



Educators Conference February 15-16, 2016

The 2016 Spring Educators Conference will be held at the Embassy Suites, Raleigh-Durham/ResearchTriangle (exit 287 at Harrison Oaks Blvd.), February 15-16, 2016. Information about online registration is to be available on the Commission's website.

Commission-approved real estate instructors, school directors, and continuing education sponsors are encouraged to reserve these dates and plan to attend!

Robert Ramseur Reappointed

Governor Pat McCrory has reappointed Robert J. "Bob" Ramseur of Raleigh as a public member of the Commission for a three-year term beginning August 1, 2015.

Rule Changes

Rule changes effective July 1, 2015 are published on the Commission's website, www.ncrec.gov.

In Memoriam

Raymond A. "Buddy" Bass, Jr., of Fayetteville, Chairman of the Commission in 1995 and 2006, and a member from 1993 to 2007.

Larry A. Outlaw, Commission Director of Education and Licensing, from 1979 to 2014.

Commission Elects Cindy Chandler Chair and George Bell, Vice Chair

Cindy S. Chandler of Charlotte has been elected Chair and George Bell of Winston-Salem, Vice Chair, of the North Carolina Real Estate Commission for the term beginning August 1, 2015, it was announced by Miriam J. Baer, Executive Director.

Chandler, owner of The Chandler Group, a commercial real estate consulting and training firm, has been in real estate for more than 30 years in the areas of investment real estate, syndication, strategic planning, management, marketing and education.

She is a 2011 recipient of the Billie J. Mercer Excellence in Education Award of the Real Estate Commission and is the author of *The Insider's Guide to Commercial Real Estate*, published by Dearborn/Kaplan Publishing.



Chandler



Bell

A past regional vice president of the National Association of REALTORS®, Chandler was also Chair of the Mecklenburg County Zoning Board of Adjustment and Charlotte Chapter President. (See **Commission**, page 4)

New TILA-RESPA Integrated Disclosure Rules Effective October 3, 2015

By Glenn M. Wylie, Consumer Protection Officer

(Summarized from 2015-16 GenUP/ BICUP materials)

Major changes are coming October 3, 2015 to the disclosure and settlement forms used in most residential loan transactions. The former Good Faith Estimate will be replaced by the Loan Estimate and two Closing Disclosure forms, one for the buyer and one for the seller, will replace the HUD-1 settlement statement. The timing of the delivery of these forms/disclosures will also be strictly defined and mandated. While a broker's responsibilities regarding these matters will not change, it is important that residential brokers are informed regarding these new forms and requirements.

The new TILA-RESPA integrated disclosure rules (TRID rules) were required by the Dodd-Frank Act to eliminate duplicate forms lenders were required to provide under TILA and RESPA. The new inte-

grated disclosure forms, the Loan Estimate and the Closing Disclosures, must be used by lenders in transactions involving federally related mortgage loans governed by RESPA as well as loans for personal, family, or household purposes subject to the Truth in Lending Act (TILA). What triggers the new rules is receipt of a loan application on or after October 3, 2015 for a loan made by an institutional lender and/or to be sold in the secondary market that will be secured by a lien against real property owned by the borrower. Essentially, the new rules will affect most residential transactions involving a mortgage.

Beginning October 3rd, lenders must provide a Loan Estimate (or denial) to prospective borrowers within three (3) business days of loan application so long as the borrower has provided the lender the following information: 1) legal name, 2) (See **RESPA**, page 6)

NEW! 12-Hour Broker-in-Charge Online Course. See page 3.

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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Pat McCrory, Governor

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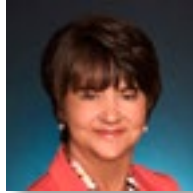
Editor

Robert L. Forshaw



People

Cindy S. Chandler, Chairman of the Real Estate Commission, has been named 2015 REALTOR® of the Year by the North Carolina Association of REALTORS®.



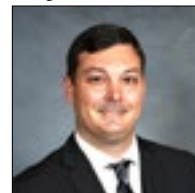
Miriam J. Baer, Executive Director of the Real Estate Commission, has been elected as President-Elect of the Association of Real Estate License Law Officials (ARELLO)®.



Tiffany Bryant has been employed as Licensing Specialist in the Education and Licensing Division. She previously served as an Information Specialist in the Administration Division for six years. She is a graduate of East Carolina University with a BS in Family and Consumer Sciences and Meredith College with a Certificate of Paralegal Studies.



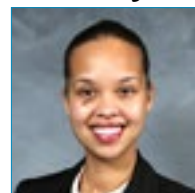
Joshua M. Oglesbee has been employed as an Application Programmer in the Administration Division. He is a graduate of Sandhills Community College with an Associates in Applied Science in Computer Programming. Prior to joining the Commission, he was a Reliability Specialist for Uniboard USA LLC.



Samantha M. Frances has been employed as Legal Assistant in the Regulatory Affairs Division. She is a graduate of Kent State University with a BA in Psychology.



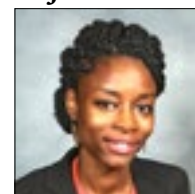
Debbie J. Slaughter has been employed as an Auditor/Investigator in the Regulatory Affairs Division. A graduate of UNC Greensboro with a BA in Spanish, she will receive a Post-Baccalaureate certificate in IT security, assurance, and privacy in the spring. Prior to joining the Commission, she was employed as a law enforcement officer.

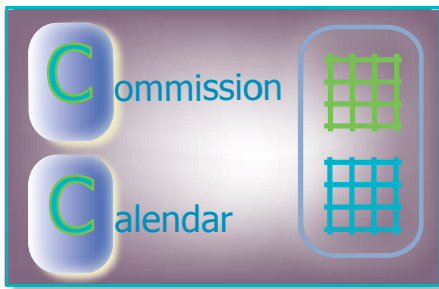


Dona C. Ocampo has been employed as a Legal Assistant in the Regulatory Affairs Division. She is a graduate of Western Carolina University with a BS in Broadcasting and a minor in Communications. Prior to joining the Commission, she was a District Sales Assistant with Grainger Industrial Supply.



Jamila G. Wilson-Davis has been employed as an Information Specialist in the Education and Licensing Division. Prior to joining the Commission she was a Benefits Examiner with the New York City Law Department. She holds an Associates Degree in Accounting from the Borough of Manhattan Community College and will earn a BS in Accounting from NC Wesleyan College in May 2016.





October 14
 November 18
 December 16
 January 13

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.

Appearances

Miriam J. Baer, Executive Director, spoke to the Property Management Division and the General Membership of the North Carolina Association of REALTORS®, to the Greensboro Regional REALTORS® Association, to the Outer Banks Association of REALTORS®, and to the Top Producers Council of the Raleigh Regional Association of REALTORS®.

Janet B. Thoren, Legal Counsel, Director, Regulatory Affairs Division, spoke to the General Membership of the North Carolina Association of REALTORS®.

Charlene D. Moody, Assistant Director, Regulatory Affairs, spoke to the High Point Regional Association of REALTORS®.

Fred A. Moreno, Deputy Legal Counsel, spoke to the Catawba Valley Association of REALTORS®.

Eric A. Mine, Associate Legal Counsel II, spoke to the Rose Realty Group in Mooresville.

Stephen L. Fussell, Senior Consumer Protection Officer, spoke to the Jacksonville Board of REALTORS® and to the Rutherford County Board of REALTORS®.

Corean E. Hamlin, Education and Licensing Officer, spoke to A Southern Land Title Agency at its offices in Moore and Wilson Counties and to the Board of the Roanoke Valley Lake Gaston Board of REALTORS®.

Glenn M. Wylie, Consumer Protection Officer, spoke to the Burlington-Alamance County REALTORS® Commercial Alliance and to the Raleigh Board of REALTORS®.

Peter B. Myers, Information Officer, spoke to Giving Tree Realty in Charlotte.

12-Hour BROKER-IN-CHARGE COURSE ONLINE INSTRUCTION ONLY

In addition to live classroom instruction, the Commission is offering the 12-Hour Broker-in-Charge Course in a live, synchronous, online environment. Licensees must have specified Internet and audio/video equipment capabilities to be eligible to take the online course. Read the equipment requirements and register for the course on the Commission's website.

Online Course dates

Wednesday/Thursday	October 21-22, 2015
Monday/Tuesday	November 9-10, 2015
Tuesday/Wednesday	December 8-9, 2015

Course Schedule (both days): 9 a.m. - 4 p.m.
 Lunch break (each day): Noon - 1 p.m.

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

(Two days) Day 1: 1 - 5 p.m.; Day 2: 8:30 a.m. - 5:30 p.m.

Asheville	Holiday Inn East/Blue Ridge Parkway	November 23-24
Concord	Hilton Garden Inn, Concord	October 12-13 November 16-17
Greensboro	Deep River Event Center	December 14-15
Raleigh	McKimmon Center	October 7-8 December 2-3
Wilmington	Best Western Coastline Center	October 27-28

Basic Trust Account Procedures (Commission Offices, Raleigh) (All classes 1 p.m.)

Raleigh	Commission Offices 1313 Navaho Drive, Raleigh	October 6 November 5 December 3 January 7
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See Commission website to confirm course dates.



Commission Awards Scholarship

The Commission awarded the Phillip T. Fisher Scholarship to Carol Perry of Kill Devil Hills at its June meeting. Perry was selected by the North Carolina chapter of the Council of Residential Specialists (CRS) for her achievement in CRS courses. Fisher is a former Executive Director of the Commission. Present for the award were, (l. to. r.) Leigh Brown, President of the CRS Board of Directors, Perry, Phillip T. Fisher, Commission Vice Chair (now Chair) Cindy S. Chandler and then Chair Thomas R. Lawing, Jr.

Schools and Instructors

Outstanding Examination Performance Records July 1, 2014 - June 30, 2015

The North Carolina Real Estate Commission monitors applicant performance on the license examination and regularly reports this information to schools and instructors. In particular, the Commission uses information about the performance of applicants who are taking the licensing examination for the first time in order to assure that quality instruction is being provided in prelicensing courses by schools and instructors. The most recent performance record for each school can be found on the Commission's website at <http://www.ncrec.gov/Pdfs/Schools/LicExamPerfRep.pdf>.

The overall examination performance (passing rate) for all first-time candidates taking the comprehensive real estate examination for the license year July 1, 2014 – June 30, 2015 was 60%. The Commission congratulates each of the following schools and instructors for achieving an outstanding examination performance record of 80% or higher during the most recent annual reporting period. The Commission recognizes that to have students perform at such a level on the license examination requires a combination of high quality instruction and high course completion standards.

■ School

■ Agent's Choice School of Real Estate, *Charlotte* ■ Central Carolina Community College, *Sanford* ■ Sandhills Community College, *Pinehurst* ■ Pitt Community College, *Greenville* ■ American Properties Real Estate School, *Jacksonville*.

■ Instructor

■ Travis Everette ■ Stephen Lawson ■ Jack Marinello ■ Andrew McPherson ■ Arthur Poling ■ Tiffany Stiles ■ Erica Thomas ■ Kathy Woodell ■ Melea Lemon ■ Parker Dunahay ■ Oscar Agurs ■ James Weese ■ Jan Secor ■ Christopher Barnett ■ Judith Elliott ■ Roy Faron ■ Scott Greeson ■ Allan Nanney, Jr. ■ Pamela Trafton ■ Pamela Vesper

Commission

(Continued from page 1)

dent of Commercial Real Estate Women (CREW).

Chandler is a past president of the North Carolina Association of REALTORS® and the North Carolina Real Estate Educators Association and a past Vice Chair of the Charlotte-Mecklenburg Planning Commission.

Bell is president of George Bell Productions, Ltd., a real estate education firm serving real estate brokers across North Carolina, and Qualifying Broker and Broker-In-Charge of the Bell First Group, a real estate brokerage firm. He is also a consultant to North Carolina real estate brokerage and law firms.

Bell entered the real estate business in 1978, following graduation from East Carolina University with a BS in Business Administration, with concentrations in real estate and banking.

Bell was the 2010 president of the Winston-Salem Regional Association of REALTORS® and its 2009 REALTOR® of the Year and was inducted into the North Carolina Association of REALTORS® Hall of Fame in 2014.

In 2012, he received the Billie J. Mercer Excellence in Education Award from the North Carolina Real Estate Commission and the Educator of the Year Award from the North Carolina Real Estate Educators Association (NCREEA). He is a past president of both the state and international Real Estate Educator Associations.

Broker Numbers

As of September 1, 2015, there are 91,752 brokers licensed by the Real Estate Commission in the following categories:

Active Brokers 57,819

(Active Provisional Brokers 5,684)

Inactive Brokers 23,287

(Inactive Provisional Brokers 4,235)

Firms 10,646

Brokers-in-Charge 15,870

Your Trust Account Software Should Be Compliant with Commission Rules

Software vendors may submit their trust account software products to the Real Estate Commission for review. Commission staff evaluates Trust Account Software for compliance with the North Carolina Real Estate Commission Rules, in particular, Commission Rule A .0117. In order to be deemed compliant, a vendor must demonstrate that the software will generate the reports required to be maintained by the Commission Rules. Those reports include:



- Trust Account Journal
- Supplemental Deposit Worksheet
- Supplemental Disbursement Worksheet
- Ledger
- Bank Reconciliation
- Ledger Trial Balance

The list of compliant Trust Account Software can be found on the Commission's website at www.ncrec.gov/resources/TrustAccount.

If a Broker-in-Charge (BIC) chooses not to use Trust Account software on the compliant list, it would be prudent for that BIC to verify that the Trust Account software generates the reports listed above. The BIC may also want to confirm that the software provides other utilities that the company needs to run the real estate business. The Commission doesn't evaluate the Trust Account soft-

ware's management utility beyond the requirements of the Commission's rules. For example, if your company is looking for Trust Account software to manage 100 long term rentals, can the software:

- Generate a report on the tenants delinquent on rent payments
- Prepare documents for summary ejections
- Create and track work orders for repair request
- Generate a report on properties available for rent, etc.

A big concern in choosing computer software is support. Are you going to be able to get support you need when you need it? You may want to call the Support phone number and/or send them an email before purchasing the software

CHOOSE YOUR TRUST ACCOUNT SOFTWARE FROM A COMMISSION LIST OR SUBMIT YOUR SOFTWARE PRODUCTS TO THE COMMISSION FOR COMPLIANCE REVIEW

and see what kind of response you get. Remember, too, that in order to function properly, any software must be kept updated. Brokers should plan on and budget for required updates of software systems.

Another major consideration in choosing Trust Account software is the installation of the software. Do you have existing records on a software program

that you would like to transfer to the new software? Can you transfer tenant and owner information to the new software? Will Support help you set up the initial Trust Account balances during the installation of the software? If the Trust Account balances are not set up properly during the installation process, then you are going to have problems reconciling the bank balance to the Trust Account Journal in the software and balancing the Ledgers to the Trust Account journal.

Software vendors are now trending toward web-based Trust Account applications. Web-based software is more expensive, but depending on the vendor, the software can do more for the company such as:

- Provide a website for marketing
- Online leasing applications
- Tenant screening
- Rent collection online
- Text messaging
- Emailing
- Owner and tenant portals
- Disburse owner payments and expenses online
- Store data on an off-site server

The Commission does not evaluate Trust Account software for any of these attributes. It is up to the user to decide whether or not to use web-based software. Be sure to discuss with the vendor the benefits and risks of using a web-based software.



New Videos

The Commission's Video Library has added six new videos covering:

- Real Estate Safety - common sense safety guidelines for brokers to follow
- Trust Account Reconciliation - how to reconcile trust account records to comply with Commission rules
- Broker-in-Charge Statement of Eligibility - how to maintain your broker-in-charge eligibility
- Complaints - how to file a complaint
- AMP Licensing Examinations for Brokers - everything you need to know about testing for a broker license
- Continuing Education Requirements - CE requirements in order to maintain a broker license

RESPA

(Continued from page 1)

statement of gross income, 3) Social Security Number, 4) property address, 5) estimate of property value, and 6) amount of mortgage loan requested. The lender may request other information, but may not require documentary support of the information prior to issuing a Loan Estimate.

Of greater importance to brokers are the new Closing Disclosures, one for the borrower/buyer and the other for the seller. The Closing Disclosure is a statement of final loan terms and closing costs.

TRID rules permit a settlement agent to provide the seller with a separate Closing Disclosure or with a copy of the Buyer/Borrowers' Closing Disclosure as long as it contains all of the seller's transaction information. If the settlement agent provides the seller with a separate Disclosure, then the settlement agent must also provide a copy of the Seller Closing Disclosure to the borrower's lender, but not to the borrower. While the buyer will not necessarily see the Seller's Closing Disclosure, the buyer will have a summary of the seller's side of the transaction on page 3 of the buyer's Closing Disclosure, as with the current HUD-1.

A broker's obligations concerning the accuracy of settlement statements have not substantially changed with the new forms; however, the information will be found in different locations. The Commission is aware that in some cases, brokers may not have access to the form for the other side of the transaction.

The change that may have the most significant impact is the requirement that the lender must ensure that the borrower receives the completed Borrower Closing Disclosure **three (3) business days prior to consummation** (defined as the point at which the borrower becomes obligated to the loan). If the Closing Disclosure is delivered to the borrower by any method other than personally, the lender generally must add **three more business days** for delivery, meaning that it must be sent not later than **six business days prior to settlement**. For Closing Disclosure purposes, "business day" includes Saturdays, excluding only Sundays and ten federal public holidays. If it is mailed or delivered electronically, the



Allan R. Dameron Legal Internship Award

Campbell University second-year law students Emily Massey and Joshua Stewart, both of Raleigh, are the recipients of Allan R. Dameron Legal Internship Awards. Then Commission Chairman Thomas R. Lawing, Jr., and Vice Chairman (now Chairman) Cindy S. Chandler presented the awards at the Commission's June meeting. The annual award is in memory of and tribute to former Commission Chairman Dameron for his dedicated service in protecting the interests of consumers.

borrower is considered to have received the Closing Disclosure three business days after it is delivered or placed in the mail. However, **if the lender has evidence that the borrower received the Closing Disclosure earlier than three business days after it is mailed or delivered, it may rely on that evidence and consider it to be received on that date.** For example, if the borrower has consented to receive the Disclosure by email and then acknowledges receipt of the Disclosure by email, the three-day clock starts from the date the borrower acknowledged receipt.

THE 3/6-DAY TIMELINE FOR ADVANCE DELIVERY OF THE BORROWER'S CLOSING DISCLOSURE IS MANDATORY AND GENERALLY CANNOT BE WAIVED. While it is the lender's responsibility to comply with these requirements, brokers must educate their clients and customers about these timelines. Other important facts to know:

1) The 3/6-day advance delivery applies only to the Borrower's Closing Disclosure. There is no rule requiring advance delivery of the Seller's Closing Disclosure. Delivery must be to the borrowers personally, not to a broker acting as a buyer agent.

2) The lender, not the settlement agent,

will decide whether to issue one or two separate Closing Disclosures and any other settlement statements. If the lender decides to issue two separate Closing Disclosures, a broker acting as a dual agent should only give each party that party's Disclosure.

3) Only three changes will require a new borrower Closing Disclosure and **a new three-day waiting period:**

- An increase in the APR,
- A change in the loan product, or
- The addition of a prepayment penalty.

For any other changes, the lender must still provide a corrected Closing Disclosure with the terms or costs that have changed and ensure that the consumer receives it. However, no additional three-business-day waiting period is required.

While this article has covered the important highlights of the new TRID rules, it is only a cursory treatment of the topic. TRID is a primary focus of the 2015-16 Update Course, both General and BICUP. Brokers involved in residential sales transactions are strongly urged to take the applicable Update Course as soon as possible to be informed and prepared for these significant changes in the residential mortgage loan process.

FHA Drops Anti-Flipping Waiver, 90-Day Rule Reinstated

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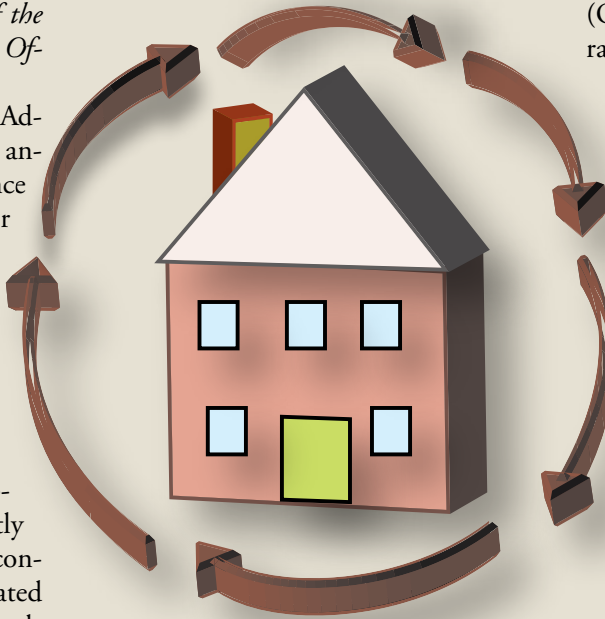
The U.S. Federal Housing Administration (FHA) has announced that, for the first time since 2010, it will not extend its waiver of the “anti-flipping rule”; which means that, effective December 31, 2014, federal regulations will prohibit the use of FHA-insured financing to purchase single family properties that are resold within 90 days of their previous acquisition.

The FHA defines “property flipping” as the practice in which recently acquired properties are resold for a considerable profit at an artificially inflated price, often as the result of a lender’s collusion with an appraiser [or other transaction participants, such as mortgage originators and real estate licensees.]

According to the FHA, most property flipping occurs within a matter of days after acquisition, and usually with only minor cosmetic improvements, if any, to the property.

In an effort to preclude the practice with respect to FHA-insured mortgages, HUD issued a final rule in May 2003 [24 CFR 203.37a] that prohibits the issuance of FHA insurance if the contract of purchase and sale for the property securing the mortgage is executed within 90 days of the prior acquisition by the seller.

Under the rule, re-sales occurring between 91 and 180 days and between 91 days and one year, from acquisition may be eligible for FHA insurance, subject to special valuation documentation requirements. Exemptions from the resale restrictions apply to HUD and other federal agency sales of real estate-owned (REO) properties, sales by approved nonprofit organizations, sales by state- and federally-chartered financial institutions and government-sponsored enterprises (GSEs), and sales of proper-



ties in designated federal disaster areas.

In 2010, the FHA waived the 90-day anti-flipping rule in order to encourage investors to renovate foreclosed and abandoned homes, help stabilize real estate prices and support communities with high foreclosure activity.

To qualify for the waiver, transactions had to be “arm’s length” (as de-

...MOST PROPERTY FLIPPING OCCURS WITHIN A MATTER OF DAYS AFTER ACQUISITION, AND USUALLY WITH ONLY MINOR COSMETIC IMPROVEMENTS, IF ANY, TO THE PROPERTY.

finied by the waiver rules) and if the sale price was more than 20 percent above the seller’s acquisition cost, the lender was required to take specific steps to document and justify the increase.

FHA’s waiver of the 90-day rule has been periodically extended through 2014, with strong support from industry groups such as the National Association of REALTORS®.

However, the Office of the Inspector General for the U.S. Department

of Housing and Urban development (OIG-HUD) recently issued a report raising concerns about HUD’s oversight of lender compliance with the waiver requirements. The OIG report estimated that the situation presented significant risk to the FHA Mutual Mortgage Insurance Fund (MMIF), which supports the insurance program. The OIG recommended that HUD either strengthen its oversight controls or discontinue the waiver at the end of 2014. FHA apparently has made its choice, announcing in early December that it will not extend the waiver beyond December 31, 2014.

In a November news release, RealtyTrac®, “the nation’s leading source for comprehensive housing data”, released its “Q3 2014 U.S. Home Flipping Report” showing that 26,947 U.S. single family homes were “flipped” (purchases followed by re-sales within 12 months) nationwide in the third quarter of 2014.

The statistic represents 4.0 percent of all U.S. single family home sales and is down from 4.6 percent in the second quarter of 2014 and 5.6 percent in the third quarter of 2013; the lowest level since the second quarter of 2009.

Follow us on



Subdivision Street Disclosure Issues

By Stephen L. Fussell, Senior Consumer Protection Officer

When listing and selling properties in residential subdivisions, especially newly developed subdivisions, brokers should check on the status of the streets (public vs. private). Brokers should not assume that all streets are public. All streets essentially begin as private streets and some eventually become public streets.

A public street is one that was constructed in compliance with state (North Carolina Department of Transportation - NCDOT) standards and then was transferred to the NCDOT - usually upon the sale of a certain number of dwellings along the street or in the subdivision, .

Upon acceptance of a street by the NCDOT, ownership and maintenance of the street will lie with the NCDOT. During the period between the construction of the street and the transfer of the street to the NCDOT, the developer and/or the lot owners are responsible for street maintenance. A street that is constructed to State standards, but falls into disrepair while waiting for the NCDOT to accept the street, may have to be repaired by the developer and/or residents before the NCDOT will accept it.

Private streets may or may not be constructed to state standards and the responsibility for maintaining them remains with the developer and/or the residents who live along the street. Per-

sons who live on private streets that were not constructed in compliance with State standards would be wise to have a written road maintenance agreement signed by all of the property owners on that street.

Pursuant to North Carolina General Statute § 136-102.6(f), developers are required to give lot purchasers a subdivision street disclosure statement. This requirement applies to the first sale of a lot. Brokers who list lots for developers should remind the developers of the requirement.

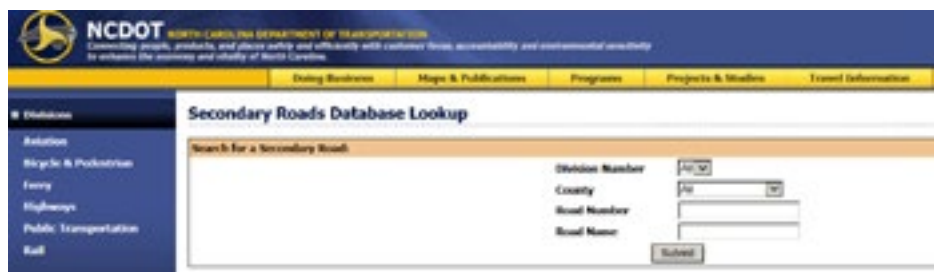
There is no standard preprinted form for making this disclosure. Brokers assisting buyers of lots from developers should request a copy of the disclosure statement from the developer. Brokers who list and/or sell homes in relatively new subdivisions should inquire about the status of the roads, because the roads may not have been transferred to the NCDOT and a buyer may bear some or all of the responsibility for road maintenance until this transfer occurs.

The high cost of maintaining and repairing streets makes the status of a street a material fact. Over the years, the Commission has dealt with a number of complaints, usually from buyers who learned after their closings that the streets in their subdivision were private and that they would share in the cost of maintaining and repairing the roads.

In a few cases, buyers learned shortly after their closings that the neighborhoods were preparing to issue assessments to obtain the money necessary to repair the streets. In one case, the buyer of an unimproved lot in a 20-year old subdivision learned that the streets in his section of the neighborhood were private. Two years later, the streets had fallen into such disrepair that public school buses and emergency vehicles were unable to travel the streets.

Astute brokers will add “Verify street status” to their regular transaction checklist and verify the status of streets in order to better protect their clients. To verify that a street has been accepted into the State system, you may visit either the NCDOT website, <https://apps.ncdot.gov/srlookup/>, and enter the necessary information or go to www.ncdot.gov/doh/divisions/, hover over each division on the state map to determine the correct division for the county in which a road is located, click on the correct division and select “Directory” to contact someone within that division to confirm that a street has been accepted into the state system.

Verifying that a street has or has not been accepted into the State system will better protect your clients as well as reduce the incidence of complaints and the likelihood of disciplinary actions against brokers.



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A recent enforcement action announced by the Consumer Financial Protection Bureau (CFPB) serves as a timely reminder of federal Real Estate Settlement Procedures Act

In its recent announcement, the CFPB said that Michigan-based Lighthouse Title will pay a \$200,000 civil monetary penalty for illegal "quid pro quo" agreements. The CFPB found that the company entered into MSAs with various companies, including real estate brokers, with the understanding that the companies would

ment, the company agreed to pay the civil penalty, but neither admitted nor denied the CFPB findings.

The CFPB's announcement and consent order do not specifically identify the MSA terms, or the services provided by real estate agents and/or others, that allegedly violated RESPA. However, the order notes that repeat-

Title Company Marketing Service Agreements Draw \$200,000 RESPA Penalty

(RESPA) provisions that govern the business relationships, and marketing services agreements in particular, between "settlement service providers" including real estate licensees.

Among those provisions, RESPA section 8(a) prohibits giving or accepting a "fee, kickback, or thing of value" pursuant to an agreement or understanding to refer business related to real estate settlement services for a federally-related mortgage loan [12 U.S.C. section 2607(a)]. Covered services include, but are not limited to, those provided by title companies attorneys, surveyors, appraisers, real estate agents/brokers, mortgage loan originators and others.

In the real estate industry, marketing services agreements (MSAs) are sometimes executed to create a business relationship in which a real estate brokerage agrees to market or promote the services of a title or mortgage company, for example, which pays a marketing fee to the brokerage. In general, such agreements are not necessarily unlawful. However, any "fee, kickback or thing of value" that is given or accepted for the referral of settlement service business violates RESPA and can have serious consequences; such as cases in which MSAs are used to circumvent RESPA through payments to real estate brokers that are disguised as advertising or marketing fees.



refer mortgage closing and title insurance business. According to the CFPB, the agreements made it appear that payments would be based on marketing services the companies would provide to Lighthouse. However, the CFPB said, "... Lighthouse actually set the fees it would pay under the MSAs, in part, by considering the number of referrals it received or expected to receive from each company." The CFPB also found that "The companies on average referred significantly more business to Lighthouse when they had MSAs than when they did not." Pursuant to a stipulated consent agree-

ed payments "connected in any way with the volume or value of the business referred" are evidence of a prohibited referral agreement. Also, "If the payment of a thing of value bears no reasonable relationship to the market value of the goods or services provided, then the excess is

not exempt." And, "A fair market value... is based only on the value of the goods or services in and of themselves and cannot include any consideration of the value of any referrals of [settlement service] business..." [citations omitted].

In addition to the civil penalty, the company must refrain from entering into future MSAs to provide any "thing of value" to any person who is in a position to refer RESPA-covered mortgage settlement service business, in exchange for advertising or endorsing the company's services; except mass advertising provided by a non-settlement service provider.



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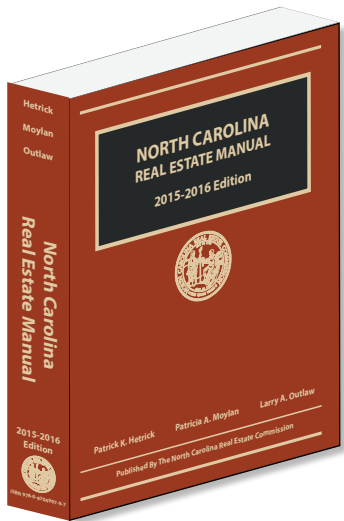
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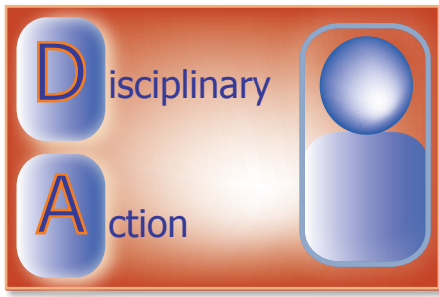
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Penalties for violations of the Real Estate License Law and Commission rules vary depending upon the particular facts and circumstances present in each case. Due to space limitations in the Bulletin, a complete description of such facts cannot be reported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

ROBERT L. BLUM (Holly Ridge) – By Consent, the Commission suspended the broker license of Mr. Blum for a period of six months effective April 1, 2015. The Commission found that Mr. Blum signed rental agreements but did not include his broker license number or the date of acceptance; performed property management duties without first obtaining management agreements; entered into an agreement with an unlicensed entity which advertised and booked rental reservations for the firm; that advertisements posted by the entity contained no contact information for Mr. Blum or the firm; that renters booking through the entity were required to accept rental agreements that did not comply with the North Carolina Vacation Rental Act; that Mr. Blum, while still a provisional broker, relocated approximately 160 miles from his affiliate firm and conducted brokerage activities outside of the supervision of a broker-in-charge; and that while his license was designated as inactive and Mr. Blum continued to practice real estate brokerage with the inactive license.

JOHN ELLIOTT BRADFORD (Charlotte) – By Consent, the Commission reprimanded Mr. Bradford effective July 1, 2015. The Commission found that Mr. Bradford, acting as the listing agent for a property, advertised the property on the local Multiple Listing Service which listed the total square feet of heated living area (“HLA”); that the property went under contract and sold as a cash sale, and the buyer renovated it and listed it for sale three months later; that the buyer’s listing agent then measured the property and determined that the actual HLA was much less than previously listed; that Mr. Bradford admitted to using the local tax data to estimate the square footage for the property and that he did not verify that data; and that Mr. Bradford could not provide copies of square footage calculations or measurements for the Commission regarding his current listings.

LARRY B. BRUNER (Terrell) – The Commission accepted the voluntary surrender of the broker license of Mr. Bruner for a period of two years effective May 20, 2015. The Commission dismissed without prejudice allegations that Mr. Bruner violated provisions of the Real Estate License Law and Commission rules. Mr. Bruner neither admitted nor denied misconduct.

ASHLEIGH DIANE BURR (Belmont) – By Consent, the Commission suspended the broker license of Ms. Burr for a period



of two years effective September 16, 2015. The Commission found that Ms. Burr was convicted of DWI level II on August 8, 2013 and received a seven-day jail sentence along with a 12-month supervised probation with conditions; that Ms. Burr failed to report this conviction within 60 days of judgment; that Ms. Burr was convicted of DWI level II on March 12, 2014 and received 30 days of in-house substance abuse treatment in lieu of a jail sentence along with an 18-month period of unsupervised probation; that Ms. Clark failed to report this conviction to the Commission within 60 days of the judgment; that Ms. Clark was convicted of DWI aggravated level I on October 21, 2014 and received a 120-days sentence along with a 36-month period of supervised probation; and that Ms.

Clark failed to report this conviction to the Commission within 60 days of judgment.

LORI ANN CARDEN (Clemmons) – By Consent, the Commission reprimanded Ms. Carden effective July 1, 2015. The Commission found that Ms. Carden, acting as listing agent for a property, was aware that in 2005, the owner hired a contractor to construct a two-story garage with an upstairs, accessory apartment and that in 2010, the primary residence on the property had been destroyed in a fire; that Ms. Carden was aware that after the destruction of the primary residence, the property owner had personally converted the garage portion of the two-story garage into a heated living space; that Ms. Carden advertised the two-story garage as a one-bedroom, single family home based on the property owner’s representation that he had obtained all of the required permits to do the conversion in 2010; and that Ms. Carden failed to confirm with County officials that all required permits had been obtained or that a certificate of occupancy had been issued for the garage, when, in fact, the property owner had failed to obtain all of the required permits or a certificate of occupancy when the first floor of the garage was converted to living space in 2010.

JANE FORD CLARK (Raleigh) – The Commission accepted the voluntary surrender of the broker license of Ms. Clark for a period of three years effective December 31, 2015. The Commission dismissed without prejudice allegations that Ms. Clark violated provisions of the Real Estate License Law and Commission rules. Ms. Clark neither admitted nor denied misconduct.

KEITH L. CLARK (Dillsboro) – By Consent, the Commission suspended the broker license of Mr. Clark for a period of 12 months effective September 3, 2015. The Commission then stayed the suspension for a period of

Continued

Licensees Must Report Convictions

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

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

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

12 months. The Commission found that Mr. Clark, acting as Broker-in-Charge and Qualifying Broker of a real estate brokerage firm, failed to maintain a journal or check stubs of its trust accounts, failed to maintain property ledgers, and failed to prepare trial balances for the accounts; that Mr. Clark admitted to discovering a \$5,000 shortage in its trust account that was later replenished to make up for the shortage; and that it does not appear to the Commission that any consumers were harmed. The Commission also found that the firm was administratively dissolved from November 2012 through April 2015 and Mr. Clark did not notify the Commission about the dissolution.

COUNTRY CLASSIC REAL ESTATE, INC., (Dillsboro) – By Consent, the Commission revoked the firm license of Country Classic Real Estate effective August 12, 2015. The Commission found that Country Classic Real Estate failed to maintain a journal or check stubs of its trust accounts, failed to maintain property ledgers, and failed to prepare trial balances for the accounts; that Country Classic Real Estate had a \$5,000 shortage in its trust account that was later replenished by the firm’s broker-in-charge to make up for the shortage; and that it does not appear to the Commission that any consumers were harmed. The Commission also found

that Country Classic Real Estate was administratively dissolved from November 2012 through April 2015 and did not notify the Commission about the dissolution.

THOMAS WILLIAM DEVOE (Cornelius) – By Consent, the Commission reprimanded Mr. Devoe effective September 1, 2015. The Commission found that Mr. Devoe failed to respond to three Commission staff Letters of Inquiry and one letter from the Commission’s legal counsel requesting a response within 14 days of receipt.

JENNIFER GREEN ELLIOTT (Waynesville) – Following a hearing, the Commission permanently revoked the broker license of Ms. Elliott effective June 8, 2015. The Commission found that Ms. Elliott, on various occasions, broke or entered into numerous homes and removed items of value including cash, jewelry, silverware, and medication; that Ms. Elliott misrepresented to a pawnshop that she was the rightful owner of items of jewelry and was entitled to dispose of them, when in fact she was not, in order to obtain cash payments from the pawnshop; and that on December 19, 2014, Ms. Elliott pleaded guilty to 29 felonies crimes involving theft, false pretenses, and larceny.

MATTHEW C. HAGLER (Charlotte) – By Consent, the Commission suspended the broker license of Mr. Hagler for a period of 12 months effective June 1, 2015. One month of the suspension was active with the remainder stayed for a period of probation from July 1, 2015 to June 30, 2016. The Commission found that Mr. Hagler was the agent for a seller of commercial property which went under contract while Mr. Hagler was affiliated with a licensed firm (hereinafter “Firm A”); that during the due diligence period Mr. Hagler left Firm A and joined another licensed firm (hereinafter “Firm B”); that the closing occurred while Mr. Hagler was with Firm B and that after closing, the buyer of the property claimed that a salvage list was not provided by a specified date according to the contract and would therefore not be honored; that the seller sent this list to Mr. Hagler two days prior to the contract deadline, and Mr. Hagler could not provide a copy of the email with the salvage list he claims he had sent to the buyer agent within the prescribed time period; that

neither Mr. Hagler, Firm A, nor Firm B could provide a copy of the transaction file; and that Mr. Hagler provided a copy of the Working With Real Estate Agents brochure that was given to his client seller the day before closing, but could not provide an agency agreement with the seller.

MARY D. HILLS (Young Harris, Georgia) – Following a hearing, the Commission ordered the permanent revocation of the broker license of Ms. Hills effective July 28, 2015. The Commission found in an audit of North Carolina licensees who are resident in and hold real estate licenses in another state, that Ms. Hills renewed her North Carolina broker license for the 2014-2015 license year by certifying that her Georgia broker license was active as required, when it was not; that Ms. Hill responded November 24, 2014 to a Commission Letter of Inquiry that her Georgia license had been put on inactive status by mistake and that she corrected this by providing the state of Georgia with proof of her residency; that the Commission verified her records through the Georgia Real Estate Commission and found that Ms. Hills’ broker license was on inactive status from November 1, 2013 through October 31, 2014; that Ms. Hills’ broker license had also lapsed for failure to renew on November 1, 2014 and its status had not been remedied as of the date of the hearing, June 18, 2015; that Ms. Hills did not respond to Letters of Inquiry on December 31, 2014 and January 28, 2015 within 14 days of each as required; and that Ms. Hills did respond in a voicemail on February 23, 2015 that she was in receipt of the letters and would not respond to any Letter of Inquiry and stated that the Commission should take action as it deemed appropriate.

JOHN J. HOROHOE (Charlotte) – By Consent, the Commission permanently revoked the broker license of Mr. Horohoe effective August 31, 2015. The Commission found that Mr. Horohoe scheduled a showing to view a property that was listed for sale; that when the owner of the property returned home early, she found Mr. Horohoe going through some of her personal belongings; and that the police were called and no charges were filed. The Commission notes that in addition to the improper conduct described

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. 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.

above, Mr. Horohoe failed to maintain client records for a period of three years from the conclusion of the transactions. The Commission noted that Mr. Horohoe has since allowed his license to expire and does not plan to engage in the real estate brokerage business in the future. Mr. Horohoe neither admitted nor denied misconduct.

HPS REAL ESTATE, INC. d/b/a PENNINK & HUFF PROPERTY MANAGEMENT (Fayetteville) – By Consent, the Commission suspended the firm license of HPS Real Estate for a period of 18 months effective May 11, 2015. The Commission then stayed the suspension for a probationary period of 18 months. The Commission found that HPS Real Estate was managing approximately 1200 rental properties, and receiving annual rents in excess of \$8 million; that a Commission audit of HPS Real Estate's trust account records and bank statements for a 12-year period revealed that several transactions were not handled in accordance with the Commission's trust account rules, including two checks that were received by HPS Real Estate, but not deposited into a trust account in a timely fashion, failure to escheat or otherwise disburse \$29,614.85 representing checks issued by HPS Real Estate but never cashed, and improper accounting for bank service charges resulting in relatively small deficits in the management company ledger; that, in addition, on two occasions, HPS Real Estate paid a "bonus" to an unlicensed employee who referred a property management client to its sales affiliate, when that referral resulted in a successful sales transaction. The Commission noted that the audit did not find any conversion of trust money to personal use

and that HPS Real Estate has agreed to put procedures in place to rectify and reconcile the items issued above and prevent them from happening in the future.

BRENDA ELAINE HUNTER (Jacksonville) – By Consent, the Commission withdrew Ms. Hunter's Prelicensing, Postlicensing, and Continuing Education Instructor Approval effective September 1, 2014, for a period of six months. The Commission found that Ms. Hunter's passage rate in the prelicensing course for first-time examination candidates for the North Carolina Real Estate License Examination was below 70% for two or more of the previous five annual reporting periods beginning in 2008 through 2013. Upon reinstatement, Ms. Hunter's Approval was placed on probation for 18 months on certain conditions. At its August meeting, the Commission granted Ms. Hunter additional time to meet certain requirements of the conditions placed upon her.

ANGELA B. MCKINNEY (Greensboro) – By Consent, the Commission reprimanded Ms. McKinney effective April 22, 2015. The Commission found that Ms. McKinney acted as broker-in-charge (BIC) of an unlicensed sole proprietorship which used outdated accounting software not approved by the Commission to maintain trust and rental accounts, both of which had overages; that no reconciliations had been performed, and no journals or records had been maintained; that before Ms. McKinney became BIC, the unlicensed owner of the company loaned more money to a landlord from the rental account than was actually collected, resulting in deficit spending; that Ms. McKinney and the unlicensed

owner agree that Ms. McKinney only acted at the direction of the company owner and attorney in paying the landlord less than they were owed in order to recoup funds owed on the loan. The Commission noted that the issues with the trust and rental accounts pre-dated Ms. McKinney's employment as BIC and that she has worked to remedy the violations.

ANNA H. MCMILLAN (Laurinburg) – By Consent, the Commission reprimanded Ms. McMillan effective September 1, 2015. The Commission found that Ms. McMillan, acting as qualifying broker and broker-in-charge of a real estate brokerage firm, failed to maintain the firm's trust account in accordance with Commission rules; that Ms. McMillan failed to keep rent monies received by the firm in a separate trust account; and that, as a result, all rent payments received were commingled with the firm's operating funds. The Commission noted that there was no evidence of a shortage of any trust monies.

RITA K. MCVICKER (Durham) – By Consent, the Commission revoked the broker license of Ms. McVicker effective August 13, 2015, with the provision that Ms. McVicker will not be eligible to apply for reinstatement of the license for a period of 10 years. The Commission found that Ms. McVicker, acting as a property manager, failed to disburse rental proceeds and main-

Continued

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tenance information to her landlord client despite repeated requests from the client; that Ms. McVicker failed to provide trust account records to a Commission representative after agreeing to do so; that Ms. McVicker failed to maintain trust account records and client funds in compliance with Commission rules including failing to maintain funds in a designated trust account; and that, due to Ms. Vicker's failure to provide information and records, an accurate audit trail could not be determined, but it is estimated that approximately \$26,000 of trust account monies were converted to Ms. McVicker's personal use.

DENETRIA MONTRESA MYLES (Charlotte) – Following a hearing, the Commission permanently revoked the broker

of 18 months effective May 11, 2015. The Commission then stayed the suspension for a probationary period of 18 months. The Commission found that Mr. Oehme, acting as broker-in-charge of a licensed real estate brokerage firm, was managing approximately 1200 rental properties, and receiving annual rents in excess of \$8 million; that a Commission audit of Mr. Oehme's trust account records and bank statements for a 12-year period revealed that several transactions were not handled in accordance with the Commission's trust account rules, including two checks that were received by Mr. Oehme, but not deposited into a trust account in a timely fashion, failure to escheat or otherwise disburse \$29,614.85 representing checks issued by Mr. Oehme but never cashed, and improper accounting

that, as a result, Mr. Rabon was unaware that all rental payments from an online promotional and booking company were deposited into the operating account of the firm from April 2013 to April 2014, and management fees were not timely removed from the trust account of Mr. Rabon's firm; and that the trust accounts of Mr. Rabon's firm showed a possible shortfall of as much as \$14,828.82 between January and March 2014. The Commission noted that Mr. Rabon promptly corrected all possible account deficiencies.

ANDREW JOHN SAMAJ III (Cary) – The Commission accepted the permanent voluntary surrender of the broker license of Mr. Samaj effective June 17, 2015. The Commission dismissed without prejudice allega-

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.

license of Ms. Myles effective August 13, 2015. The Commission found that Ms. Myles was indicted on one count each of Racketeering Conspiracy and Mortgage Fraud Scheme in United States District Court and found guilty of each count after a jury trial in October 2013 and sentenced to 51 months in Federal prison to be followed by three years of supervised probation; and that the charges and convictions were the result of Ms. Myles' participation in a criminal enterprise in which Ms. Myles acted as a promoter and assisted the enterprise in providing false documentation to lenders in order to obtain loan proceeds for properties with inflated purchase prices.

TINA HUONG NGUYEN (Charlotte) – The Commission accepted the permanent voluntary surrender of the broker license of Ms. Nguyen effective August 31, 2015. The Commission dismissed without prejudice allegations that Ms. Nguyen violated provisions of the Real Estate License Law and Commission rules. Ms. Nguyen neither admitted nor denied misconduct.

CHESTER G. OEHME (Fayetteville) – By Consent, the Commission suspended the broker license of Mr. Oehme for a period

for bank service charges resulting in relatively small deficits in the management company ledger; that, in addition, on two occasions, Mr. Oehme paid a "bonus" to an unlicensed employee who referred a property management client to the brokerage firm's sales affiliate, when that referral resulted in a successful sales transaction. The Commission noted that the audit did not find any conversion of trust money to personal use and that Mr. Oehme has agreed to put procedures in place to rectify and reconcile the items issued above and prevent them from happening in the future.

ROBERT G. RABON (Raleigh) – By Consent, the Commission suspended the broker license of Mr. Rabon for a period of 24 months effective July 1, 2015. The Commission then stayed the suspension for a probationary period ending July 1, 2019. The Commission found that Mr. Rabon, acting as qualifying broker for a vacation and long-term rental management firm, mistakenly allowed the firm's license to expire on July 1, 2013, and that, as a result, the firm operated without a license until October 21, 2013. The Commission also found that Mr. Rabon agreed to maintain the firm's trust accounts, but failed to supervise and maintain trust account records in accordance with Commission Rules;

that Mr. Samaj had violated provisions of the Real Estate License Law and Commission rules. Mr. Samaj neither admitted nor denied misconduct.

DAVID M. SMOOT (Raleigh) – The Commission accepted the voluntary surrender of the broker license of Mr. Smoot effective with its expiration June 30, 2015. Mr. Smoot voluntarily and permanently waived and surrendered any renewal or reinstatement right he may possess. The Commission dismissed allegations that Mr. Smoot violated provisions of the Real Estate License Law and Commission rules. Mr. Smoot neither admitted nor denied misconduct.

VIP REALTY NC, LLC (Greensboro) – By Consent, the Commission revoked the firm license of VIP Realty NC effective October 1, 2015. The Commission found that VIP Realty NC purchased property management clients from another firm in 2013 after the other firm's license was revoked by the Commission due to the unlicensed owner having signature authority over the accounts, among other things, in violation of the firm's probation sanction; that the other firm's owner remains as the general manager of VIP Realty NC and has signature

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authority over the firm's accounts; that VIP Realty NC as part of the General Manager's compensation, pays the General Manager a percentage of rents received; that an audit of the firm's two trust accounts shows deficit spending, a net shortage of over \$13,000, and that neither account was designated as "trust" or "escrow"; and that VIP Realty NC's website also represents that it has been in operation since 1986, even though it was not created until 2013.

LISA O. WARREN (Hendersonville) – The Commission accepted the voluntary surrender of the broker license of Ms. Warren for a period of two years effective August 12, 2015. The Commission dismissed without prejudice allegations that Ms. Warren violated provisions of the Real Estate License Law and Commission rules. Ms. Warren neither admitted nor denied misconduct.

A. FRANCIS P. WILDER III (Cashiers) – By Consent, the Commission reprimanded Mr. Wilder effective July 15, 2015. The Commission found that Mr. Wilder was the broker-in-charge of a licensed real estate brokerage firm when an owner of vacant land signed an exclusive listing agreement and the acknowledgment card of a Working With Real Estate Agents brochure in January, 2014; that Mr. Wilder never provided a fully executed copy of the listing agreement to the owner; that in May, Mr. Wilder still had not listed the lot on his website for sale, which prompted an email inquiry from the owner to which Mr. Wilder never replied; that in July, the owner sent a written notice of termination

to Mr. Wilder and asked for documents to be returned; that Mr. Wilder did not respond to this or subsequent letters sent by the owner; that after a complaint was filed, Mr. Wilder sent the Commission a copy of the Working With Real Estate Agents brochure and the listing agreement in his possession and that the dates on these documents were changed from January to April; and that Mr. Wilder admitted that he "panicked" and made these changes before sending them to the Commission. The Commission noted that Mr. Wilder has returned the documents to the owner, that the real estate brokerage firm has closed,

and that Mr. Wilder now works with another firm. Mr. Wilder may not act as broker-in-charge for a period of three years.

DAVID NORMAN ZAUBER, JR. (Summerfield) – The Commission accepted the permanent voluntary surrender of the broker license of Mr. Zauber effective July 15, 2015. The Commission dismissed without prejudice allegations that Mr. Zauber violated provisions of the Real Estate License Law and Commission rules. Mr. Zauber neither admitted nor denied misconduct.

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