan serves or has served on the Boards of Advisors or Boards of Directors of Union Dime Investment Services of Washington, DC, Boland Advisory Services of Washington, DC, and Bethesda, Maryland, Sense Technologies of Charlotte, American Traffic Solutions of Tempe, Arizona, Box Canyon Capital of Raleigh and Titan Capital of New York.

Sullivan was a member of the North Carolina Economic Development Board from 2009 to 2013, Finance Chair and Treasurer of the Democratic Governors Association from 2011 to 2013, Co-Chair of former Governor Perdue's Transition team, and a member of President Bill Clinton's China PNTR White House Working Advisory Group.

He received a J.D. Degree from Georgetown University Law Center and a B.A. from the University of South Carolina.

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.

NORTH CAROLINA REAL ESTATE COMMISSION
1313 Navaho Drive
P. O. Box 17100
Raleigh, North Carolina 27619-7100
Phone (919) 875-3700
www.ncrec.gov

Patrick McCrory, Governor

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Editor-In-Chief
Miriam J. Baer

Editor
Robert L. Forshaw

To request a speaker from the Commission, please submit the "Request for Program Presenter" form available on the Commission's Web site, www.ncrec.gov.

People

Bruce W. Moyer has been named Commission Education and Licensing Officer. He holds an Educational Specialists Degree from the University of South Carolina and was principal broker and broker-in-charge of his own firm, Urban Realty, for 12 years in Charlotte. He also taught real estate prelicense, postlicense, and continuing education at Superior School of Real Estate for several years.

Appearances

Miriam J. Baer, Executive Director, spoke to the Albemarle Area Association of REALTORS®, Charlotte Regional REALTOR® Association, Lincoln County Board of REALTORS®, and the Raleigh Regional Association of REALTORS® - Small Brokers Council.

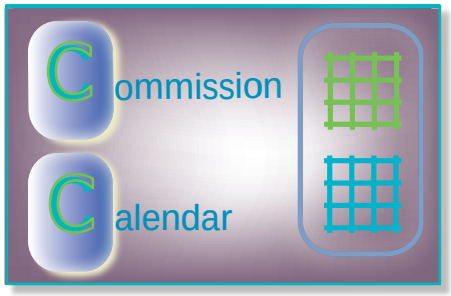
Janet B. Thoren, Director, Regulatory Affairs and Legal Counsel, spoke to the Raleigh office of Coldwell Banker Howard, Perry and Walston and to the Wilmington Regional Association of REALTORS®.

S. Adam Stallings, Chief Deputy Legal Officer, spoke to the Carteret County Association of REALTORS® on property management, Pinehurst-Southern Pines Area Association of REALTORS®,

(Continued)

125 Years of Service

Awards for service to the Commission were presented to staff members in April. Those receiving the awards were (l. to r.) Miriam J. Baer, Executive Director, 25 years; Janet B. Thoren, Director, Legal Counsel, 15 years; Wanda E. Johnson, Senior Licensing Specialist, 20 years; Diana Carnes, Technology Specialist, 10 years; Bart H. Allen, Senior Auditor/Investigator, 10 years; Patricia L. Street, Information/Imaging Specialist, 10 years; Juanita G. Kiaku, Information Specialist, five years; Tiffany D. Bryant, Information Specialist, five years; and M. Spier Holloman, Senior Legal Auditor/Investigator, 10 years. Staff members not present were LaToya S. Simms, Administrative Specialist, 10 years, and Matthew A. Wentz, License Application Analyst, five years.



June 12
July 10 (Boone)
August 7
September 4
October 9

All meetings, unless otherwise noted, begin at 9 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.

Appearances

(Continued from page 2)

Rutherford County Board of REALTORS®, and the Winston-Salem Regional Association of REALTORS® on common complaints.

Stephen L. Fussell, Senior Consumer Protection Officer, spoke to the Johnston County Top Producers Council.

Bruce W. Moyer, Education and Licensing Officer, spoke to the Durham Regional Association of REALTORS®.

Jean A. Wolinski-Hobbs, Consumer Protection Officer, spoke to the Catawba Valley Association of REALTORS® on the top 10 complaints to the Commission.

Peter B. Myers, Information Officer, spoke to the Raleigh offices of Fonville Morisey and Prudential York Simpson Underwood, Hendersonville Association of REALTORS® on new forms, BICAR update, and disclosure, and Wilkes County Association of REALTORS® on "fracking" and contingency sales.

Glenn M. Wylie, Information Officer, spoke to the Greater Chapel Hill Association of REALTORS® on broker-in-charge topics and to the Henderson County Board of REALTORS®.

COURSE SCHEDULES

Broker-in-Charge and Basic Trust Account Procedures Courses

Please see the Commission Web site, *www.ncrec.gov,* under Course Registration, for locations, dates, and times from May 14-15 thru November 6-7, 2013.

Broker-in-Charge Course
Two-days. Day one, 1-5 p.m.; Day two, 8:30-5:30 p.m.

Asheville	May 14-15 August 14-15	Holiday Inn East/Blue Ridge Parkway
Concord	June 5-6 July 10-11 August 5-6 October 2-3	Hilton Garden Inn, Concord
Greensboro	May 22-23 July 29-30 November 6-7	Deep River Event Center
Raleigh	June 3-4 July 17-18 August 20-21 September 16-17 October 28-29	McKimmon Center
Wilmington	July 22-23 October 21-22	Coastline Convention Center

Basic Trust Account Procedures Course

Asheville	August 15, 9 a.m. - 1 p.m.	Holiday Inn East/Blue Ridge Parkway
Greensboro	May 23, 9 a.m.. - 1 p.m.	Deep River Event Center
Raleigh	June 5, 1 - 5 p.m. September 3, 1 - 5 p.m.	McKimmon Center
Wilmington	July 23, 9 a.m. - 1 p.m.	Coastline Convention Center

See Commission Web site to confirm course dates.

Educators Terry Farr, Julia Iden Receive 2013 Conference Awards

By Pamela R. Rorie, Continuing Education Officer

Real estate instructors, school officials and publisher representatives attended the 2013 Real Estate Educators Conference in Raleigh March 4 and 5 at the Hilton North Raleigh/Midtown. The Real Estate Commission-sponsored meeting drew 198 participants from across the state,

Carmel Streater, DREI and specialist in real estate research and education from Baton Rouge opened the conference with the keynote address, *A Common Sense Approach to Teaching Adults.* Streater emphasized the importance of goal setting, intense preparation, and ruthless self-evaluation to improving instructor performance.

Streater

Following the keynote presentation, Larry Outlaw, Director of Education and Licensing, discussed Commission activities and initiatives during the past year.

During the first day's luncheon, the North Carolina Real Estate Educators Association (NCREEA) held its spring meeting, officiated by President Kim Stotesbury.

Commission Chairperson Benjamin Cone, III, presented the Commission's Billie J. Mercer Excellence in Education Award to Terry E. Farr. This award is presented annually in memory of former Commission member and chairperson, Billie J. Mercer, who was especially dedicated to the cause of real estate education. The names of all award winners are engraved on the Mercer Award cup on display in the Commission's lobby.

Commission members Laura Bromhal, Cindy Chandler, Everett "Vic" Knight, and S. R. "Buddy" Rudd were in attendance for the award presentation.

(Left photo) Terry E. Farr, center, received the Billie J. Mercer Excellence in Education Award from Commission Chairman Benjamin Cone III, left, and the NCREEA Educator of the Year award from Immediate Past President Dana Rhodes. Julia Iden received the NCREEA "Program of the Year" award.

NCREEA Immediate Past President Dana Rhodes presented the association's "Program of the Year" award to Julia Iden for her continuing education elective course, *The Art of the Short Sale,* and its "Educator of the Year" award to Terry Farr.

Commission Education and Examination Officer Anita Burt opened the afternoon session with a discussion of *Perspectives on Performance*, which examined license examination performance statistics and included a visual demonstration of the impact of separate scoring resulting from the two-part real estate license examination.

A panel of real estate educators composed of Oscar Agurs, Terry Farr, Corean Hamlin and Terry Wilson shared teaching tips for successfully mastering some of the license examination's more difficult topics.

The first day's program concluded with a presentation by Commission Education and Licensing Officer Bruce Moyer on the various smartphone applications currently used by real estate practitioners.

On day two of the conference, Continuing Education Officer Pamela Rorie gave a brief *Continuing Education Update*, discussing new procedures for course reporting and other information for sponsors and instructors. Legal Education Officer Patricia Moylan summarized revised Commission Rules and proposed topics for the 2013-14 *Update* and *BICAR* courses.

NCREEA President Kim Stotesbury officiated at the association's spring meeting.

Phyllis Atkins-Kinard, Account Executive with Strategic Connections, a Certified Education Consultant for SMART Technologies, demonstrated the use and capabilities of the SMART Board™ interactive whiteboard.

The conference concluded with the *Legal Issues, Hot Topics, and Open Forum* featuring Commission Regulatory Affairs Director Janet Thoren and Assistant Director Charlene Moody, who discussed various real estate topics and answered conference participants' questions.

The Commission thanks North Carolina's real estate educators for their continued interest and support, and congratulates Terry E. Farr and Julia Iden for their achievements.

Education and Licensing Director Larry Outlaw updated conference participants about Commission activities and initiatives.

Rules

(Continued from page 1)

into three new rules (See this issue of the *Real Estate Bulletin,* page 6.)

Broker Price Opinions – These rules replace the temporary rules implementing License Law changes and are effective October 1, 2012. (See the October 2012 *Real Estate Bulletin.*)

Real estate license fee – The fee has been raised from $40 to $45. A decline in Commission revenues resulting from the decline in licensees necessitated the increase. The Commission cut operating expenses and increased efficiencies to maintain current operations without a fee increase for more than 10 years.

License activation form – Electronic filing of notifications of supervision and requests for license activation requiring only the broker or broker-in-charge's signature are now permitted. The rule was also amended to add satisfaction of postlicensing education deficiency as one of the requirements for license activation.

Timeshare fees – The rules permit changes in various registration and renewal fees.

Effective May 1, 2013

Broker-in-Charge (BIC) – Major revisions eliminate the 10-day period for the filing of a BIC declaration; clarify that the Commission designates a BIC after eligibility is determined; clarify the delivery address requirements for a broker-in-charge of multiple firms at the same office; eliminate the requirement that a BIC provide statements to the Commission about work performed by a broker under the BIC's supervision; and require a former BIC to take the 12-hour *Broker-in-Charge Course* when BIC status is terminated.

Real Estate Education and Recovery Fund – Updates references to "Real Estate Recovery Fund" to reflect its current statutory name and establishes factors to be considered by the Commission when consolidating cases.

Renewals

(Continued from page 1)

reference your license number on your check.

Because the June 30 deadline falls on Sunday this year, if mailing your renewal, please allow enough time so that it is received in plenty of time.

The quickest, most efficient way to renew is online using your Visa, MasterCard or Discover card. You will receive an immediate confirmation which you may print out for your records.

The Commission staff updates all licensee records on July 1. If your renewal was not received by the deadline, your record will be updated to reflect your status as expired. You are reminded that no licensee may perform any act or service which requires a real estate license (including the listing, selling, leasing or showing of real estate) while a license is on an expired status.

If you fail to renew by the June 30 deadline, you may reinstate your license by paying a $55 reinstatement fee between July 1 and December 31. Failure to reinstate by December 31 will result in your having to file a new application and fee and obtain a background report. In addition, you may be required to take additional education or pass the license examination.

You may renew prior to completing your continuing education requirements. However, to maintain active status, you must complete eight hours of continuing education consisting of the mandatory *Update* and one elective by June 10 of each license period.

If you are a broker-in-charge or broker-in-charge eligible, in addition to the *Update*, you must take the *Broker-in-Charge Annual Review* course (BICAR) annually. Otherwise, you will lose your BIC eligibility. Brokers-in-charge are also responsible for ensuring that licensees under their supervision have renewed their licenses and completed the proper continuing education.

Changes in Rule A. 0110 require that a broker-in-charge who loses designation or eligibility must 1) first have a license on active status; 2) meet the experience requirements for designation; and, 3) take the 12-hour *Broker-in-Charge Course* before re-designation. (This course cannot be used as an elective to meet the requirement for active status.)

Handling, Accounting of Trust Money Now Explained in Three New Rules

To facilitate understanding and application of Commission rule A. 0107, Handling and Accounting of Funds, the Commission has divided it into three new rules effective April 1, 2013 as follows:

A. 0116 Handling of Trust Money

A. 0117 Accounting for Trust Money

A. 0118 Trust Money Belonging to Property Owners' Associations

Rule A. 0107 has been repealed effective April 1, 2013.

Division of the rule into three shorter rules separates the two essential functions of trust account management: (1) the handling of funds being held in trust for others and (2) the accounting of funds from receipt to distribution. Addressed separately are the specialized requirements arising when trust money belongs to property owners' associations.

The processes and procedures for the handling of trust money (now A. 0116) have not been revised.

The methods of accounting for trust money (now A. 0117) have been expanded to include guidance and definitions about the use of personal funds, requirements concerning monthly bank reconciliations, and extension of the time for a broker to respond to a client's request for records from five to 10 days.

Rules relating to trust money belonging to property owners' associations (now A. 0118) include a new provision limiting the responsibilities of broker/property owners who receive trust money belonging to an association in their capacity as an association officer for which they receive no compensation.

Handling of Trust Money

The fiduciary responsibilities of brokers in the handling of funds belonging to others are defined in Rule A. 0116. In general:

☐ All monies received by a broker must be deposited within three banking days in a trust or escrow account (with certain exceptions including receipt by a provisional broker or non-resident commercial broker, funds in a form other than currency, and custody of checks or other negotiable instruments payable to a seller for an option or due diligence fee).

Trust Account Records		
Memoranda	Transactions (copies)	POA Records
Bank statements, checks, journals, ledgers, other account evidence	Deposit tickets for sales and rentals	Property management agreements
Separate transaction ledgers for each entity and any company funds	Checks, receipts, contracts, closing statements	Statements, receipts for cash payments
General journal, check register, or check stubs with chronological entries	Leases, security deposit checks, management agreements and statements	Copies of covenants, bylaws, and minutes
Payment records for each property or interest	Paid invoices, bills and contracts	Periodic statements relating to POA management

☐ If the account bears interest, written authorization is required from all parties having an interest in the money.

☐ In the event of a dispute over the disposition of any deposit (excepting residential tenant security deposits held by a broker), a broker must retain the deposit in a trust or escrow account until receiving written release from the disputing parties or a court order or transfer the funds to the Clerk of Superior Court.

☐ Transfers of earnest money deposits for closings are prohibited more than 10 days prior to the anticipated settlement date.

☐ Disbursements from a trust or escrow account must not exceed the account's balance.

☐ A broker must comply with the Real Estate License Law and Commission rules in managing trust money and may not convert trust money for personal use, apply trust money to purposes other than that for which intended, or assist others in their conversion or misapplication of the funds.

Accounting for Trust Money

Of the three rules, the one describing accounting requirements is the longest and most complex (A. 0117). It lists the records a broker must create and maintain when managing trust money and describes the specific information those records must contain.

In general, the rule prescribes the following:

☐ Brokers must maintain records showing ownership of trust money from deposit into a trust or escrow account through final disbursement. These records must be sufficient to verify the records' accuracy and proper use of the account.

☐ All records must be designated a "Trust Account" or "Escrow Account".

☐ Trust account records consist of:

- Bank statements
- Memoranda (e.g., checks, journals, ledgers, and other evidence) of payments from a trust or escrow account.
- Deposit tickets for sales and rental transactions.
- Separate ledgers for each transaction, property or property owner, and company funds held in a trust account.
- General journal, check register or check stubs with entries in chronological order.
- Payment records for each property or interest.
- Copies of checks (front and back), receipts for cash payments, contracts and closing statements.
- Copies of leases, security deposit checks, property management agreements and statements and receipts for cash payments.

Continued

• Copies of covenants, bylaws, minutes, management agreements and periodic statements relating to the management of property owner associations.

• Copies of invoices, bills and contracts paid from a trust account.

☐ Records are to be maintained so as to create a clear audit trail.

☐ Records are to include worksheets showing reconciliations of trust or escrow accounts monthly.

☐ Specific records acquired when a broker acts as agent for the landlord of a residential property used for vacation rentals must be maintained.

☐ A broker must respond to a client's request for copies of any records within 10 days (changed from five days under the old rule, A. 0107) following receipt of the request.

☐ All trust or escrow account records must be made available for inspection by the Commission.

The Commission provides education in accounting procedures when handling trust money through its *Basic Trust Account Procecures* course which is given alone or in conjunction with the *Broker-in-Charge Course*.

Further information is provided from a three-part tutorial in handling rental deposits and disbursements on the Law/Rules page of the Commission Web site and in the Trust Account Guidelines section of the Commission booklet, *North Carolina Real Estate License Law and Commission Rules.* The Guidelines are also available on the Law/Rules page of the Web site.

Trust Money Belonging to Property Owners' Association

The third rule, A. 0118, requires that the funds of a property owners' association (POA) are deposited into and maintained in a trust or escrow account dedicated exclusively for trust money belonging to a single POA and may not be commingled with funds belonging to other associations or persons or parties. An exemption is granted for brokers receiving trust money from POA's when they are officers of the associations in which they are property owners.

New Brokerage "Coming Soon"

By Stephen L. Fussell, Senior Consumer Protection Officer

The Commission's Regulatory Affairs Division (formerly Legal Division) has experienced increased call volume recently regarding the use of "Coming Soon" sign riders attached to "For Sale" signs. The two primary questions asked by callers are, "Does 'Coming Soon' mean that the property is currently listed, but not yet available for showings?" and "Does it mean that the property is not yet listed, but will be listed soon?"

A broker is required by Commission rule to enter into a written brokerage agreement with a seller-client before marketing the seller-client's property. Thus, a broker is permitted to place a "For Sale" sign (with or without sign riders) on a property only if a written brokerage agreement is in effect that authorizes the placement of a sign on the seller-client's property.

If the seller-client wants the broker to begin marketing the property immediately to generate interest by prospective buyers, but the property is not yet ready to be shown, then this information should be specified in the brokerage agreement and in any advertising media, including an MLS system. If the seller is unwilling to enter into a written brokerage agreement, then the broker is prohibited from marketing the property in any manner including the placement of a "Coming Soon" sign.

There is another issue arising from the use of "Coming Soon" sign riders. Example: a broker places a "For Sale" sign with a "Coming Soon" sign rider on a property and then three weeks later, the broker replaces the "Coming Soon" rider with a "Sold In 2 Days" sign rider. The use of the "Sold in 2 Days" rider suggests that the property had only been listed for two days. If this is true, then the broker may have violated the Commission rule by placing the "For Sale" sign on the property before entering into a written brokerage agreement with the seller.

If the broker properly listed the property before putting the "For Sale" sign on the property, then it was a misrepresentation for the broker to put a "Sold in 2 Days" rider on the sign, because the property had been listed for approximately three weeks before a contract was signed. In this scenario, the broker could use a sign rider indicating "Sold In 3 Weeks" or "Sold 2 Days After Available For Showings" (if this is a true statement).

Remember, before you place a "For Sale" or "For Rent" sign on any property, you must first enter into a written brokerage agreement with the property owner. As long as the agreement contains a definite expiration date and the anti-discrimination language specified in the Commission rule, the remaining terms of the agreement are negotiable by the broker and the seller-client. Moreover, as soon as a brokerage agreement expires or is terminated, you must cease all marketing efforts and remove all signs, lock boxes and other marketing materials.

When advertising with signs, newspapers, magazines or digital media (i.e. the MLS system, Web sites, etc.), brokers must exercise care to ensure that the advertising contains accurate information. While the Commission does not object to the use of sign riders including the "Coming Soon" sign riders, brokers must be careful to use them in a manner which is not misleading and which complies with the Commission's rules. Brokers are not eligible to receive compensation from transactions that arise from the improperly established agency relationships. Don't put your license or your livelihood in jeopardy by failing to comply with the rules.

Special Landlord and Tenant Laws for Military Personnel

By S. Adam Stallings, Chief Deputy Legal Counsel

North Carolina is home to a significant population of members of the military services, who often rent or lease properties near their duty stations and may be subject to relocation on short notice. In such circumstances, service members are protected under federal and state laws that grant them specific rights to achieve early termination of a lease.

As a broker who works with landlords and tenants, you should be knowledgeable about those laws.

Federal law is set out in the Servicemembers Civil Relief Act, enacted in 2003 to amend the Soldiers' and Sailors' Civil Relief Act of 1940. It provides a broad range of benefits and protections to service personnel including specific rights relating to renting and leasing obligations.

North Carolina law is found under General Statute §§ 42-45 and 42-45.2. It grants special protections to "military personnel, surviving family members, or lawful representatives" involved with early termination of a rental agreement.

The two laws differ in the rights and protections they provide when applied to early termination of a lease. One may be applicable to a particular situation and the other may not, or both laws may be applicable, but yield different outcomes.

The requirements under each law are as follows:

Requirements to Pursue Early Termination of a Lease	
SCRA	NCGS § 42-45
Each allows for early termination in three, but differing, instances:	
(1) Entry into lease before active service; (2) Permanent change of station received while on active duty; (3) Deployment in excess of 90 days while on active duty. Termination effective 30 days after next monthly payment following notice to landlord.	(1) PCS* to depart 50 miles or more from current dwelling; (2) Premature or involuntary service separation; (3) Deployment in excess of 90 days. Termination effective 30 days after notice to landlord in (1) and (2); 30 or 45 days after notice in (3), whichever is shorter. *Permanent Change of Station

Federal Law

The SCRA's rights to early termination of a lease are granted based on active duty status, i.e., they are secured for a lease already in force upon entering into military service and, when in active service, relocated to a new permanent duty station or deployed in support of a military operation in excess of 90 days.

In these instances, lease termination is effective 30 days after the next rental payment is due following the landlord's receipt of proper notice of intent to terminate. [Notice must include a copy of the orders or a written verification by the tenant's commanding officer.]

(Example: If the monthly rent is due on the 1st day of the month and termination notice is delivered to your landlord five days earlier, your lease terminates and your final obligation to pay rent is effective 30 days following the 1st day of the month.)

State Law

State law, G.S. § 42-45, differs by specifying a permanent change of station of 50 miles or more from the member's current dwelling and allowing for premature or involuntary release from active duty; it differs slightly as to a deployment of "90 days or more" compared to "in excess of 90 days" in the federal law.

Also under our State law, the lease termination date depends first on which of the three reasons the service member has for terminating the lease.

Whether the service member receives permanent change of station orders to relocate at least 50 miles away or is prematurely or involuntarily discharged or released from active duty, the service member may provide written notice of termination to be effective as quickly as 30 days after the landlord's receipt of the notice.

A member of the Armed Forces of the United States who is deployed for 90 days or more may terminate 30 days after the next rental payment is due, following the landlord's receipt of proper notice of intent to terminate, or 45 days after receipt of notice, whichever is shorter.

The application of either or both laws should be determined after consulting with an attorney, who for a member on active duty may be available through the Judge Advocate General's Corp.

Liquidated Damages

The biggest differences between the SCRA and North Carolina law relate to how much money the service member may owe on the effective date of termination.

Generally, if a service member has been in the lease for less

than nine months, the SCRA will be more favorable. How much must be paid will depend on the effective date of lease termination and liquidated damages.

When comparing federal and state law is more advantageous, consider the following:

Consequences of Pursuing Early Termination of a Lease	
SCRA	NCGS § 42-45
No liquidated damages required	Liquidated damages • 1 month's rent if the tenant has lived in the residence for less than 6 months • 1/2 month's rent between 6 and 9 months
Contract may waive rights • Separate writing 12 point font • Signed by service member • Reference lease	No waiver allowed
Termination explicitly releases the spouse and all dependents of service member	No explicit language regarding release of others, but intent of law is likely persuasive

Example: Under N.C. law, the lease termination date depends first on which of the three reasons the service member has for terminating the lease. Whether the service member receives permanent change of station orders to relocate at least 50 miles away or is prematurely or involuntarily discharged or released from active duty, the service member may provide written notice of termination to be effective as quickly as 30 days after the landlord's receipt of the notice. For example, if a service member hand-delivers a notice of termination along with his or her official PCS orders on January 15th, the termination date may be as soon as February 15th, only 30 days later.

Example: A member of the Armed Forces of the United States who is deployed for 90 days or more may terminate 30 days after the next rental payment is due, following the landlord's receipt of proper notice of intent to terminate, or 45 days after receipt of notice, whichever is shorter. For example, if rent is due on the 1st of the month, and the service member provides proper notice to terminate on January 5th, the lease terminates 30 days after February 1st or 45 days after January 5th, whichever comes first. In this case, 45 days after January 5th is shorter and that is the earliest possible effective date of lease termination. However, if a service member terminates under North Carolina law and has been in the lease under nine months, he or she may also be required to pay liquidated damages.

"Liquidated damages" ordinarily refers to an agreed amount designed to estimate the dollar value of the harm that will be caused if a party to a contract violates the terms. If a service member terminates a lease under North Carolina law, the service member may be required to pay rent through the effective date of lease termination and may be required to pay the applicable liquidated damages amount if he or she has completed less than nine months of the lease term. If the service member completed less than six months of the tenancy, the maximum liquidated damage amount is one month's rent. If the service member completed at least six months of the tenancy but less than nine months, the maximum is one-half of a month's rent. After completing nine months of the tenancy, no liquidated damages are owed.

If a member of the armed forces terminates a lease under the SCRA, there is no statutory requirement to pay liquidated damages. The service member must pay rent through the effective date of lease termination but there are no further charges resulting from early termination.

It is important to note that even under North Carolina law, the landlord is not entitled to liquidated damages where there are no actual damages due to loss of the tenancy. Actual damages occur when, despite making the required reasonable efforts to mitigate or limit damages, the landlord is unable to find a new tenant for the premises.

Example: If the landlord rents the residence two days after a service person terminates the lease, the liquidated damages cannot exceed two days' rent.

Notice Requirements

The notice requirements under both the SCRA and North Carolina law are similar. Service members must provide written notice and a copy of military orders to the landlord. Alternatively, a service member can provide a letter from his or her Commanding Officer verifying the reason for the need to terminate the lease. Under the SCRA, the only effective manners of service of notice are hand-delivery, private business carrier, or by US mail with return receipt requested.

Obligations of a Spouse

A North Carolina law was passed to assist service members whose military duties cause them to leave the area, but the law does not specifically address the obligations of a spouse on the lease. The latest version of the SCRA, on the other hand, makes it very clear that termination by the service member terminates the obligations of a spouse and any other military dependent that may have signed the lease as well.

Waiver of Rights

A lease can give a military tenant more lease termination rights than would otherwise be had, but, with one exception, its terms cannot take any of these rights away. While the North Carolina law specifically prohibits waiver or modification of its requirements under any circumstances, the SCRA does permit lease termination rights to be waived. To be legally effective, however, such a waiver must comply with certain requirements, including, but not limited to, the following:

- The waiver must be in writing;
- It must be on a document separate from the lease;

Continued

Military

(Continued from page 9)

• The waiver must be signed by the service member;

• The waiver must specify the legal instrument (e.g., the lease) to which it applies; and

• It must be in at least 12-point font.

If neither law applies, landlords, property managers, and military tenants should review the lease to see if it contains any other special lease termination rights. If there are none, then early termination may not be permitted. If the tenant leaves the premises early and in breach of the contract, the landlord is likely entitled to damages caused as a result of the breach. These damages include the loss of rent due to any vacancy of the premises during the remainder of the lease term. As always, the landlord must take reasonable steps to mitigate the damages, that is, to re-rent the premises, but the landlord may withhold the security deposit to satisfy these damages and may also sue for any additional damages that exceed the amount of the security deposit.

NC General Statute § 42-45(a3)

Since 2012, North Carolina law provides that when a member of the US Armed Forces dies on active duty, there is a specific right to terminate the lease. An immediate family member or lawful representative may terminate the lease with written notice as required in the other authorized situations. As with the case of a deployment for 90 days or more, termination is effective 30 days after the first date on which the next rental payment is due, or 45 days after the landlord's receipt of notice, whichever is shorter. Notice must include a copy of the death certificate, military casualty report, or letter from the commanding officer. While cotenants who are immediate family members are also no longer obligated under the lease, cotenants who are not immediate family members remain obligated under the lease. Payment of all rents is due up to the date of termination, and the same liquidated damages provisions discussed earlier apply under this law.

Service members are valued members of our community and should be treated as such. Brokers should be aware of the special circumstances that may allow service members to terminate a lease agreement early. These situations should be explained to landlords prior to entering into any lease agreement with a military tenant.

Update

(Continued from page 1)

New Commission rules, most of which became effective April 1, 2013, will be summarized, as well as important new or revised laws that impact real estate brokerage. Additional topics that will be briefly addressed include: why surveys remain important to buyers and the interaction between surveys and owner's title insurance coverage; an agent's duty of confidentiality to a principal and breaches thereof; and possibly a review of selected disciplinary cases and the process.

2013-2014 BICAR Course

Risk management will be one topic in next year's BICAR course with the primary focus being on advertising pitfalls and fair housing matters. The materials will provide examples using actual broker advertisements and will include fact summaries of current fair housing actions being prosecuted and recent court decisions.

Changes in the Broker-in-Charge rule, both those effective Spring, 2013, as well as anticipated revisions, will be discussed, as well as other selected BIC duties and disciplinary cases involving brokers-in-charge.

New Commission Videos

Four new videos have been added to the Commission's Web site in its Video Library:

Firm Licensing - describes the process for obtaining a firm broker license.

NCREC vs. NCAR - describes the differences between the North Carolina Real Estate Commission and the North Carolina Association of REALTORS®.

WWREA - Buyer - explains the duties of agents to buyers as described in the Working With Real Estate Agents brochure.

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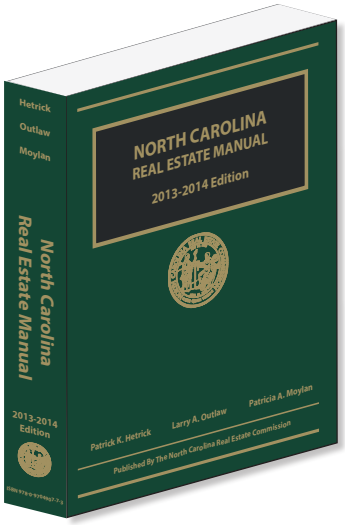

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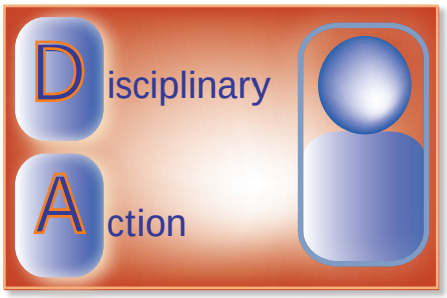

Penalties for violations of the Real Estate License Law and Commission rules vary depending upon the particular facts and circumstances present in each case. Due to space limitations in the Bulletin, a complete description of such facts cannot be reported in the following Disciplinary Action summaries.

AMERICAN REAL ESTATE ASSOCIATES, INC. (Raleigh) - The Commission accepted the permanent voluntary surrender of the firm license of American Real Estate Associates effective February 6, 2013. The Commission dismissed without prejudice allegations that American Real Estate Associates violated provisions of the Real Estate License Law and Commission rules. American Real Estate Associates neither admitted nor denied misconduct.

DONNA LUCILLE BAKER (Bryson City) – After a hearing, the Commission revoked the broker license of Ms. Baker effective February 21, 2013. The Commission found that Ms. Baker, acting as sole proprietor of a property management and vacation rental business, failed to hold trust moneys in a separate trust account and to account for and remit rental proceeds to owners in a timely manner; commingled her personal funds with trust moneys and by holding trust money in an interest-bearing account without her principal's permission and without providing for the disbursement of interest; failed to comply with rules adopted by the Commission; failed to commemorate agency agreements with her owner clients in writing; failed to maintain a trust account and the records pertaining to it in compliance with Commission rules; and failed to designate herself broker-in-charge of her sole proprietorship when she was accepting money and holding money for others.

DIVINE PROPERTY MANAGEMENT, LLC (Goldsboro) - By Consent, the Commission revoked the firm license of Divine Property Management effective February 6, 2013. The Commission found that Divine Property Management failed to maintain trust accounts for tenant security deposits, rents, and income in compliance with Commission rules. The Commission also found that Divine Property Management commingled personal funds with monies held in trust for others, converted trust funds for personal gain, and failed to forward rental payments and tenant security deposits in a timely manner.

JOHN MAC CHUBIRKO (Kannapolis) – The Commission accepted the permanent voluntary surrender of the broker license of Mr. Chubirko effective April 4, 2013. The Commission dismissed without prejudice allegations that Mr. Chubirko violated provisions of the Real Estate License Law and Commission rules. Mr. Chubirko neither admitted nor denied misconduct.

KENNEDY EARL GRAY (Wilson) – By Consent, the Commission revoked the broker license of Mr. Gray effective February 6, 2013. The Commission found that Mr. Gray failed to maintain trust accounts for tenant security deposits, rents, and income in compliance with Commission rules. The Commission also found that Mr. Gray commingled personal funds with monies held in trust for others, converted trust funds for personal gain, and failed to forward rental payments and tenant security deposits in a timely manner.

KENNETH D. HARRIS (Marion) – By Consent, the Commission revoked the broker license of Mr. Harris effective February 20, 2013. The Commission found that Mr. Harris managed properties through his sole proprietorship on behalf of his landlord clients, but failed to commemorate their agreement in writing; that he collected rents, but failed to deposit the funds in a trust account and failed to perform reconciliations of his trust accounts; and that he failed to respond to three Letters of Inquiry sent by the Commission. The Commission also found that Mr. Harris converted approximately $3,000 of his client's funds to his personal use.

FRED LEE HEINA II (Gastonia) – By Consent, the Commission reprimanded Mr. Heina effective March 1, 2013. The Commission found that Mr. Heina performed approximately 350 Broker Price Opinions (BPO's) in 2010 and 400 in 2011 and that none of the BPO's

(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 Legal Division at 919-875-3700 for more information.

resulted in a listing agreement. The Commission also found that Mr. Heina failed to provide a list of his 2011 BPO's when the records were requested by the Commission.

DERITA KAY MASON (Fayetteville) – The Commission accepted the voluntary surrender of the broker license of Ms. Mason for a period of two years effective February 6, 2013. The Commission dismissed without prejudice allegations that Ms. Mason violated provisions of the Real Estate License Law and Commission rules. Ms. Mason neither admitted nor denied misconduct.

DEXTER A. MCMURRAY (Charlotte) – By Consent, the Commission suspended the broker license of Mr. McMurray for a period of one year effective April 1, 2013. The Commission then stayed the suspension for a probationary period through and including March 31, 2015. The Commission found that Mr. McMurray failed to maintain his trust account in compliance with the Real Estate License Law and Commission rules. The Commission noted that Mr. McMurray has now closed his trust account and no longer holds monies for others and that no consumers were harmed.

THOMAS A. NIELSEN (Raleigh) – The Commission accepted the permanent voluntary surrender of the broker license of Mr. Nielsen effective February 6, 2013. The Commission dismissed without prejudice allegations that Mr. Nielsen violated provisions of the Real Estate License Law and Commission rules. Mr. Nielsen neither admitted nor denied misconduct.

WALTER L. PETERSON III (Jefferson) – By Consent, the Commission suspended the broker license of Mr. Peterson for a period of six months effective February 1, 2013. The Commission then stayed the suspension for a probationary period of six months ending August 1, 2013. The Commission found that Mr. Peterson acted as a buyer agent for his client in the purchase of a home, but failed to enter into a written buyer agency agreement with his client. The Commission also found that Mr. Peterson failed to discuss or recommend radon testing and, after the purchase, the buyer discovered the property had high radon levels.

REALTY QUEST LLC (Durham) – The Commission accepted the permanent voluntary surrender of the firm license of Realty Quest effective March 31, 2013. The Commission dismissed without prejudice allegations that Realty Quest violated provisions of the Real Estate License Law and Commission rules. Realty Quest neither admitted nor denied misconduct.

JENNIFER MUSSHAFEN ROSS (Kitty Hawk) – By Consent, the Commission revoked the broker license of Ms. Ross effective February 6, 2013. The Commission found that Ms. Ross, on or about November 2, 2011, was convicted in Dare County of misdemeanor injury to personal property and misdemeanor simple assault and, thereafter, pled guilty to and was convicted of various felonies; that Ms. Ross failed to report timely the criminal misdemeanor convictions to the Commission; and that Ms. Ross failed to respond to Letters of Inquiry sent by the Commission.

SANDDOLLAR REALTY MANAGEMENT LLC (Kitty Hawk) - By Consent, the Commission reprimanded Sanddollar Realty Management effective December 31, 2012. The Commission found that Sanddollar Realty Management, a real estate brokerage firm, failed to maintain its trust accounts in compliance with the Real Estate License Law and Commission rules. The Commission noted that the firm has brought its trust accounts into compliance.

HARRY WILLIAM SANDFORD, JR. (Burlington) – By Consent, the Commission reprimanded Mr. Sandford effective March 7, 2013. The Commission found that Mr. Sandford, through his unlicensed company provided rent-to-

(Continued)

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own, property management and other brokerage services to consumers, and failed to designate himself or any other qualified licensed person as broker-in-charge of the firm. The Commission also found that Mr. Sandford in his advertising of properties and services failed to identify that he was a licensed real estate broker, the name of a licensed firm or the name of a licensed real estate broker. The Commission further found that Mr. Sandford's advertisements established down payment terms to finance purchases, but failed to disclose interest rates on the loan, the term of such loan, or other details as required by federal Truth-in-Lending laws.

GEORGE D. SEAY (Kitty Hawk) – By Consent, the Commission reprimanded Mr. Seay effective December 31, 2012. The Commission found that Mr. Seay, acting as broker-in-charge and qualifying broker of a real estate brokerage firm, failed to maintain his trust accounts in compliance with the Real Estate License Law and Commission rules. The Commission noted that Mr. Seay has brought his trust accounts into compliance.

SHOWCASE REALTY OF THE CAROLINAS, INC. (Charlotte) - By Consent, the Commission suspended the firm license of Showcase Realty of the Carolinas for a period of one year effective April 1, 2013. The Commission then stayed the suspension for a probationary period through and including March 31, 2015. The Commission found that Showcase Realty of the Carolinas failed to maintain its trust account in compliance with the Real Estate License Law and Commission rules. The Commission noted that Showcase Realty of the Carolinas has now closed its trust account and no longer holds monies for others and that no consumers were harmed.

JULES W. SMYTHE, JR. (Winston-Salem) – By Consent, the Commission revoked the broker license of Mr. Smythe effective February 20, 2013. The Commission found that Mr. Smythe, acting as qualifying broker and broker-in-charge of a real estate brokerage firm, in 2009 received his client's closing funds of $8,500 and a check for the seller from the buyer outside of closing for $129 for interest to compensate for the delayed settlement and failed to deposit the client funds into a trust account; and that the client suffered no monetary losses. The Commission also found that, in June, 2009, Mr. Smythe received a check for $5,000 from a closing attorney written to Mr. Smythe's buyer client for escrowed plumbing repair expenses and failed to deposit these funds into a trust account; and that the client suffered no monetary losses. The Commission finally found that, in November 2011, Mr. Smythe was convicted of Misdemeanor Worthless Check and failed to report the conviction to the Commission. The Commission noted that Mr. Smythe's contention that prolonged health issues and the inability to locate critical witnesses and documents, which were subpoenaed, interfered with his ability to present a full defense.

LARRY A. STANLEY (Jefferson) – By Consent, the Commission reprimanded Mr. Stanley effective March 1, 2013. The Commission found that Mr. Stanley acted as listing agent for a property that he advertised as having three bedrooms; that he failed to obtain a copy of the septic permit to verify the permitted number of bedrooms; and that, after closing, the buyer discovered the property was permitted for only two bedrooms. The Commission noted that Mr. Stanley revised his firm's written policies to require listing agents to obtain a copy of the septic permit as part of the listing process.

JAMES S. WAGONER (Sneads Ferry) – By Consent, the Commission reprimanded Mr. Wagoner effective April 1, 2013. The Commission found that Mr. Wagoner, who was a certified residential real estate appraiser, in January 2009 entered into a permanent voluntary surrender of his real estate appraisal certificate in order to conclude a disciplinary case before the North Carolina Appraisal Board. The Commission noted that there were no findings of fact in connection with the surrender.

CHERYL CUNNINGHAM WARREN (Charlotte) – By Consent, the Commission repri-

(Continued)

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, call Janet Thoren at (919) 875-3700, Ext. 136. Please allow at least four weeks prior to your group's meeting.

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manded Ms. Warren effective May 1, 2013. The Commission found that Ms. Warren, acting as broker-in-charge of a property management firm, performed all trust account record keeping for the firm, but failed to designate rental account checks as trust or escrow and failed to maintain duplicate copies of deposit slips for the maintenance account. The Commission also found that Ms. Warren's reconciliation of the rental account contained numerous undeclared items, the account did not balance, and Ms. Warrant engaged in deficit spending.

JENNIE G. WILKES (Canton) – The Commission accepted the permanent voluntary surrender of the broker license of Ms. Wilkes effective March 7, 2013. The Commission dismissed allegations that Ms. Wilkes had violated provisions of the Real Estate License Law and Commission rules. Ms. Wilkes neither admitted nor denied misconduct.

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