North Carolina Real Estate Commission

# REAL ESTATE BULLETIN

Volume 47 • May 2016 • Number 1

## Rulemaking Nears Completion for Rules To Be Effective July 1

The Commission adopted seven of the eight proposed rule changes at its March 16 meeting.

Proposed amendments to Rule 21 NCAC 58A .0116 relating to abandoned trust accounts were withdrawn from this rulemaking session for further consideration.

The seven adopted rule changes are subject to final approval at the Rules Review Commission (RRC) meeting on April 21. With the RRC's approval, which will be announced on the Commission's website, the seven adopted rule changes will be effective July 1.

The complete texts of the rules with changes are available on the Commission's website and are summarized below.

**21 NCAC 58A .0103** – To amend the rule in Paragraph (a) to require brokers to update phone numbers and email addresses within 10 days of change and in Paragraph (b) to clarify the use of assumed names by business entities or sole proprietorships.

**21 NCAC 58A .0108** – To amend

*(See* **Rules**, *page 3)*

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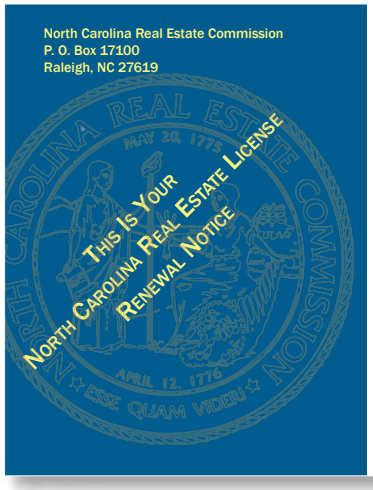
## Renew Your Real Estate License Now; Online Renewal Required by Law

The annual period for renewal of your real estate license begins at midnight on May 15 and continues until June 30. The renewal fee is $45.00. Per Commission Rule 58A.0503, you must renew online at *www.ncrec.gov*. If you fail to renew on or before June 30, your license will EXPIRE.




NC Real Estate Broker
123 Any Street
Any Town, NC 27282

To renew online, login to your record on the Commission's website, www.ncrec.gov, on or after May 15. Your PIN (password) will be the last four digits of your Social Security number unless you have changed it. (A broker who does not have the ability to renew online may renew by calling the Commission's office between 8:30 a.m. and 5:00 p.m., Monday through Friday (919/875-3700)).

You may pay by Visa, MasterCard, Discover, or PayPal account (new this year). A printable confirmation of renewal will appear on your screen when the process is completed.

While logged in, be sure to verify and update all contact information. The Real Estate License Law allows you to designate your email address in one of two ways: (1) PRIVATE, meaning it will be

*(See* **Renewals**, *page 9)*

## NO DOGS ALLOWED:
### The FHAA, the ADA, and exceptions to no-pet policies.

***By Eric A. Mine, Associate Legal Counsel II***

Imagine you are a broker for a real estate firm managing a building of privately owned condominiums. One sunny afternoon, a woman comes into your office. Walking beside her on a leash is a small brown cat. The woman strolls up to your desk and asks if you have any units for rent. You tell her that there are some units for rent, but, nodding toward the cat, you mention that no units permit pets. The woman laughs and tells you Jasper, apparently the cat's name, is not a pet. She says that she has a condition that Jasper helps her with and asks that you make an exception to the no-pet policy. But as far as you can tell, the woman doesn't have any apparent disabilities.

Are you required to make an exception for Jasper? Can you ask the woman to take Jasper out of the rental office? And what questions can you ask the woman to determine if you must do so?

There is no shortage of confusion when it comes to answering these questions. And much of that confusion is due to differences in the two main laws

*(See* **No-Pet Policies**, *page 8)*

## 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

## Appearances

**Everett "Vic" Knight,** Commission Member, spoke to The NC Real Estate Firm in Apex.

**Miram J. Baer,** Executive Director, spoke to the Wake County Real Property Lawyers Association.

**Charlene D. Moody,** Legal Counsel and Assistant Director of Legal Affairs, spoke to BHHS Carolinas Realty in Huntersville.

**Frederick A. Moreno,** Deputy Legal Counsel, spoke to the Campbell University Law School real estate finance class.

**Eric A. Mine,** Associate Legal Counsel II, spoke to the Catawba Valley Association of REALTORS®.

**Glenn M. Wylie,** Consumer Protection Officer, spoke to Keller Williams Concord/Kannapolis.

**Peter B. Myers**, Information Officer, spoke to Lake Norman Realty, the Lincoln County Board of REALTORS®, and RE/MAX Preferred Properties in Winston-Salem.

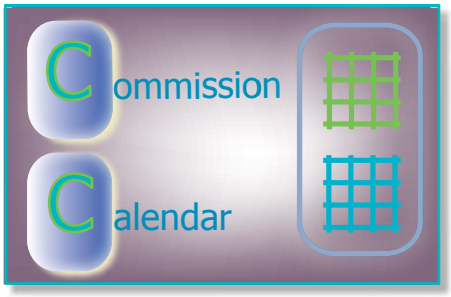
**Elizabeth W. Penney**, Information Officer, spoke to HM Properties in Charlotte.

**Melissa A. Vuotto**, Rulemaking Coordinator, participated in a legal panel at the North Carolina Bar Association and spoke at the Rules Review Commission's Rulers Roundtable meeting.

## People

### 195 Years of Service to the Commission

*Commission staff members received awards recently for a total of 195 years of service. Commission Chair Cindy S. Chandler (standing, far right) and Vice Chair George Bell (standing, left) presented the awards to (standing, l. to r.) Charlene D. Moody, Assistant Director, Legal Counsel, 10 years; Frances N. Johnson, Senior Administrative Specialist, 30 years; Elizabeth W. Penney, Information Officer, 10 years; Susan M. Tysor, Executive Assistant, 20 years; Susanne H. Viens, Administrative Specialist, 20 years; Glenn M. Wylie, Consumer Protection Officer, five years; and Robert L. Forshaw, Publications Officer, 15 years; (seated, l. to. r.) Michael B. Gray, Chief Financial Fraud Investigator, 20 years; Paula L. Ricard, Chief Financial Officer, 25 years; Pamela R. Rorie, Continuing Education Officer, 20 years; Jean Wolinski-Hobbs, Auditor/Investigator, 10 years; and Daniel K. Creech, Information Specialist, 10 years.*




May 18

June 22

July 20

August 17

September 14

*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.*

## Rules

*(Continued from page 1)*

the rule to include requirements for brokers to maintain all records relied upon to determine square footage and all advertising records used to market property.

**21 NCAC 58A .0113** – To amend the rule to require a broker who enters into a conciliation agreement or consent order with another agency to report it to the Commission.

**21 NCAC 58A .2104** – To amend the rule to correct the United States Code reference.

**21 NCAC 58A .2105** – To amend the rule to correct the United States Code reference.

**21 NCAC 58B .0102** – To amend the rule to increase the number of payment methods by which a time share project can submit an initial registration application fee.

**21 NCAC 58B .0103** – To amend the rule to include technical changes and to increase the number of payment methods by which a time share project can submit a renewal application fee.

## Broker Numbers

As of April 1, 2016, there are 96,927 brokers licensed by the Real Estate Commission in the following categories:

- Active Brokers 60,222
- Active Provisional Brokers 5,993
- Inactive Brokers 25,636
- Inactive Provisional Brokers 5,293
- Firms 11,069
- Brokers-in-Charge 16,226

## New Videos

## Broker-in-Charge and Basic Trust Account Procedures Courses

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

| Broker-in-Charge Course<br>(Two days) Day 1: 1 - 5 p.m.; Day 2: 8:30 a.m. - 5:30 p.m. | | |
|---|---|---|
| Asheville | Holiday Inn East | August 2-3 |
| Concord | Hilton Garden Inn, Concord | June 6-7<br>July 11-12<br>August 15-16<br>September 26-27 |
| Greensboro | Deep River Event Center | May 23-24<br>September 13-14 |
| Raleigh | McKimmon Center | June 1-2<br>July 21-22<br>August 22-23<br>October 3-4 |
| Wilmington | Coastline Convention Center | May 10-11<br>July 25-26 |
| **Basic Trust Account Procedures**<br>(Commission Offices, Raleigh)<br>(All classes 1-5 p.m.) | | |
| Raleigh | Commission Offices<br>1313 Navaho Drive, Raleigh | June 6<br>July 11<br>August 8<br>September 12 |

See Commission website to confirm course dates.

# 2016 Spring Educators Conference Highlights Exam Revisions, Rule Restructuring, Learning Objectives

***By Pamela R. Rorie, Continuing Education Officer***

Real estate instructors, school officials and publisher representatives braved cold and icy conditions to attend the Commission's 2016 Real Estate Educators Conference in Cary on February 15-16 at the Embassy Suites. Despite the inclement weather, the annual event drew an enthusiastic crowd of approximately 180 participants.

Commission Chair Cindy Chandler welcomed the group and introduced other Commission members attending the day-and-a-half conference. Commission Executive Director Miriam Baer initiated the morning session with a *State of the Commission* presentation, which highlighted "front burner" issues and described recent accomplishments and future projects.

Bruce Moyer, Director of Education and Licensing, and Janet Thoren, Director of Regulatory Affairs and Legal Counsel, jointly presented *The Road Ahead*, which informed educators of actions to be taken as a result of findings by the Instructor Task Force, and plans to substantially change the format of the *North Carolina Real Estate Manual*, and restructure Commission rules governing education programs.

*The Larry A. Outlaw Excellence in Education Award, newly established by the Commission, was presented to educator and attorney Mel Black (third from left) who also received the North Carolina Real Estate Educators Association (NCREEA) award. Deborah Outlaw (second from left), wife of the late Education and Licensing Director, joined presenters Cindy Chandler, Commission Chair, and George Bell, Vice Chair, at the Commission's spring Educators Conference.*

Corean Hamlin, Education and Licensing Officer, explained the importance of specific and student-focused learning objectives in *Are We There Yet? GPS for Your Classroom*. Deborah Carpenter, Education and Examination Officer, recognized with *Certificates of Achievement* prelicensing schools and instructors whose students had exhibited outstanding performance on the license examination for the past year.

*Deborah Long is the recipient of the NCREEA Program of the Year Award, presented by Association President Arvil Price.*

The North Carolina Real Estate Educators Association (NCREEA) held its spring meeting during the first-day luncheon and NCREEA President Arvil Price presented the Association's "Program of the Year" award to Deborah Long for her continuing education elective course, *You've Been Served: Real Estate Lawsuits That Changed the Business*.

Chandler and Price jointly presented the Commission's newly established *Larry A. Outlaw Excellence in Education Award* and the Association's *Educator of the Year* award to educator and attorney Mel Black. The Outlaw award was established in memory of the late Commission Director of Education and Licensing who retired in 2014 after 35 years of service. Commission Vice Chair George Bell and former Chair Everett "Vic" Knight were also in attendance for the presentation.

Moyer began the afternoon session with comments relating to state-specific exam topics and other issues associated

with the licensing exam and Hamlin explained the process of reviewing requests to waive the examination requirement. The first day concluded with a presentation by Moyer about the Instructor Performance Improvement Plans and a *Continuing Education Update* from Continuing Education Officer Pamela Rorie, who recounted the growth and improvements in the continuing education program over the past 22 years and announced the topics for the *General* and *Broker-in-Charge Update* (*GENUP* and *BICUP*) courses for the 2016-2017 license year.

Dr. Lawrence J. Fabrey, Senior Vice President of Psychometrics with Applied Measurement Professionals, Inc., opened the conference's second day with an overview of the company's history and a discussion of revisions to the licensing exam.

The conference concluded with a *Case Studies & Open Forum* conducted by members of the Commission Regulatory Affairs Division: Director Thoren, Assistant Director Charlene Moody, Deputy Legal Counsel Fred Moreno, Associate Legal Counsel II Eric Mine, and Associate Legal Counsel I Robert Patchett, who presented various application and disciplinary case scenarios and answered questions from the audience.

The Commission thanks North Carolina's real estate educators for their continued interest and support, and congratulates Deborah Long and Mel Black for their achievements.

*Instructors and schools were recognized for outstanding exam performance. They are, (l. to r. front row) Jan Secor, Erica Thomas, Andrew McPherson, Pamela Trafton, Margie Bell DREI for Agent's Choice School of Real Estate, Parker Dunahay, Lori Degre for Sandhills Community College; (l. to. r. standing) Jack Marinello DREI, Stephen Lawson, Christopher Barnette, Allan Nanney, Jr., Travis Everette, Arthur Poling, Scott Greeson, Oscar Agurs DREI, James Weese (instructor and for Pitt Community College). Instructors not present were Tiffany Stiles, Melea Lemon, Judith Elliott, Roy Faron, and Pamela Vesper; schools not represented were Central Carolina Community College; Pitt Community College; and American Properties Real Estate School.*

*Despite inclement weather, the Commission's annual spring Educators Conference attracted 180 instructors, school officials and publishers' representatives.*

**Follow us on**

RENEW
YOUR REAL ESTATE LICENSE
ONLINE NOW!

License renewal period begins May 15 and ends June 30.

# Septic Permits – A Refresher

*By Jean Wolinski-Hobbs, Auditor-Investigator*

The Real Estate Commission continues to receive complaints related to misrepresentations concerning bedrooms and septic permit disclosure despite the issue's coverage in *Update* courses and *Bulletin* articles. Brokers can be disciplined for making a willful or negligent misrepresentation, whether in listing advertisements or other representations.

This article reviews four types of septic systems: municipal, community, on-site, or the combination of on-site septic and municipal, and outlines considerations for brokers when preparing advertisements or disclosures.

• **Municipal Water or Septic System -** A broker should accurately determine whether a property is connected to municipal water or is serviced by a septic system. Brokers in municipalities should not assume that septic issues are limited to rural homes; there are many older neighborhoods in cities where a homeowner may not have connected to the municipal system when given the opportunity.

If a property is in an older neighborhood or if there are red flags such as a depression in the yard, or stones marking a tank and the seller indicates that the home is served by the municipal system, a broker should verify that information. Even if a property is connected to a municipal system, the homeowner is typically responsible for the sewer line running from the street to the property. Damage to this line from tree roots or otherwise is not usually covered by homeowners insurance. Verification of municipal connection can be obtained from either the city or county, depending on the property location. If the property is serviced fully by the municipality, the broker's investigation will be complete.

• **Community and Combination Systems -** There may be a combination system, where the house's septic system is connected to a municipal system but water is not. Most owners know if they are connected to a community system that is regulated by the state (Environmental Health Section, a division of the NC Department of Health and Human Services) in conjunction with the county health department that maintains permit information. Community system drain fields are typically owned by the community's homeowners' association (HOA). The drain field site may be material depending upon its location, and should be determined through the seller, HOA or the county health department.

Combination systems with municipal system connection may no longer have a permit on file. Brokers should be aware that city or county responsibility ends where the septic system connects to the municipal system. Issues with a pump connected to the septic tank, root damage to pipes in the yard or any other problem that occurs on the owner's land will be left to the homeowner, potentially at considerable cost.

• **On-Site Septic Systems -** If a broker learns that a property has an on-site septic system, a call to the county health department should normally provide the broker with the requisite septic permit information. Permits set a capacity (generally, two people per bedroom) which cannot be exceeded in the design parameter. Brokers should be aware that a permit may state other limitations such as prohibiting the use of a dishwasher or garbage disposal.

A broker should be careful not to advertise a property as having more bedrooms than the number permitted by the septic system permit. Although state law requires that on-site septic permits be maintained until they are no longer in use, there are a few counties where the records were not kept initially.

Issues in locating records can arise when the original septic permits recorded under the original builder or owner's name and that information is unknown. In those instances, given the difficulty of verifying the permitted number of bedrooms, a broker should research tax records. If the property appears to have four bedrooms but the tax records indicate three bedrooms, that could indicate a septic permit's limit. Ultimately, in cases when the permit cannot be located, brokers should disclose what they know: namely, that the property has an on-site septic system but the system permit was not located.

• **Advertising -** When a septic system permit is available and indicates a capacity of three bedrooms, the broker may only advertise the property as a three bedroom home. To knowingly advertise more bedrooms than permitted would be a willful misrepresentation.

One concern with misrepresenting a property as having more bedrooms than the system permits is that the system could be overused and eventually fail. The health department can then prohibit further use of the system in order to prevent possible contamination of groundwater and to protect public health. If the system is repairable, lower occupancy limits can be imposed.

The Commission regularly reviews cases where brokers knowingly advertise properties as having more bedrooms than the permit allows but try to qualify it. For example, a broker advertises that the property has six bedrooms but in the property remarks discloses that the septic permit allows only three bedrooms. Such advertising is still deceptive and encourages overuse of the system by suggesting allowable occupancy by more people than the septic system was designed to handle.

• **Complaints -** When a broker has misrepresented either the type or capacity of the system, the buyers frequently file complaints with the Commission and may pursue the broker in civil court for their losses. Buyers' complaints cite septic system failures or discovery that their property is not usable as they intended, meaning certain improvements such as in-ground pools or building additions, are prohibited. Frequently, when a buyer attempts to resell the property, a new listing agent discovers the inaccuracy and the original three-bedroom home is now being advertised as a two-bedroom home. Thus, the owner may

*(See* **Septic**, *page 7)*

# 'I couldn't get a loan AND I'm not getting my earnest money back???'

***By Elizabeth W. Penney, Information Officer***

Earnest money is an important part of nearly all residential real estate contracts and not something that buyers like to lose. Many brokers do not understand or thoroughly explain to their buyer clients why earnest money may not be returned to a buyer if the buyer cannot obtain loan approval and thus cannot close.

Commonly, a buyer will agree on the Offer to Purchase and Contract standard form to a "*due diligence period*" within which to secure financing, conduct inspections of the property to be purchased, and inquire about any other matters important to the buyer. Within that period, established in the contract with the seller usually by a negotiated payment of a due diligence fee, the buyer may for any reason or no reason terminate by giving written notice of termination prior to the period's expiration.

**Offer to Purchase and Contract Standard Form**
**Section 1, Paragraphs h, i, j**

(h) "Due Diligence": Buyer's opportunity during the Due Diligence Period to investigate the Property and the transaction contemplated by this Contract, including but not necessarily limited to the matters described in Paragraph 4 below, to decide whether Buyer, in Buyer's sole discretion, will proceed with or terminate the transaction.

(i) "Due Diligence Fee": A negotiated amount, if any, paid by Buyer to Seller with this Contract for Buyer's right to conduct Due Diligence during the Due Diligence Period. It shall be the property of Seller upon the Effective Date and shall be a credit to Buyer at Closing. The Due Diligence Fee shall be non-refundable except in the event of a material breach of this Contract by Seller, or if this Contract is terminated under Paragraph 8(I) or Paragraph 12, or as otherwise provided in any addendum hereto. Buyer and Seller each expressly waive any right that they may have to deny the right to conduct Due Diligence or to assert any defense as to the enforceability of this Contract based on the absence or alleged insufficiency of any Due Diligence Fee, it being the intent of the parties to create a legally binding contract for the purchase and sale of the Property without regard to the existence or amount of any Due Diligence Fee.

(j) "Due Diligence Period": The period beginning on the Effective Date and extending through 5:00 p.m. on_____ _____TIME BEING OF THE ESSENCE with regard to said date.

The "*due diligence period*" replaced a financing contingency in the Offer to Purchase and Contract form (developed by the North Carolina Association of REALTORS© and the North Carolina Bar Association) when it was revised in 2011. Brokers familiar with the older form may overlook or forget this change which, in effect, removed the ability to obtain financing as a contingency; instead, the buyer's contingency became the period of time within which to inquire about the property and obtain financing. That period should be of sufficient length to enable completion of the buyer's inquiries. If additional time is needed, it must be negotiated with the seller. Otherwise, the "*due diligence period*" expires without the buyer having terminated and the buyer is then unable to close, the contract provides that earnest money paid by the buyer belongs to the seller.

Under the standard form the buyer pays a fee in order to have a due diligence period. Termination before the end of the due diligence period will yield return of earnest money, but not the due diligence fee. During the due diligence period, the buyer should take the necessary steps to feel confident that their loan is going to be approved. A prequalification letter is not a loan guarantee, and buyers should be advised of the risk of moving forward after the due diligence period ends.

Ideally, buyer should consult with their lender prior to signing the offer and the buyer and broker should be confident that the due diligence period provided will allow sufficient time. The buyer's lender should provide feedback so that the buyer is comfortable in deciding whether to terminate or proceed with the transaction. The standard form contract clearly states the loan is not a condition of the contract.

Moving forward after due diligence implies that the buyer is confident that the loan will be funded and puts the earnest money at risk if the buyer later terminates. Brokers must explain to their buyer clients about the due diligence process and the buyer's risk if they continue past due diligence.

## Septic

*(Continued from page 6)*

have a lower property value and difficulty attracting potential buyers. Resolution of these problems may be possible by expanding system capacity (assuming enough room) or connecting to a municipal system (if available and possible), but at a cost the buyer did not anticipate when purchasing the property. However, all too often, there is no way to fix the problem because access to a municipal system may not be possible or there may not be enough room for an expansion.

Brokers should take reasonable steps to ensure that they are discovering and disclosing the correct sewage system utilized by any home they are listing. If the home is connected to an on-site septic system, then the property should be represented as having the amount of bedrooms as indicated on the permit. Buyer's agents should be alert to any red flags and perform their own due diligence if there are concerns about the representations.

## No-Pet Policies

*(Continued from page 1)*

that protect the rights of a person with a disability: the Fair Housing Amendments Act (FHAA) and the Americans with Disabilities Act (ADA). This article will provide guidance on how a broker should proceed when attempting to determine whether or not an exception to a no-pet policy must be made for a person with a disability.

**FHAA Applicable Law**

When it comes to making an exemption to a no-pet policy for a rental unit, be it an apartment, condominium, or house, the FHAA will be the applicable law in almost every case. The FHAA makes it illegal to discriminate against a person with a disability by refusing to make reasonable accommodations in rules, policies, practices, or services when it may be necessary to afford an equal opportunity to use and enjoy a dwelling. Making an exception to a no-pets policy for an Assistance Animal as defined in the Act has been held to be a reasonable accommodation, and "dwelling" has been very broadly defined and includes most types of housing, with a few very limited exceptions.

So when Jasper's owner makes her request, you must consider two threshold questions before deciding whether or not you are required under the FHAA to make an exception to the no-pets policy: 1) does the woman have a disability? and 2) does the woman have a need related to her disability for the animal? If the answer to either of those questions is no, then you are not required to make an exception to the no-pets policy. But if the answer to both of those questions is yes, then you and the landlord/owner are required to make an exception to the no-pets policy.

Much of the misunderstanding about the FHAA and the ADA arises from the fact that animals are considered differently under each. The FHAA requires reasonable accommodations for an "Assistance Animal." An Assistance Animal is an animal that provides assistance, performs tasks, or provides emotional support that alleviates symptoms or effects of a person's disability. To qualify as an Assistance Animal, there is no need for the animal to have any specialized training, which may come as a surprise to many brokers and landlords. It may also come as a surprise to some to learn that, under the FHAA, there is no restriction on the type of animal that

can be considered an Assistance Animal. A person could have an emotional support dog, cat, or in theory even a kangaroo.

**Ask Potential Renter**

But what exactly can you ask the potential renter? If the person's disability is readily apparent and it is clear what function the Assistance Animal is providing, you may not ask for any more details and you should accommodate the request as your no-pets policy doesn't apply. For instance, if the person appears to be blind and the Assistance Animal is a seeing-eye dog, you must allow the dog, no questions asked.

If the person's disability is not readily apparent and the need for the Assistance Animal is not clear, you may ask the person to submit reliable documentation showing that they have a disability and that they have a disability-related need for the assistance animal. So, back to Jasper and her owner, since the woman has no apparent disability and it is not clear what assistance Jasper is providing, it would be acceptable to ask her to provide a letter from a medical professional stating that she has a disability and Jasper alleviates one or more of the effects of the disability. But you may not ask for details about the person's disability, including what the disability is, nor require the person to provide detailed medical records. A note from a medical professional is all you should ask for. Likewise, if the disability is apparent, but the need for the Assistance Animal is not, you may ask for documentation showing the need for the Assistance Animal. But, again, you may not ask for details regarding the disability. You also may not ask how or if the Assistance Animal has been specially trained because no special training is needed for an animal to qualify as an Assistance Animal.

Therefore, if the woman provides you the requested letter, you will be required to make an exception to the no-pet policy, unless doing so somehow poses an undue financial or administrative burden (not likely), the animal poses a direct threat to the safety and health of others (possibily if it's a kangaroo), or the animal would cause substantial physical damage to the property. And, because under the FHAA Assistance Animals are not considered pets, you may not charge the woman a pet fee or deposit. But keep in mind that you may still charge the woman at the end of the tenancy for any actual damage caused by Jasper.

**ADA Protection**

So how does the ADA factor in? The ADA protects a person with a disability from discrimination in places of public accommodation. The office of a property management firm is a place of public accommodation, as are hotels, restaurants, stadiums, professional offices, gas stations, etc. An individual rental unit is not. Therefore, the ADA standards will apply to your decision whether or not to allow Jasper to be present in your rental office, but not when considering the woman's request for reasonable accommodation for a rental unit.

When the woman brings Jasper into your office, you may only consider two questions: 1) is Jasper a Service Animal that is required because of a disability? and 2) what work tasks has Jasper been trained to do? If the answer to either of those questions is no, then Jasper may be excluded. But if the answer to both

of those questions is yes, then you are required to allow Jasper in the office.

Determining whether or not Jasper is a Service Animal is a little easier under the ADA. Unlike the expansive definition of an Assistance Animal in the FHAA, a "Service Animal" under the ADA may only be a dog and, in limited circumstances, a miniature horse, that is individually trained to perform specific tasks for the benefit of a person with a disability; the most common example being a seeing-eye dog. Many brokers are more familiar with the ADA's more restrictive requirements and mistakenly believe that the FHAA has the same standard. That is not the case. Jasper, being a cat, will not qualify as a Service Animal under the ADA and you would be within your rights to ask the woman to take Jasper back outside.

But let's assume for a minute that Jasper is a dog. If it is readily apparent that a dog is trained to do work or perform tasks for a person with an obvious disability, you may not ask about the person's disability or the dog's training. As in the FHAA example, if the person appears to be blind and the Service Animal is a seeing-eye dog, you must allow the dog to enter the office, no questions asked.

However, if it is not readily apparent that the dog is a Service Animal, the questions you may ask the person are much more limited than those allowed under the FHAA. You may ask if a dog is required because of the disability. A simple "yes" answer is sufficient; you may not ask for detailed information, not even the nature of the disability. You may also ask what the dog has been trained to do. The person should provide you with a description of what service the dog provides; however, you may not require the person to prove to you that the dog is registered, certified, trained, or licensed to be a Service Animal. If the person tells you that they need the dog because of a disability, and explains what the dog is trained to do, the dog may not be denied access to the facility unless it is out of control, not housebroken, or poses a direct threat to the health and safety of others.

The FHAA and the ADA are both laws protecting the rights of persons with disabilities. But knowing when and where each law applies can be tricky. Keep in mind the FHAA – the Fair Housing Amendments Act – applies to housing units and the ADA applies to anywhere the public can go. To protect yourself and the owners of any properties that you manage, always limit yourself to asking the questions permitted by each law. The FHAA allows you to ask: 1) Does the person have a disability? and 2) Does the animal provide assistance or support related to the disability? The ADA allows you to ask: 1) Is the animal a Service Animal required because of a disability? and 2) What work or tasks has the animal been trained to perform? And, under either law, if the person is able to answer both of those questions you are required to make an exception and allow an animal, even if you have an established no-pets policy.

RENEW
YOUR REAL ESTATE LICENSE
ONLINE NOW!
License renewal period begins May 15 and ends June 30.

## Renewals

*(Continued from page 1)*

used exclusively for communication from the Commission to you; or (2) PUBLIC, meaning it will be provided upon request to the public, including CE course sponsors and others. You may provide both a private and/or public email address upon logging into your record.

All broker license records are updated on July 1 to reflect license status as of that date. The Commission's website will be unavailable on July 1 and 2, due to the annual records maintenance process.

If your renewal fee has not been received by the Commission by June 30, your license will EXPIRE. To reinstate an expired license, you must pay a $55 fee between July 1 and December 31. Failure to reinstate the former license by December 31 will result in your having to file a new application and fee, and obtain a criminal background report. You will also be required to take additional education and/or pass the state license examination. Refer to the "Reinstate your License" page on the Commission's website *(www.ncrec.gov)* for detailed information regarding the reinstatement process.

Be sure to renew your license even if you do not complete your continuing education by June 10. By doing so, your license will only be changed to Inactive status on July 1, rather than Expired.

Brokers-in-charge and BIC-eligible brokers must take the *BICUP* course and one elective by June 10. Failure to take the correct CE or timely renew the license will result in loss of BIC status and/or eligibility. A broker-in-charge who loses BIC status/eligibility must (1) return the license to active status; (2) meet the experience requirements for designation; (3) take the 12-hour *Broker-in-Charge Course* before re-designation; and (4) send the Commission the BIC Declaration Form. Do NOT take the 12-hour BIC Course before your license is on active status!

Brokers-in-charge are also responsible for ensuring that licensees under their supervision have renewed their licenses and completed all necessary education to maintain active and current licenses.

| Free Publications | Quantity |
|---|---|
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| Trato Con Agentes de Bienes Raíces (Working With Real Estate Agents) | _____ |
| Preguntas y Respuestas sobre: (Questions and Answers On:) | |
| Vivienda Justa (Fair Housing) | _____ |
| El Depósito de Seguridad del Inquilino (Tenant Security Deposits) | _____ |
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## How To Order:

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| North Carolina Real Estate License Law and Commission Rules ($4 per copy) | _____ | $ _____ |
| Real Estate Agent Safety Guide ($.25 per copy) | _____ | $ _____ |
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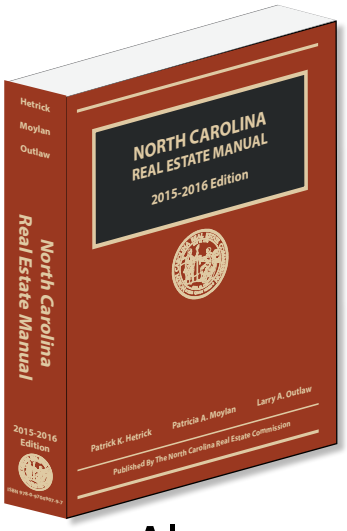


## 2015-2016 Edition

# 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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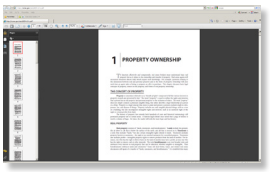


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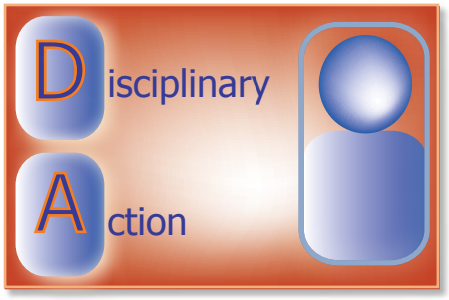


*Penalties for violations of the Real Estate License Law and Commission rules vary depending upon the particular facts and circumstances present in each case. Due to space limitations in the Bulletin, a complete description of such facts cannot be reported in the following Disciplinary Action summaries.*

ANITA T. AFIFY (Surf City) – By Consent, the Commission reprimanded Ms. Afify effective April 1, 2016. The Commission found that Ms. Afify is the qualifying broker and broker-in-charge of a licensed rental property management firm from which tenants reserved an oceanfront beach house; that Ms. Afify was notified that a shoreline proection project had been extended and would coincide with the tenants' rental period; that Ms. Afify failed to notify the tenants of the possibility that the project could affect their ability to directly access the beach from the rental until the day the rental period was to begin and, that in fact, the project prevented direct access to the beach during the rental period. The Commission noted that the tenants were offered full reimbursement for the cost of the rental period.

LINDA F. ALLISON (Belmont) – By Consent, the Commission reprimanded Ms. Allison effective March 31, 2016. The Commission found that Ms. Allison was the listing agent for a property that went under contract with buyers who had their own broker representation; that an inspection of the property was performed which suggested that the AC unit temperature differential was not within industry standards and the inspector suspected low refrigerant as the cause; that as a result, the buyers requested that the sellers have the AC system evaluated by a qualified HVAC technician and make any recommended repairs; that the sellers were not agreeable to paying for this evaluation or repairs, so Ms. Allison agreed to pay for this cost herself as a gift to her clients; that none of the contract documents referenced that Ms. Allison, rather than her seller clients, was going to be responsible for the AC system evaluation and repairs; that after the work was complete, the HVAC technician delivered an invoice to Ms. Allison who believed that the technician also added refrigerant to the system, based upon a prior conversation with him, so she wrote the words "added refrigerant" on the work order receipt before sending it to the buyer's agent; that the technician, however, did not add refrigerant to the AC system after checking it as he determined it was not needed, and did not authorize Ms. Allison to include that language on the invoice.

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

JAMES F. BLUE IV (Asheville) – By Consent, the Commission reprimanded Mr. Blue effective March 31, 2016. The Commission found that Mr. Blue, acting as the qualifying broker and broker-in-charge of a real estate brokerage firm, rented a property, built in 1928, to a tenant who had recently moved to North Carolina from out of the country; that during the lease period, the tenant had the property evaluated by a general contractor who found various issues, including exposed asbestos insulation in the basement; that Mr. Blue admitted to knowing about the insulation in the basement and suspecting it was asbestos, but stated that it had never been tested for confirmation; and that, nevertheless, Mr. Blue failed to disclose its presence to the tenant. The Commission notes that the tenant has reached a civil settlement with the landlord and Mr. Blue's insurance carrier.

ANN S. BRADSHAW (Gastonia) – By Consent, the Commission reprimanded Ms. Bradshaw effective April 1, 2016. The Commission found that Ms. Bradshaw advertised a residential property on the MLS as having four bedrooms when the septic permit only allowed up to two bedrooms.

DANIEL C. CALLAHAN (Charlotte) – By Consent, the Commission reprimanded Mr. Callahan effective March 31, 2016. The Commission found that Mr. Callahan, acting as a listing agent for a property, responded to an inquiry from the buyer's agent about the amount of the average monthly utility bill for the property by stating it was under $80; that after closing, it was discovered that the average monthly utility bill for the prior twelve months was actually over $200; that the buyer then replaced the unit; that Mr. Callahan failed to verify the average utility bill amount before conveying the information to the buyer's agent; and that the buyer received two monthly average utility bill amounts from the utility company prior to closing on two separate occasions in the amount of $190 and $90, respectively.

CONNIE L. DEJEET (Surf City) – By Consent, the Commission reprimanded Ms. Dejeet effective April 1, 2015. The Commission found that Ms. Dejeet was employed by a licensed rental property management firm from which tenants reserved an oceanfront beach house; that Ms. Dejeet was notified that a shoreline protection project had been extended and

*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.

Access the reporting form at www.ncrec.gov under "Forms" or call the Commission at 919-875-3700 for more information.

would coincide with the tenants' rental period; that Ms. Dejeet failed to notify the tenants of the possibility that the project could affect their ability to directly access the beach from the rental until the day the rental period was to begin; and, that in fact, the project prevented direct access to the beach during the rental period. The Commission noted that the tenants were offered full reimbursement for the cost of the rental period.

## Real Estate Education and Recovery Fund Reimburses Victims

At its February 18, 2016 meeting, the North Carolina Real Estate Commission approved payments totaling $10,260 out of the Real Estate Education and Recovery Fund to three applicants, two of whom suffered financial losses due to the misconduct of Michael K. Brooks and one of whom suffered losses due to the misconduct of Rebecca L. Niemchak, both former North Carolina real estate brokers.

By Consent, the Commission revoked the broker license of Michael K. Brooks effective March 19, 2014, and, following a hearing, ordered the permanent revocation of the broker license of Rebecca L. Niemchak effective October 24, 2014.

THOMAS G. DERHAM (Charlotte) – By Consent, the Commission suspended the broker license of Mr. Derham for a period of 12 months effective March 2, 2016. One month of the suspension was active with the remainder stayed for a probationary period ending March 2, 2017. The Commission found that Mr. Derham, acting as a leasing agent to secure a tenant for a commercial property, allowed a tenant to occupy the property beginning in August 2014, but did not procure a written lease until October 2014; that Mr. Derham failed to timely deliver or deposit in a trust or escrow account two separate $2,000 checks payable to the property owner; that the licensed real estate brokerage firm for which Mr. Derham is the Qualifying Broker was administratively dissolved on September 10, 2010; that Mr. Derham failed to notify the Commission of the administrative dissolution and continued to operate the firm until June 2015; that Mr. Derham lost his broker-in-charge eligibility on July 1, 2011 and failed to affiliate with a new broker-in-charge thereafter; and that Mr. Derham continued to practice real estate brokerage and operate the firm without a broker-in-charge.

ANGELA T. DOLE (Gastonia) – By Consent, the Commission reprimanded Ms. Dole effective April 1, 2016. The Commission found that Ms. Dole, acting as broker-in-charge of a real estate brokerage firm, failed to properly review prior to listing the advertisement of a residential property on an MLS, which was prepared by a licensed broker under Ms. Dole's supervision, and which advertised a property as having four bedrooms when, in fact, the septic permit allowed two bedrooms.

THOMAS E. DORAZIL (Charlotte) – By Consent, the Commission suspended the broker license of Mr. Dorazil for a period of 18 months effective February 18, 2016. The Commission then stayed the suspension for a period of 18 months on certain conditions including the immediate withdrawal of his approvals as an *Update Course* instructor and as a sponsor of continuing education courses. The Commission found that Mr. Dorazil taught a Commission-approved course to four students, but was not approved to teach the course at that time; that Mr. Dorazil failed to provide any course materials to the students, failed to obtain written approval by the Commission prior to conducting the course, failed to submit documentation regarding the advertising of a class that included less than five students, and failed to provide written notice to the Commission of the course offering more than 10 days in advance; and that Mr. Dorazil was later approved to instruct the course on May 28, 2015, but Mr. Dorazil then falsely reported to the Commission that the subject course was taught on June 2, 2015 instead of the actual date.

MICHAEL K. DRIVER (Greensboro) – By Consent, the Commission reprimanded Mr. Driver effective March 31, 2016. The Commission found that Mr. Driver acted as a buyer agent for a couple that was purchasing a new construction home and as the listing agent for the same couple in the sale of their current home; that the couple went under contract to purchase the new construction home on

*Continued*

## Brokers: Do Not Require Closing Attorneys to Disburse Commissions

In a sales transaction, the listing agreement determines the liability of the seller to pay a commission to the listing FIRM. The listing FIRM may be obligated to pay individual brokers or cooperating brokers through any agreements with an MLS or otherwise. Brokers should not attempt to require closing attorneys to make these disbursements for them, putting the closing attorney in jeopardy of paying an unlicensed person or firm, a provisional broker directly, or improperly dividing a fee due to incomplete or inaccurate information.

## 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. 112, or 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.

March 20, 2015, but did not sign a buyer agency agreement with Mr. Driver for representation until April 5, 2015; that the buyer agency agreement did not contain an expiration date; and that the acknowledgement form he received from the buyer couple following thereview of the Working With Real Estate Agents brochure with them was dated April 5, 2015, well after first substantial contact was made.

HOLLY BROOKS EVANS (Charlotte) – By Consent, the Commission revoked the broker license of Ms. Evans effective April 1, 2016. The Commission found that Ms. Evans attended an appointment to show a home alone and, during the appointment, took prescription drugs belonging to the homeowner; and that Ms. Evans, acting as the buyer agent in a residential sales transaction, delivered keys to the property to her buyer-client prior to closing, the time agreed upon for the keys' delivery.

TINA LYNN HANSON (Kannapolis) – The Commission accepted the voluntary surrender of the broker license of Ms. Hanson for a period of one year effective March 2, 2016. The Commission dismissed without prejudice allegations that Ms. Hanson violated provisions of the Real Estate License Law and Commission rules. Ms. Hanson neither admitted nor denied misconduct.

WILLIAM EASTON HORNER (Holly Springs) – By Consent, the Commission reprimanded Mr. Horner effective March 2, 2016. The Commission found that Mr. Horner, acting as listing agent for two adjacent, separately owned properties received an offer from a potential buyer for both properties; that seller A countered the buyer's offer while seller B, at Mr. Horner's suggestion, did not counter the buyer's offer but instead offered seller financing and solicited a new offer from the buyer; that the buyer and seller A entered into a contract; that Mr. Horner communicated seller B's offer of financing to the buyer, but the buyer was not interested and did not make any other offer for seller B's property; and that Mr. Horner failed to communicate with seller B concerning the buyer's failure to make another offer for seller B's property, believing that to do so would adversely affect the sale of seller A's property.

INVESTORS DREAM REALTY LLC (Kannapolis) – The Commission accepted the voluntary surrender of the firm license of Investors Dream Realty for a period of one year effective March 2, 2016. The Commission dismissed without prejudice allegations that Investors Dream Realty violated provisions of the Real Estate License Law and Commission rules. Investors Dream Realty neither admitted nor denied misconduct.

J D JACKSON ASSOCIATES INC. (Asheville) – By Consent, the Commission reprimanded J D Jackson Associates effective March 31, 2016. The Commission found that J D Jackson Associates, a real estate brokerage firm, rented a property, built in 1928, to a tenant who had recently moved to North Carolina from out of the country; that during the lease period, the tenant had a general contractor evaluate the property who found various issues, including exposed asbestos insulation in the basement; that J D Jackson Associates, through its broker, admitted to knowing about the insulation in the basement and suspecting it was asbestos, but stated that it had never been tested for confirmation; and that, nevertheless, J D Jackson Associates, through its broker, failed to disclose its presence to the tenant. The Commission notes that the tenant has reached a civil settlement with the landlord and J D Jackson Associate's insurance carrier.

CORIN MARIE KELLY (Fayetteville) – By Consent, the Commission revoked the broker license of Ms. Kelly March 16, 2016. The Commission found that Ms. Kelly acted as the buyer agent in the sale of real property with an underground fuel storage tank as indicated by a home inspection report and failed to educate her buyers about the risks of purchasing property with an underground fuel tank; that Ms. Kelly also failed to suggest that the buyer request removal of the underground fuel storage tank or recommend that the buyers have the surrounding soil tested for fuel contamination; that the buyers

*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 website.**

**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.**

discovered that the underground storage tank had leaked fuel and contaminated the surrounding soil, which required the removal of the tank and remediation of the contaminated soil; that during an investigation of this matter, Ms. Kelly received, but failed to respond to a Letter of Inquiry sent by Commission staff.

STEVEN A. LAROQUE (Kinston) – The Commission accepted the voluntary surrender of the broker license of Mr. LaRoque for a period of three years effective February 18, 2016. The Commission dismissed without prejudice allegations that Mr. LaRoque violated provisions of the Real Estate License Law and Commission rules. Mr. LaRoque neither admitted nor denied misconduct.

MEA PROPERTIES INC. (Surf City) – By Consent, the Commission reprimanded Mea Properties effective April 1, 2016. The Commission found that Mea Properties is a licensed rental property management firm from which tenants reserved an oceanfront beach house; that Mea Properties was notified that a shoreline protection project had been extended and would coincide with the tenants' rental period; that Mea Properties failed to notify the tenants of the possibility that the project could affect their ability to directly access the beach from the rental until the day the rental period was to begin and, that in fact, the project prevented direct access to the beach during the rental period. The Commission noted that the tenants were offered full reimbursement for the cost of the rental period.

HOWARD JOSE MORGAN (Greensboro) – By Consent, the Commission suspended the broker license of Mr. Morgan for a period of 18 months effective April 15, 2016. The Commission then stayed the suspension on certain conditions. The Commission found that Mr. Morgan was affiliated with a real estate brokerage firm, worked under a broker-in-charge, and managed the firm's two trust accounts; that a review of the firm's trust accounts found that one account was not designated trust or escrow; that Mr. Morgan did not keep any accounting records including journals, ledgers, trial balances, or bank reconciliations; that Mr. Morgan used money from the trust account to make personal expenditures in lieu of deducting a management fee; that two checks bounced indicating a shortage in one account; that deposit slips did not identify the purpose and remitter of the funds deposited; that Mr. Morgan failed to remit rent proceeds to the landlord within a reasonable time; and that Mr. Morgan could not produce a copy of all property management agreements and leases. The Commission notes that the firm has closed down and all monies have been accounted for and sent to the respective owners and/or new property management firms.

WINOKA S. MORGAN (Greensboro) – By Consent, the Commission suspended the broker license of Ms. Morgan for a period of six months effective April 15, 2016. The Commission then stayed the suspension on certain conditions. The Commission found that Ms. Morgan was the broker-in-charge of a real estate brokerage firm which engaged in property management; that Ms. Morgan supervised a licensed broker who was affiliated with the firm and who managed the firm's two trust accounts; that a review of the firm's trust accounts found that one account was not designated trust or escrow; that Ms. Morgan did not keep any accounting records including journals, ledgers, trial balances, or bank reconciliations; that the broker used money from the trust account to make personal expenditures in lieu of deducting a management fee; that two checks bounced indicating a shortage in one account; that deposit slips did not identify the purpose and remitter of the funds deposited; that the broker failed to remit rent proceeds to the landlord within a reasonable time; that Ms. Morgan could not produce a copy of all property management agreements and leases; and that Ms. Morgan admitted to not checking the firm's bank statements or other accounting records and to not supervising the broker. The Commission notes that the firm has closed down and all monies have been accounted for and sent to the respective owners and/or new property management firms.

PHYLLIS C. STANLEY (Hickory) – By Consent, the Commission suspended the broker license of Ms. Stanley for a period of 12 months effective March 1, 2016. One month of the suspension was active with the remainder stayed for a probationary period ending March 1, 2017.The Commission found that Ms. Stanley was assigned

*Continued*

## Closing Lawyers Should Not Disburse Proceeds Without Written Authorization

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 sent 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 came from an address that looked like the broker's. The lawyer wired the seller's proceeds to the criminals' account. By the time the lawyer learned of this crime, the criminals had 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." Logon to your record at *www.ncrec.gov* and provide your phone numbers!

Broker Login

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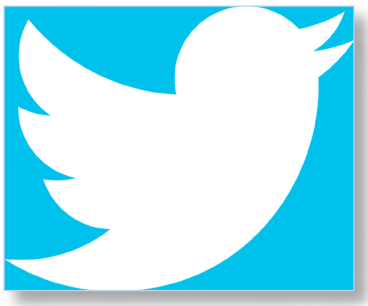
a listing for a foreclosed property on July 2, 2015 for a list price of $85,500; that the listing contract stated that Ms. Stanley was to enter the listing within one business day on the Multiple Listing Service ("MLS"); that Ms. Stanley acted as a dual agent for a buyer that submitted an offer for the property on July 16, 2015; that Ms. Stanley did not place the property on the MLS until July 31, 2015 and the property went under contract that same day with her client; and that the asset manager for the property did not authorize the listing to be delayed on the MLS.

TD PROPERTY GROUP LLC (Charlotte) – The Commission accepted the voluntary surrender of the firm license of TD Property Group for a period of one year effective March 2, 2016. The Commission dismissed without prejudice allegations that TD Property Group violated provisions of the Real Estate License Law and Commission rules. TD Property Group neither admitted nor denied misconduct.

GERALD W. WITHERSPOON (Rockingham) - Following a hearing on January 14, 2016, the Commission reprimanded Mr. Witherspoon effective February 10, 2016. The Commission found that in July 2013, Mr. Witherspoon acted as a listing agent for a vacant land property and failed to accurately disclose the status of two wells located on the property.

NATHAN SHANE WOLF (Charlotte) – Following a hearing, the Commission permanently revoked the broker license of Mr. Wolf effective January 21, 2016. The Commission found that Mr. Wolf was indicted in United States District Court and, after a jury trial, convicted on charges of Racketeering Conspiracy, Mortgage Fraud Scheme and Aiding and Abetting, and Money Laundering Conspiracy and sentenced to 84 months in federal prison.



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