



## Wendell Bullard, Jeffery J. Malarney Appointed to Commission

Wendell Bullard of Durham and Jeffery J. Malarney of Manteo have been appointed to the North Carolina Real Estate Commission by Governor Roy Cooper, it was announced by Miriam J Baer, Executive Director.



**Bullard**



**Malarney**

Bullard is Managing Broker at Bullard Properties, LLC, in Durham and has over 22 years of experience in the real estate industry including affiliations with Prudential Carolinas Realty, and Realty Executives Triangle Southpointe (Co-Owner).

He is past president of the Durham Regional Association of REALTORS®  
*(See Appointments, page 3)*

**License Renewal  
Changes to Process  
See article, Page 5**

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## Anna Gregory Wagoner Elected Chair, Thomas R. Lawing, Jr., Vice Chair

Anna Gregory Wagoner, of Winston-Salem, has been elected Chair of the North Carolina Real Estate Commission and Thomas R. Lawing, Jr., of Charlotte, Vice Chair, for the term beginning August 1, 2018, it was announced by Miriam J. Baer, Executive Director.

Ms. Wagoner is a shareholder with the law firm of Blanco Tackabery & Matamoros, P.A. in Winston-Salem and practices in the areas of commercial real estate and renewable energy.

Active in the practice of real estate law for approximately 18 years, Ms. Wagoner began her legal career in Greensboro and was formerly associated as an attorney with Investors Title Insurance Company, of Chapel Hill.

Ms. Wagoner is a member of the North Carolina Bar Association, Forsyth County Bar Association, Piedmont Triad Commercial Real Estate Women, North Carolina Land Title Association, and NAIOP (Commercial Real Estate



**Wagoner**



**Lawing**

Development Association).

She is a graduate of Wake Forest University with a BA in Psychology and holds a Juris Doctor degree from the Wake Forest University School of Law.

Lawing, a former Chair of the Commission, is a Certified Property Manager and President of T. R. Lawing Realty, a family-owned residential property man-

*(See Commission, page 3)*

## Avoid These 10 Common Mistakes to Make Trust Account Management Trouble Free

*By Jean A. Wolinski-Hobbs, Auditor/Investigator*

The Real Estate Commission has three rules governing how brokers handle and account for trust monies - A.0116, .0117, and .0118. Additionally, the nrec.gov website has a number of videos available on trust account handling. Familiarize yourself with these rules to avoid the following common mistakes.

**1. DO YOU DEPOSIT MONEY INTO THE TRUST ACCOUNT AND THEN MOVE THE MONEY INTO AN OPERATING ACCOUNT TO PAY CLIENTS OR INVOICES?**

A variation on the same theme is depositing trust monies into an operating account and then transferring them into the trust account. Well, DON'T! All

trust monies must be deposited into a trust account and all clients and invoices need to be paid out from the trust account. The only time it is acceptable to move money from a trust account into an operating account is when you are disbursing your earned commission or are reimbursing yourself for invoices that were paid by you from your operating account in advance and on behalf of the client.

If the bank account into which you deposit client monies is not identified as a trust or escrow account, then it will not be treated as such by the IRS or courts, meaning they can attach or freeze the monies. The FDIC may also deny insurance coverage for each individual cus-

*(See Trust, page 6)*

## REAL ESTATE BULLETIN

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Roy Cooper, Governor

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Nicholas T. Smith	Consumer Protection Officer
Peter B. Myers	Information Officer
Elizabeth W. Penney	Information Officer
Melissa A. Vuotto	Rulemaking Coordinator

**Editor-In-Chief**  
Miriam J. Baer

**Editor**  
Robert L. Forshaw



## People

**Sheryl B. Graham** has been employed as Consumer Protection Officer in the Regulatory Affairs Division. Prior to joining the Commission, she was a real estate broker in both North Carolina and Virginia for 18 years. She studied accounting and marketing at Old Dominion University, as well as staging design and residential appraisal.



**Nicholas T. Smith** has been employed as Consumer Protection Officer in the Regulatory Affairs Division. Prior to joining the Commission, he was a commercial real estate broker in North Carolina. He earned a B.A. in Finance from California State University, Fullerton, while working as an intern for a retail property development and management firm.



**Wendy C. Harper** has been named Chief Administrative Officer in the Administration Division.

**Stephen L. Fussell** has been named Chief Consumer Protection Officer in the Regulatory Affairs Division.

**Bradford A. Cox** has been named Licensing Services Team Lead in the Education and Licensing Division.

**Brinita A. Robinson** has been named License Records Team Lead in the Education and Licensing Division.

## Appearances

**Corean E. Hamlin**, Director, Education and Licensing Division, spoke on the Blue Ridge Real Estate Report on WTZQ Radio in Flat Rock.

**Frederick A. Moreno**, Chief Deputy Legal Counsel, spoke to the Experienced Investor Sub-Group of the Triangle Real Estate Investors Association in Cary.

**Marcia M. Waldron**, Auditor, spoke to the Property Management Meeting of the Jacksonville Board of REALTORS®.

**Jean A. Wolinski-Hobbs**, Auditor/Investigator, spoke to Longleaf Pine REALTORS® Inc. in Fayetteville.

**Stephen L. Fussell**, Chief Consumer Protection Officer, spoke to the Gaston Association of REALTORS® and to the Greater Fayetteville Apartment Association.

**Sheryl B. Graham**, Consumer Protection Officer, spoke to the Catawba Valley Association of REALTORS® in Hickory.

**Sarah E. Herman**, Consumer Protection Officer, spoke to Blue Ridge Realty and Investments in Boone and to the Central Carolina Association of REALTORS® in Concord.

**Nicholas T. Smith**, Consumer Protection Officer, spoke to Allen Tate Wesley Chapel.

**Peter B. Myers**, Information Officer, spoke to the Carolina Smokies Association of REALTORS® in Franklin, to the Greensboro Regional REALTORS® Association, and to Lake Norman Realty.

**Elizabeth W. Penney**, Information Officer, spoke to the Rockingham REALTOR® Council of the Greensboro Regional REALTORS® Association.



October 17-18  
 November 14-15  
 December 12-13  
 January 9-10  
 February 13-14

*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.*

## Commission

*(Continued from page 1)*

agement company serving the Charlotte regional since 1957.

He is a past president and REALTOR® of the Year of both the NC REALTORS® and the Charlotte Regional REALTORS® Association (CRRA) and a past director of the National Association of REALTORS® (NAR).

Active in civic affairs, Lawing has held leadership positions at Hawthorne Lane United Methodist Church, is a past president of the Charlotte West Rotary, past chair of the Eagle Projects Committee of the Mecklenburg County Council of the Boy Scouts of America and has co-chaired the Will Call Committee of the Wells Fargo Championship since its inception.

## Appointments

*(Continued from page 1)*

and the North Carolina Association of REALTORS® and past REALTOR® of the Year in both organizations.

One of several founding members for charter high schools in Charlotte and Raleigh, Bullard is past treasurer for Commonwealth and Stewart Creek High Schools and past board president of Central Wake Charter High School in Raleigh.

He is a graduate of North Carolina Central University with a BS in marketing and a United States Air Force Security Specialists veteran.

Malarney, a former member of the Real Estate Commission, serves as General Counsel for Twiddy & Company, a North Carolina Vacation Rental Management Firm, and is a principal of the Law Offices of Jeff Malarney, PLLC. He is also a licensed real estate broker and property insurance agent.

A Commander (ret.) of the United States Navy Judge Advocate Corps, he is a former Special Assistant United States Attorney, past president of the North Carolina Vacation Rental Manager's Association, and past chairman of the Outer Banks Chamber of Commerce.

Malarney holds a JD from Wake Forest University School of Law and BA (cum laude) in Economics and Management from Albion College.

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

Register online at the Commission website, [www.ncrec.gov](http://www.ncrec.gov), under Education/Course Registration.

### Broker-in-Charge Course

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

Asheville	Western Carolina University Biltmore Park	November 26-27
Charlotte	Goodwill Opportunity Campus	November 13-14
Greensboro	Conference Center at GTCC	October 2-3
Raleigh	McKimmon Center	October 8-9 November 5-6 December 10-11
Wilmington	Cape Fear Community College	October 23-24

### Basic Trust Account Procedures (Commission Offices, Raleigh)

(All classes 1 - 5 p.m.)

Raleigh	Commission Office 1313 Navaho Drive, Raleigh	October 24 November 7 December 10
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See Commission website to confirm course dates.  
 Registration fees are nonrefundable.

# Sellers Required by Law to Provide Two Disclosure Statements to Buyers

By Elizabeth W. Penney, Information Officer

Brokers know that most sellers of residential property are required by law to give the buyer two disclosure forms: the Residential Property and Owners' Association Statement (RPOADS) and the Mineral and Oil and Gas Rights Mandatory Disclosure Statement (MOGS).

The four-page RPOADS form should be given prior to an offer to purchase. The seller has the option of answering each question "yes," "no," or "no representation." Thus, while it is a mandatory disclosure form, it does not actually mandate any disclosure because of the "no representation" option. Sellers who choose to answer the questions "yes" or "no" should do so honestly, based on their actual knowledge as a seller can be held accountable in a court of law for the truth and accuracy of the representations made.

Sellers and brokers should understand that regardless of the seller's decision to disclose issues and defects concerning

the property, a broker must disclose any material facts to a prospective buyer. If a home inspection reveals a significant defect and the seller refuses to repair, that defect becomes a material fact which the agent has discovered and must disclose affirmatively to prospective buyers.

If the seller originally answered any of the relevant questions "no", then the broker should also advise the seller-client to amend the RPOADS once a defect becomes known to avoid charges of misrepresentation and fraud. If the seller decides not to disclose, the seller still has the option of "no representation" but, again, the broker still must disclose the known material fact separately from the RPOADS.

Failure to provide the RPOADS can have consequences. The statement should be provided to a prospective buyer prior to the buyer making an offer. A seller or listing agent who fails to present a completed statement prior to

an offer being extended opens the door to the possibility of the buyer rescinding the contract within either three days of contract formation or three days from receipt of the statement, whichever occurs first. It is the listing agent's duty to inform seller-clients of their rights and obligations regarding the completion and distribution of this mandatory form.

Additionally, sellers of residential property are now required by law to give the buyer the single-page MOGS form prior to the Offer to Purchase. The seller has the option to mark "no representation" only as to the severance of mineral or oil and gas rights by a previous owner.

It is important to note that the fact the property is investment property and has not been owner-occupied does not negate the obligation of the seller to provide a disclosure statement to prospective buyers. When in doubt as to whether the RPOADS or MOGS must be given in a certain transaction, sellers should contact the Commission or err on the side of caution and provide the Statement.

## Exemptions to Providing RPOADS/MOGS Disclosure Forms

North Carolina state law (General Statute Chapter 47E) requires that the RPOADS/MOGS be given in all transfers of residential one-to-four unit dwellings by sale, exchange, installment land sales contract or option to purchase, subject to a few very narrow exceptions in NCGS § 47E-2 as shown below:

### **NCGS § 47E-2 (a)... [RPOADS/MOGS exemptions]**

(1) Transfers pursuant to court order, including transfers ordered by a court in administration of an estate, transfers pursuant to a writ of execution, transfers by foreclosure sale, transfers by a trustee in bankruptcy, transfers by eminent domain, and transfers resulting from a decree for specific performance.

(2) Transfers to a beneficiary from the grantor or his successor in interest in a deed of trust, or to a mortgagee from the mortgagor or his successor in interest in a mortgage, if the indebtedness is in default; transfers by a trustee under a deed of trust or a mortgagee under a mortgage, if the indebtedness is in default; transfers by a trustee under a deed of trust or a mortgagee under a mortgage pursuant to a foreclosure sale, or transfers by a beneficiary under a deed of trust, who has acquired the real property at a sale conducted pursuant to a foreclosure sale under a deed of trust.

(3) Transfers by a fiduciary in the course of the administration of a decedent's estate, guardianship, conservatorship, or trust.

(4) Transfers from one or more co owners solely to one or more other co owners.

(5) Transfers made solely to a spouse or a person or persons in the lineal line of consanguinity of one or more transferors.

(6) Transfers between spouses resulting from a decree of divorce or a distribution pursuant to Chapter 50 of the General Statutes or comparable provision of another state.

(7) Transfers made by virtue of the record owner's failure to pay any federal, State, or local taxes.

(8) Transfers to or from the State or any political subdivision of the State.

### **NCGS § 47E-2 (b)... [Additional RPOADS exemptions]**

(1) Transfers involving the first sale of a dwelling never inhabited.

(2) Lease with option to purchase contracts where the lessee occupies or intends to occupy the dwelling.

(3) Transfers between parties when both parties agree not to complete [the RPOADS].

# Renewal Process Changes: Online Renewal Required in 2019

By *Corean E. Hamlin, Director of Education and Licensing*

Since July 1, 2014, Commission rule 58A .0503 has required brokers to renew their licenses on the Commission's website or by calling the Commission's office. Despite the rule, the Commission has attempted to accommodate brokers who preferred to pay their renewal fees by check.

Effective July 1, 2018, there is no longer an option to renew by phone has been removed. In addition, checks will no longer be accepted by mail. Going forward, brokers will renew their licenses on the Commission's website between May 15 and June 30 each year. Brokers who wish to reinstate their licenses within the first six months of license expiration will also be required to do so electronically.

The Commission eliminated the option to renew by phone for the security of broker information. Entering payment information on a secure website affords better protection than communicating such information over the phone.

The decision to stop accepting checks

resulted from two law changes requiring certain information to be gathered during the renewal process.

First, as required by the NC state legislature in NCGS § 143-765, all applicants for occupational licenses, including license renewal, must disclose any investigations for employee misclassification. All applicants must certify that they have read and understand a Public Notice Statement from the Employee Classification Section of the State Industrial Commission (<http://www.ic.nc.gov/121317ECSPublicNotice.pdf>) and must disclose any investigations for employee misclassification. If an applicant does not provide the certification and disclosure, the NC Real Estate Commission is not permitted to process the application or renew the license. The certification and disclosure have been added into the online renewal program.

Second, Commission rule 58A .0503 now requires Brokers-in-Charge to disclose information regarding trust account(s) and criminal convictions or dis-

ciplinary actions. These questions, too, have been added to the online renewal program.

If you have been in the practice of renewing by phone or sending checks by mail for your renewal fee, please be aware that these options will not be available in 2019. Online renewal will be required. Detailed instructions will be provided on the Commission's website and in the Bulletin to assist you during the renewal period. Also, Commission Staff will be happy to answer your questions regarding the process by phone (919.875.3700) or in person at the Commission office.



North Carolina Real Estate Commission  
**REAL ESTATE BULLETIN**

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## New Videos



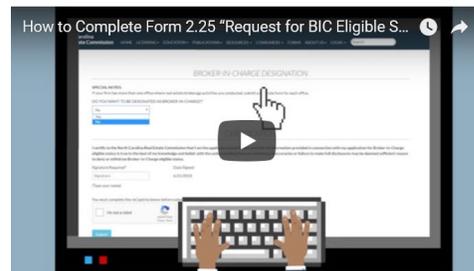
*Learn how and when to register your business under an assumed name.*



*Understand how to correctly establish an account to hold funds in trust for others.*



*Requests activation of a license and records affiliation with a broker.*



*Use this form to obtain broker-in-charge eligibility status.*

## Trust Accounts

(Continued from page 1)

tomer whose money is deposited into an account not properly designated.

### 2. DO YOU PAY CLIENT PROCEEDS BEFORE THE RENT OR OTHER INCOMING MONEY CLEARS THE ACCOUNT?

Well, DON'T! Ensure that incoming funds clear prior to paying the client or any invoices on behalf of the client. Failure to do so can cause a deficit in the account if the funds do not clear.

### 3. DO YOU ALLOW BANK SERVICE FEES TO BE CHARGED AGAINST THE TRUST ACCOUNT AND THEN REIMBURSE THE ACCOUNT AFTER THE FACT?

Well, DON'T! This also causes a deficit in the account. Instead, make sure that service charges are covered by depositing enough of your own money to cover them and keep a ledger to keep track of those personal funds.

### 4. DO YOU LEAVE INTEREST, COMMISSIONS, RESERVATION FEES OR MONIES FOR CREDIT/BACKGROUND CHECKS THAT BELONG TO THE BROKER OR OTHERS IN THE TRUST ACCOUNT BEYOND 30 DAYS?

Well DON'T! To do so is commingling. Also, don't use a money market account if it requires a large balance of personal funds in order to avoid service fees - that is also commingling. Money market accounts are acceptable if there is a large enough balance of customer funds, such as a security deposit trust account holding a substantial number of deposits.

### 5. DO YOU ALLOW YOUR CLIENT TO BE A SIGNATORY ON THE TRUST ACCOUNT?

Well, DON'T! Trust accounts must be custodial and if the owner of the funds has access to make their own deposits or withdrawals, then it is no longer a custodial account.

### 6. DO YOU DEPOSIT MULTIPLE HOMEOWNERS' ASSOCIATION MONIES INTO ONE TRUST ACCOUNT?

Well, DON'T! Homeowner's associations must each have their own individual trust account. If you manage ten (10) homeowner's associations, then you must maintain at least ten (10) trust accounts.

### 7. DO YOU ALLOW YOUR BOOKKEEPER TO HANDLE EVERY ASPECT OF MAINTAINING AND RECONCILING THE TRUST ACCOUNT?

Well, DON'T! Embezzlement happens even with trusted bookkeepers or long-time employees and is made easier when one person is in charge of everything. Simple steps can help ensure that trust money is safeguarded. For example, the person who receives cash should not be the same person who reconciles the trust account. Cash receipts should be verified at the end of each day and logged by the broker-in-charge or another person in a supervisory role. And, the bookkeeper should not be the person initially receiving the bank statement. The broker-in-charge should verify the items in the bank statement against the journal and also check cash receipts against deposits on a monthly basis, prior to the reconciliation. A bookkeeper who never takes vacations or is obsessed with getting the mail is not a good thing, it is a RED FLAG.

### 8. DO YOU TAKE POSSESSION OF CHECKS OR CASH BUT DEPOSIT THE ITEMS DIRECTLY INTO A CLIENT'S ACCOUNT?

Well, DON'T! If you "touch" the money, then you must have a trust account and the money must go through your trust account. If the check is written to the client, do not accept it. The only time it is acceptable for a broker to deliver monies to a client is when the payment is subject to a specific exception such as a due diligence check or check payable to a designated escrow agent.

### 9. DO YOU USE TRUST ACCOUNT MONEY TO PAY FOR REPAIRS TO A PROPERTY IF THE CLIENT DOES NOT HAVE SUFFICIENT FUNDS IN THE TRUST ACCOUNT TO COVER THE REPAIR?

Well, DON'T! Just because there is \$50,000 in the trust account does not mean that you can pay for a new water heater costing \$1000 for client Smith if only \$200 of the \$50,000 belongs to client Smith. To do so means you are using other clients' money to pay for client Smith's water heater and causing a deficit in client Smith's ledger. No client should ever have a negative balance on their ledger.

### 10. DO YOU DISBURSE LATE FEES OR COMMISSIONS EVEN IF THE TENANTS HAVE NOT PAID THE LATE FEE OR PAID RENT FOR THE MONTH?

Well, DON'T! If a tenant owes a \$15 late fee but has not paid that amount, do not pay yourself or the client the late fee. Disbursements on rentals must be calculated upon the amount actually paid for that month.

If this sounds confusing, you are not alone. Come to one of our monthly trust account courses and learn the rules in detail. Bring along anyone who also handles trust accounts for your firm. As a broker-in-charge, at a minimum you will learn what you need to know to adequately supervise your bookkeeper and what you or your software program needs to be able to produce in the way of reports in order to be compliant. As a bonus, it qualifies as an elective continuing education course.

## Allan R. Dameron Legal Internship Award



*Rachel E. Rogers of Fayetteville, a second year law student at Campbell University, is the recipient of the Allan R Dameron Legal Internship Award. Rogers received the award at the Commission's June meeting.*

*The award is given annually in memory of and tribute to former Commission Chairman Allan R. Dameron for his dedicated service to protect the interests of consumers.*

## Real Estate Commission Scholarship Winners

Three North Carolina brokers recently received scholarships from the Commission for academic excellence in real estate courses.

The recipients, each of whom received \$400 for tuition, are Michael J. Shelton, Winston-Salem, the Joe Schweidler Memorial Scholarship Award; Melinda G. Pope, Liberty, the Blanton Little Memorial Scholarship Award; and Mike G. Montpetit, Cary, the Phillip T. Fisher Scholarship Award.

Shelton and Pope were selected by the North Carolina Association of REALTORS® for achievement in the Graduate REALTORS® Institute (GRI) program. Montpetit was selected by the North Carolina Chapter of the Council of Residential Specialists for achievement in the Certified Residential Specialists (CRS) program. Little and Schweidler were former Secretary-Treasurers of the North Carolina Real Estate Licensing Board. Fisher was Executive Director of the Real Estate Commission from 1981 to 2010.



Shelton



Pope



Montpetit

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## How to File An Assumed Business Name

By Charlie Moody, Legal Counsel

North Carolina law has long required individuals, partnerships, LLCs, and corporations that engage in business under an assumed name to file a certificate with the register of deeds in the county in which that person or entity does business.

Similarly, Commission Rule 58A .0103(c) requires a broker or firm to file such a certificate in compliance with GS 66-71.4 AND notify the Commission in writing of the use of such assumed name.

What is an "Assumed Business Name"? For example, when an individual broker/sole proprietor named Alex advertises as Robinson Realty, Alex is not using an assumed name because Robinson Realty includes the broker's surname.

If Alex Robinson instead advertises brokerage services (with business cards, ads, etc.) under the name "Luxury Homes 4U Realty," Alex is now using an assumed business name and must comply with the statute and Commission rule.

Similarly, a licensed firm has a corporate name under which it is registered to do business with the Secretary of State but may choose to advertise under one or several assumed names. "Team One Property Management" and "Team One Realty" might be two assumed names (or "trade names") used by ABC Corporation for branding purposes. Both assumed business names must be filed with the State and the Commission must be notified of their use to assist consumers in finding the actual entity/broker with whom they are dealing.

On December 1, 2017, the legislature repealed Chapter 66, Article 14 and enacted Article 14A, the "Assumed Business Names Act." This change modernized the assumed business name process to make it easier to register, find, and maintain assumed name information. The new Act altered the requirements for the assumed

(See **Assmed Name**, page 8)

## Assumed Name

(Continued from page 7)

business name certificate and created the means by which a single registration in the office of one Register of Deeds can be made effective for multiple counties.

Filers will need to identify which counties they will be doing business in or check the box for "All 100 counties." The certificates are then recorded and indexed in identified counties and scanned certificate images are transmitted by the Register of Deeds to the NC Secretary of State for entry into a single, statewide search-

able database maintained by the Secretary at <http://www.sosnc.gov/abn/search>. The Secretary assigns an identification number to each assumed business name that is recorded, and to which any future amendments or withdrawals must refer.

Certificates filed before December 1, 2017 are still valid, at least for now. The Act allows for a five-year transitional period during which individuals and entities with pre-existing assumed business names can re-file a certificate to preserve the effectiveness of the name designation. Filers have until December 1, 2022 to re-file a certificate for a pre-existing assumed name.

Remember also that filers of assumed business names must update the filings within 60 days of the information changing.

Compliant blank certificate forms are available from registers of deeds or may be downloaded from <https://edpnc.com/start-or-grow-a-business/start-a-business/business-forms/>.

Go to the Secretary of State website to find additional information about when, how and why to file an Assumed Business Name: [https://www.sosnc.gov/divisions/business\\_registration/assumed\\_business\\_names](https://www.sosnc.gov/divisions/business_registration/assumed_business_names).

*The Assumed Business Certificate below is the primary form with which to file an assumed name. Two other forms available for downloading on the Secretary of State's website serve to amend or withdraw a certificate.*

### **ASSUMED BUSINESS NAME CERTIFICATE (NCGS §66-71.5)**

*Please print legibly.*

1. The assumed business name is:

\_\_\_\_\_

(You may include no more than five (5) assumed business names on this form.)

2. The real name of the person or entity engaging in business under the assumed business name is:

\_\_\_\_\_

(Corporations, LLC's, limited partnerships must provide the exact name registered with the NC Secretary of State's office and the SOSID number assigned at the time of formation. Go to [www.sosnc.gov/br/search](http://www.sosnc.gov/br/search) to look up your information.)

3. The nature/type of the business is: \_\_\_\_\_

4. The street address of the principal place of business is: (PO Boxes are not acceptable)

\_\_\_\_\_

5. The mailing address, if different from the street address, is:

\_\_\_\_\_

6. The counties where the assumed business name will be used to engage in business are:

All 100 North Carolina counties

\_\_\_\_\_

This certificate is signed by the owner/legal representative of the person or entity named above, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

Signature: \_\_\_\_\_

Printed/Typed Name: \_\_\_\_\_

Title: \_\_\_\_\_

(See instructions for who must sign for various business entity types.)

Assumed Business Name Certificate

10.03.17

# What Does "As Is" Really Mean?

*Stephen L. Fussell, Chief Consumer Protection Officer*

The term, "As Is," means that a seller has decided in advance of soliciting offers that he or she will not make any repairs to the listed property. Disclosing this decision to prospective buyers puts them on notice that the seller will not make any repairs regardless of the results of inspections. However, it should not discourage prospective buyers from ordering inspections as doing so is a prudent means for determining the true condition of a property. One misconception is that when a seller notes "As Is" on a property, the buyer has no right to inspect. The NC Realtors Standard Form Offer to Purchase and Contract (No. 2-T) specifically gives the buyer the right to conduct their due diligence and order relevant inspections.

There is no State law or Commission rule compelling sellers to make repairs. Moreover, Section 4(c) of the NC Realtors Contract 2-T reads in part, "Buyer acknowledges and understands that un-

less the parties agree otherwise, THE PROPERTY IS BEING SOLD IN ITS CURRENT CONDITION." With that said, many sellers are willing to make at least some repairs as a means of facilitating a sale. If every seller refused to make repairs, then many transactions would fail to close for that reason. NC Realtors created the Due Diligence Request and Agreement ("DDRA") form (No. 310-T) for buyers and sellers to identify the repairs they agree upon. Once all parties sign this form, the seller then has an obligation to make the repairs listed on the form.

Another common misconception is that selling a property "As Is" gives a seller and/or a listing agent the opportunity to conceal material facts about the property. While a seller can always answer "No Representation" to any question on the Residential Property and Owners' Association Disclosure Statement ("RPOADS"), a seller who answers "No"

to a question when the truthful answer is "Yes," may face civil liability for his/her misrepresentation.

Real estate brokers, including those brokers who are selling their own properties, must always disclose material facts. A listing agent has the duty to discover and disclose material facts. The Commission holds brokers responsible for the information they know or reasonably should know about or relating to a property. Therefore, even if a seller fails to disclose a material defect on an RPOADS, the listing agent must disclose it to prospective buyers or their agents prior to the formation of sales contracts. If a seller indicates he/she does not want a listing agent to disclose a material fact, then the listing agent should decline to list the seller's property.



## Broker Indicted for Fraud

A Regulatory Affairs Division Case Study

*By Charlie Moody, Legal Counsel*

On August 15, 2018, the US Department of Justice indicted a Minnesota real estate broker, his wife, and their real estate firm on multiple counts of mail and wire fraud.

Broker Jeffrey Detloff managed and sold foreclosed properties on behalf of institutional clients and worked with his wife, Lori, an accountant.

The couple are alleged to have carried out a multi-year scheme to defraud corporate and institutional clients including Fannie Mae and Freddie Mac by collecting kickbacks from independent contractors for repairs.

The couple allegedly created and submitted sham bids to create a false appearance of competitive bidding for projects, and awarded contracts only to contractors who were willing to pay a kickback.

The couple faces up to 30 years in jail and a fine of up to \$1 million. The fine may be increased up to twice the gain derived from the crime or the loss suffered by the victims. One housing repair contractor has already pled guilty in connection with the investigation.

### Broker Numbers

As of September 1, 2018, there are 102,614 brokers and firms licensed by the Real Estate Commission in the following categories:

Active Brokers 67,219

(Active Provisional Brokers 8,692)

Inactive Brokers 22,616

(Inactive Provisional Brokers 6,275)

Firms 12,540

Brokers-in-Charge 16,841



# Commission Publications

## Order form for FREE Publications

Free Publications	Quantity	Free Publications	Quantity
Questions and Answers on:		Trato Con Agentes de Bienes Raíces (Working With Real Estate Agents)	
Fair Housing	_____	Preguntas y Respuestas sobre: (Questions and Answers On:)	
Tenant Security Deposits	_____	Vivienda Justa (Fair Housing)	
Condos and Townhouses	_____	El Depósito de Seguridad del Inquilino (Tenant Security Deposits)	
Residential Subdivisions and Planned Communities	_____	Alquiler de Inmuebles para Vivienda (Renting Residential Real Estate)	
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### How to Order:

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 P. O. Box 17100, Raleigh NC 27619-7100

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**Please allow 7 days from receipt of order for delivery.**

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MasterCard  Visa

Exp Date

Security Code

3-digit code on card back

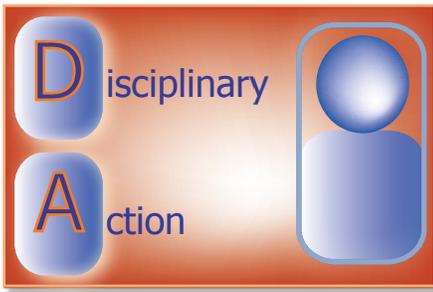
**Credit card orders must be a minimum of \$1.00.**

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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.*

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**ALICIA DAWN ALTMAN** (Sunset Beach) – The Commission accepted the permanent voluntary surrender of the broker license of Ms. Altman effective July 18, 2018. The Commission dismissed without prejudice allegations that Ms. Altman violated provisions of the Real Estate License Law and Commission rules. Ms. Altman neither admitted nor denied misconduct.

**ROBERT LORENZO ARRIAGA** (Cary) – By Consent, the Commission suspended the broker license of Mr. Arriaga for a period of 36 months effective December 1, 2017. Six months of the suspension were active with the remainder stayed for a probationary period from June 1, 2018 to December 1, 2020. The Commission also prohibited Mr. Arriaga from acting as a broker-in-charge, engaging in property management, and accepting or holding trust monies belonging to others for a period of five years. The Commission found that Mr. Arriaga, the qualifying broker and broker-in-charge of a property management firm, received compensation for a maintenance referral without disclosing to his principal, improperly applied the tenant security deposit to various expenses, failed to provide the tenant with an accounting, and failed to provide documents requested by the Commission. A Commission review of his tenant security deposit account found that cancelled checks and deposit tickets lacked the required identifying information and were not properly retained funds, were used for Mr. Arriaga's personal benefit, a journal and separate ledger sheets were not maintained, an audit trail was lacking,

and a shortage was present. A review of his rental deposits account found that it contained an overage and that some owners were being overpaid, causing deficit spending.

**WAYNE T. BARBOUR** (Dunn) – By Consent, the Commission sus-

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

pending the broker license of Mr. Barbour for a period of three months effective November 1, 2018. The Commission then stayed the suspension on certain conditions. The Commission found that Mr. Barbour as Qualifying Broker and Broker-in-Charge of a licensed real estate firm in and around October 2016, acted as buyer agent in a transaction with a provisional broker serving as the exclusive listing agent. Mr. Barbour submitted an offer to purchase on behalf of the buyer without first entering into a written agency agreement or presenting a Working With Real Estate Agents brochure. Neither Mr. Barbour nor his firm had permission from the buyer to act as dual agent. The subject property's heated square footage was also negligently misrepresented in the MLS.

**WILLIAM F. BELLAMY** (North Myrtle Beach, South Carolina) – By Consent, the Commission suspended

the broker license of Mr. Bellamy for a period of six months effective November 1, 2018. The Commission then stayed the suspension for a probationary period through May 1, 2019. The Commission found that Mr. Bellamy entered into a listing agreement for a property and failed to obtain a buyer agency agreement, but purported to act as dual agent for the transaction without authorization from the seller or buyer to perform dual agency.

**VALERIA MARIA CARRIZO WYDA** (Asheville) – By Consent, the Commission reprimanded Ms. Carrizo Wyda effective September 25, 2018. The Commission found that Ms. Carrizo Wyda was the listing agent for a property and received reports noting limited accessibility of the crawl space and issues with the property's foundation. Although Ms. Carrizo Wyda disclosed this information to some subsequent interested buyers, this information was not disclosed to the buyer who went under contract. This buyer later terminated the contract after discovering these issues.

**SABRINA HORTENSE CHARLESTON-MILES** (Raleigh) – Following a hearing, the Commission permanently revoked the license of Ms. Charleston-Miles, effective July 31, 2018. The Commission found that Ms. Charleston-Miles acted as a dual agent in transactions when she was not authorized to do so, advertised real property for sale without having an executed listing agreement, failed to provide and review a copy of the publication "Working

*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 919-719-9180 for more information.

with Real Estate Agents” with prospective buyers or sellers at first substantial contact, failed to ensure that her buyer clients submitted all due diligence fees and earnest money deposits in accordance with the purchase contract, failed to notify Commission staff of her updated contact information, failed to timely communicate with other agents involved in transactions, required “cash only” offers on a

property she listed for sale without her seller client’s consent, failed to properly and timely deliver a copy of an executed listing agreement pursuant to a court order, failed to communicate with Commission staff during the investigation, and misrepresented to the Commission that she was represented by an attorney whom she, in fact, had not retained.

**COMPASS REAL ESTATE GROUP LLC** (Huntersville) – By Consent, the Commission permanently revoked the firm license of Compass Real Estate Group effective September 5, 2018. The Commission found the firm’s trust accounts were not labeled “trust” or “escrow”, entrusted funds were commingled and converted to the personal use of the broker, deficit spending, failure to perform monthly reconciliations, lack of a trial balance, lack of required documentation, and a shortage. The investigation also discovered that Compass Real Estate Group was administratively dissolved by the NC Secretary of State from January 14, 2016 through June 16, 2016, and that it failed to notify the Commission.

**CROWN REALTY INC.** (Fayetteville) - By Consent, the Commission permanently revoked the firm license of Crown Realty Inc., effective August 29, 2018. The Commission found that Crown Realty, a property management firm, failed to maintain trust account records in compliance with Commission rules. Crown Realty deposited rent proceeds into its operating account and issued 32 non-sufficient funds checks to owner-clients from its operating account, causing the owner-clients to incur bank service fees. An audit showed a trust account shortage of at least \$14,663.

**DEBORAH L. DOSS** (Thomasville) – The Commission accepted the permanent voluntary surrender of the broker license of Ms. Doss effective August 15, 2018. The Commission dismissed without prejudice allegations that Ms. Doss violated provi-

sions of the Real Estate License Law and Commission rules. Ms. Doss neither admitted nor denied misconduct.

**ELLIS BARBOUR & SONS, INC.** (Dunn) – By Consent, the Commission suspended the firm license of Ellis Barbour & Sons for a period of three months effective November 1, 2018. The Commission then stayed the suspension on certain conditions. The Commission found that Ellis Barbour & Sons, in and around October 2016, acted as dual agent for a transaction with a provisional broker serving as the exclusive listing agent and the BIC as the buyer agent. An offer to purchase was submitted without the firm first entering into a written agency agreement or presenting a Working With Real Estate Agents brochure. Ellis Barbour & Sons did not have permission from the buyer to act as dual agent. The heated square footage was also negligently misrepresented in the MLS.

**PATRICIA GONZALEZ** (Fayetteville)- Following a hearing, the Commission permanently revoked the broker license of Patricia Gonzalez effective August 7, 2018. The Commission found that Ms. Gonzalez practiced real estate after her broker license was suspended by the Commission in a prior case, that she failed to remit rental proceeds and a tenant security deposit to

*Continued*

## Real Estate Education and Recovery Fund Reimburses Victims

At its August 29, 2018 meeting, the Commission approved payments totaling \$23,290.70 out of the Real Estate Education and Recovery Fund to three applicants who suffered financial loss due to the misconduct of Sherry Clark Byrd.

Following a hearing, the Commission permanently revoked the broker license of Ms. Byrd effective July 17, 2017.

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

her client, and that she converted trust money to personal use.

**ROBERT SANFORD GOSNELL JR.** (Hendersonville) – By Consent, the Commission suspended the broker license of Mr. Gosnell for a period of 16 months effective May 9, 2018. The Commission then stayed the suspension for a probationary period from May 10, 2018 through September 10, 2019. The Commission found that Mr. Gosnell timely reported his August 31, 2017 conviction of Aggravated Level I DWI, served 120 days in jail, received 24 months of supervised probation and is currently in full compliance with all court ordered restrictions.

**DAMIAN DAVID HALL** (Tryon) – By Consent, the Commission suspended the broker license of Mr. Hall for a period of 18 months effective July 19, 2018. The Commission then stayed the suspension for a probationary period from July 19, 2018 through January 18, 2020. The Commission found that Mr. Hall failed to provide property management records to the Commission’s investigator. An audit of the firm’s records found that deposit slips were not designated as “trust” or “escrow”, agency agreements did not identify the broker’s license number, and security deposits were not deposited within three days of receipt. The firm continued to operate from July 2016 through June 2017 despite being issued a revenue suspension by the North Carolina Secretary of State. Mr. Hall is restricted from further property management.

**HD REALTY LLC** (Mount Holly) - The Commission accepted the permanent voluntary surrender of the firm license of HD Realty effective July 18, 2018. The Commission dismissed without prejudice allegations that

## Commission Speakers Available

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

To schedule a speaker, submit the “Request for Program Presenter” form available on the Commission’s website, [www.ncrec.gov](http://www.ncrec.gov), under Forms. Please allow at least four weeks prior to your group’s meeting.

HD Realty violated provisions of the Real Estate License Law and Commission rules. HD Realty neither admitted nor denied misconduct.

**INTRACOASTAL REALTY CORPORATION** (Wrightsville Beach) – By Consent, the Commission reprimanded Intracoastal Realty effective July 18, 2018. The Commission found that Intracoastal was notified that a waterproofing project was approved at an oceanfront condominium complex where the firm managed rental properties. A tenant reserved one of the condominiums for a month but the firm failed to notify the tenant that the project could affect her ability to use the condo’s balcony. The firm refunded a significant portion of the tenant’s rental amount.

**HOLLY MARIE LAM** (Mount Holly) – The Commission accepted the permanent voluntary surrender of the broker license of Ms. Lam effective July

18, 2018. The Commission dismissed without prejudice allegations that Ms. Lam violated provisions of the Real Estate License Law and Commission rules. Ms. Lam neither admitted nor denied misconduct.

**LANEY REAL ESTATE** (Wilmington) – By Consent, the Commission suspended the firm license of Laney Real Estate until September 1, 2018 on certain conditions including requiring the deposit of \$77,432.19 into its tenant security deposit trust account and providing sufficient evidence to the Commission to demonstrate that the trust account was fully funded and balanced. The Commission found that in June 2018, a total of \$77,432.19 was transferred from Laney Real Estate’s tenant security deposit trust account to pay a non-client legal order.

**DAVID MAYO** (Fayetteville) - By Consent, the Commission permanently revoked the broker license of Mr. Mayo effective August 29, 2018. The Commission found that Mr. Mayo, as broker-in-charge, failed to maintain trust account records in compliance with Commission rules. Instead of depositing rent proceeds into the trust account, Mr. Mayo deposited the rent proceeds into his operating account. Mr. Mayo is-

*Continued*

## Mail From The Commission

The Commission corresponds with licensees at their business addresses of record. Licensees are required to respond to Letters of Inquiry from this office within fourteen (14) days of receipt of same. Full brokers who work primarily from their homes must make arrangements with their offices to be notified regarding mail from the Commission so that the brokers can receive and respond to such mail in a timely manner. Additionally, if a broker changes offices or firms, he or she must provide the Commission with the new business address within ten (10) days of the change.

## 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.

sued 32 non-sufficient funds checks to owner-clients from his operating account, causing the owner-clients to incur bank service fees. An audit showed a trust account shortage of at least \$14,663.

**CAREY MARIE MCMULLEN** (Wrightsville Beach) – By Consent, the Commission reprimanded Ms. McMullen effective July 18, 2018. The Commission found that Ms. McMullen, as broker-in-charge, of Intracoastal Realty Corporation, was notified that a waterproofing project was approved at an oceanfront condominium complex where the firm managed rental properties. A tenant reserved one of the condominiums for the month but the firm failed to notify the tenant that the project could affect her ability to use the condo's balcony. The firm refunded a significant portion of the tenant's rental amount.

**HOWARD JOSE MORGAN** (Greensboro) – By Consent, the Commission suspended the broker license of Mr. Morgan for a period of 18 months effective December 1, 2017. Four months of the suspension were active with the remainder stayed for a probationary period from April 1, 2018 to June 1, 2019. The Commission found that Mr. Morgan failed to maintain a journal and ledger, failed to perform monthly reconciliations, and used of unapproved financial software programs, which caused a lack of an audit trail and

overages in the tenant security deposit account.

**ROBERT EDWARD ROBBINS** (Laurinburg) – The Commission accepted the permanent voluntary surrender of the broker license of Mr. Robbins effective May 9, 2018. The Commission dismissed, without prejudice, allegations that Mr. Robbins violated provisions of the Real Estate License Law and Commission rules. Mr. Robbins neither admitted nor denied misconduct.

**WILLIAM FREDERICK SCHNEIDER** (Charlotte) – By Consent, the Commission reprimanded Mr. Schneider effective June 15, 2018. The Commission found that Mr. Schneider, a broker-in-charge, entered into a residential lease with a tenant. Due to the lease terms and Mr. Schneider's acceptance of a full month's rent payment on the 15th, the tenant believed payments were due by the 15th of each month. Mr. Schneider mistakenly notified the tenant that she was in arrears with rent payments. Mr. Schneider caused further confusion at lease termination by referencing different lease termination dates, and charged rent against

the tenant's tenant security deposit for a period where the tenant should not have been responsible for rent.

**JEAN I. SKELCY** (Tryon) – By Consent, the Commission suspended the broker license of Ms. Skelcy for a period of 12 months effective June 1, 2018 and restricted her from further engagement in property management. The Commission then stayed the suspension for a probationary period from June 1, 2018 to May 31, 2019. The Commission found that Ms. Skelcy, a broker-in-charge, failed to provide all requested property management documents to the Commission and failed to designate "trust" or "escrow" on deposit slips, failed to identify the broker's license number on agency agreements, and failed to deposit security deposits within three days of receipt. The firm also continued to operate from July 2016 through June 2017, despite being issued a revenue suspension by the NC Secretary of State.

**TRINA C. STRICKLAND** (Tabor City) – By Consent, the Commission suspended the broker license of Ms. Strickland for a period of six months effective November 1, 2018. The Commission then stayed the

suspension effective November 1, 2018. The Commission found that Ms. Strickland acted as a dual agent in a sales transaction and attempted to use a standard form "Offer to Purchase and Contract", "Buyer Possession Before Closing Agreement", and

*Continued*

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

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

**\*\*Attention\*\*  
BIC's and BIC  
eligible brokers!**

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

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"Additional Provisions Addendum" to broker a contract for deed transaction. Ms. Strickland managed the subject property without first executing a property management agreement and without having a signed lease agreement. Ms. Strickland, after collecting rent, did not deposit rental proceeds in a trust account before remitting the rental proceeds to the owner.

**WFS PROPERTIES LLC** (Charlotte) – By Consent, the Commission reprimanded WFS Properties effective June 15, 2018. The Commission found that in July 2015, WFS Properties entered into a residential lease with a tenant, and due to the lease terms and WFS Properties' acceptance of a full month's rent payment on the 15th, the tenant believed payments were due by the 15th of each month. WFS Properties notified the tenant that she had to pay on the 1st of each month and mistakenly notified her that she was in arrears. WFS Properties caused further confusion at lease termination by referencing different lease termination dates and charged rent against the tenant's tenant security deposit for a period where the tenant should not have been responsible for rent.

**BRYAN GREGORY YURKO** (Raleigh) – By Consent, the Commission reprimanded Mr. Yurko effective November 1, 2018. The Commission found that in 2013, Mr. Yurko, acting as listing agent for a property serviced by a septic tank, advertised the home as having four bedrooms based on the seller's representation, and failed to verify the septic permit. When listing the property in 2017, the buyer discovered that the home was permitted for only three bedrooms.

Scan the code below to access the Commission website from your mobile devices.

