



## Commission Member Billie J. Mercer

*The Real Estate Commission regrets to announce the passing of Commission Member and former Chairman Billie J. Mercer. During her six years' service on the Commission, Billie was a tireless and dedicated worker, committed to improving and elevating real estate practice in our state. The members and staff of the Commission extend their sincere sympathy to her family and many friends.*

## Former Commission Member John W. Olive

*The Real Estate Commission also regrets to announce the passing of former member and Chairman John W. Olive (Wilmington) who served with distinction on the Commission from 1969 to 1973.*



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## Commission Education Program Winner of Top ARELLO Award

*By Larry A. Outlaw, Director of Education and Licensing*

The Association of Real Estate License Law Officials (ARELLO) presented its top education recognition award to the North Carolina Real Estate Commission for its "Total Education Program."

This award honors a jurisdiction's real estate licensing agency for operating an overall education program that is judged to be particularly outstanding based on awards criteria such as program design, program standards, innovation, resources devoted to the program and benefits of the program.

Specific aspects of the Commission's education program that contributed to the Commission's selection for this

honor include:

### **New Broker Prelicensing Course**

— The emphasis on practical application of laws, rules and concepts, inclusion of a major section on "Introduction to Commercial Real Estate Brokerage," and provision by the Commission of high quality course final examinations for use by instructors are particularly noteworthy.

*(See Education, page 6)*



*Education Award - Lanny Wilson, Commission Chairman, (r.) receives ARELLO award from Larry Outlaw, Director, Education and Licensing. Commission members (l. to r.) are Marsha Jordan, Raymond Bass, Wanda Proffitt, William Lackey, Sang Hamilton, Allan Dameron and Mona Hill.*

## M. Rick Watts Appointed To Commission

M. Rick Watts, Broker Associate and Senior Sales Executive with Coldwell Banker United Realty in Fayetteville,



has been appointed a member of the Real Estate Commission by Gov. Michael F. Easley, it was announced by Lanny Wilson, Chairman. Watts succeeds Billie

J. Mercer of Wilson.

Judge Cheri Lynn Beasley, 12th District Court in Cumberland County, administered the oath of office to Watts

February 13 at the Commission office.

Watts entered the real estate business in 1992 after retiring from a 30-year career with the U. S. Army where he achieved the rank of Command Retention Sergeant Major for the XVIII Airborne Corps. In eight years with Coldwell Banker, Watts has been a member of the President's Elite for four years and the President's Circle for five years.

Among numerous military honors, Watts holds the U. S. Army's Legion of Merit, the highest peacetime award for

*(See Watts, page 3)*



## REAL ESTATE BULLETIN

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

### NORTH CAROLINA REAL ESTATE COMMISSION

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P. O. Box 17100  
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Michael F. Easley, Governor

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**Editor-In-Chief**  
Phillip T. Fisher

**Editor**  
Robert L. Forshaw



## New to the Commission

**Jocelyn A. Watt** has assumed the position of Continuing Education Specialist in the Licensing and Education Division. She assists with the real estate continuing education program. Prior to joining the Commission, she served as a



database specialist for the Nutrition Services Division of the North Carolina Department of Health and Human Services. She is a graduate of Hampton University in Hampton, VA.

**Sandra A. Whenner** has assumed the position of Records Specialist in the Administration Division. She maintains licensee records, completes renewals, and assists newly licensed brokers. Prior to joining the Commission, Sandra was a mortgage division Lending Coordinator of K. Hovnanian Enterprises. She is an active community volunteer for many non-profit organizations including "Hope Worldwide".



**Gloria T. Williams** has returned to the Commission in the position of License Applications Specialist in the Licensing and Education Division. She worked for the Commission for 28 years before retiring in 1999 as Senior Application Specialist and has worked part-time for the past two years.



*To request a speaker from the Commission, please submit the "Request for Program Presenter" form available on the Commission's Web site, [www.ncrec.state.nc.us](http://www.ncrec.state.nc.us).*

## Appearances

**Thomas R. Miller**, Legal Counsel, presented a case law update and **Janet B. Thoren**, Deputy Legal Counsel, presented a program on Board Member Ethics at the annual convention of the Association of Real Estate License Law Officials.

**Thomas R. Miller**, Legal Counsel, and **Miriam J. Baer**, Assistant Director of Legal Services, addressed property management issues as part of a panel at the North Carolina Association of REALTORS® annual convention and later reviewed brokerage cases from courts across the nation at the convention.

**Thomas R. Miller**, Legal Counsel, spoke on Residential Square Footage Guidelines at the Risk Management Summit of the North Carolina Association of REALTORS® in Greensboro.

**Miriam J. Baer**, Assistant Director of Legal Services, presented a program on the role of the Real Estate Commission in advising licensees and consumers to the Wake County Real Property Lawyers Association in Raleigh, discussed common property management complaints at a Property Management Seminar of the Fayetteville Association of REALTORS®, and addressed other issues of general interest with the Fayetteville Association's regular membership.

**Peter C. Evans**, Information Officer, spoke to the Roanoke Rapids Board of REALTORS® on retention of records and other topics of interest to real estate agents.





## Watts

*Continued from page 1*

military achievement and honorable service.

He is a member of the Veterans of Foreign Wars, American Legion, the Airborne and Special Operations Museum Foundation Board and past member of the Executive Committee of the National Association for the Advancement of Colored People among other organizations.

Watts and his wife, Margaret, a retired teacher with 31 years of service, live in Fayetteville. Their daughter, Tiffany, is a doctoral student in psychology at the University of North Carolina at Chapel Hill.

## Frye, Phillippi Receive Commission Scholarships

Greta S. Frye of RE/MAX Hallmark Realty in Winston-Salem and Cathy A. Phillippi of Dickens-Mitchener and Associates in Charlotte are the recipients of the Commission's Joe Schweidler and Blanton Little Memorial Scholarships for 2001.

The Commission awards the scholarships, in honor of Schweidler and Little, both former Commission Executive Directors, to persons selected by the North Carolina Real Estate Educational Foundation for outstanding scholastic achievement in the North Carolina REALTORS® Institute program during the previous calendar year.

March 13  
(Huntersville)

April 17

May 15

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

### REGISTRATION FORM

## BASIC TRUST ACCOUNT PROCEDURES COURSE MONTHLY - RALEIGH

CONTINUING EDUCATION ELECTIVE CREDIT FOUR HOURS

TIME: 1:00—5:00 P.M.

LOCATION: MCKIMMON CENTER AT NCSU

TUITION: \$45.00

Each session is limited to 40 participants, scheduled according to the date the registration information is received.

The fastest way to register is online at [www.ncrec.state.nc.us](http://www.ncrec.state.nc.us).

Otherwise, complete and mail this form with a check for the tuition fee to the NC Real Estate Commission at the address below. Receipt must be no later than seven (7) days prior to the date of the preferred session. (Make additional copies, if needed.) Walk-ins accepted on a space available basis only.

- |                                       |                                    |                                     |
|---------------------------------------|------------------------------------|-------------------------------------|
| <input type="checkbox"/> March 5      | <input type="checkbox"/> April*    | <input type="checkbox"/> May 7      |
| <input type="checkbox"/> June 4       | <input type="checkbox"/> July 9    | <input type="checkbox"/> August 6   |
| <input type="checkbox"/> September 10 | <input type="checkbox"/> October 8 | <input type="checkbox"/> November 5 |

Name \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Phone ( ) \_\_\_\_\_

☐ Broker ☐ Salesperson ☐ Bookkeeper  
(Lic # \_\_\_\_\_)

\*The Basic Trust Account Procedures course is not held during April because of the Spring Trust Account Caravan (see p. 10).

Mail to: NC Real Estate Commission, Audits and Investigations Division, P. O. Box 17100, Raleigh, NC 27619-7100

**Registering online is easier, faster. Just have your credit card information and license number available.**



## Summary of Rule Amendments

Following a November 14, 2001 rulemaking hearing, the Real Estate Commission amended a number of its rules. If the General Assembly makes no objection, the amendments will become effective September 1, 2002.

Here is a summary. For a complete text, contact the Commission office.

- If you undertake to act as a "dual agent," you must obtain written authority to do so as soon as the agency relationship is formed; however, if you have an oral agency agreement with the buyer, you do not have to obtain the written authority from the buyer until an offer on the property is made.

- Rental property management agreements must be in writing.

- When managing property owner associations, you must keep certain records relating to your management of the associations and follow new rules for handling their monies, includ-

ing setting up a separate trust account for each association and reporting to the association (at least once every 90 days) the balance of funds in the account.

- On checks drawn from your trust account, you must state on the check the purpose of the check and identify the payee.

- You may under limited conditions keep cancelled trust account checks that have been "digitally imaged" by your bank instead of the actual checks.

- It has been clarified that the three-year period during which you must keep transaction records begins with the termination of the transaction and after all funds have been disbursed.

- A broker may under certain conditions pay a business referral fee to a travel agent in a vacation rental transaction (as defined in the Vacation Rental Act).

- Sole proprietors must designate themselves as broker-in-charge if they

handle trust monies, advertise their services, or have salespersons associated with them.

- The Commission will terminate the status of any broker-in-charge who has not completed the broker-in-charge course within the allowable time; the broker-in-charge must complete the course before again being designated a broker-in-charge.

- A minor change was made to the wording of Item #12 of the Residential Property Disclosure Statement regarding problems with other systems and fixtures.


- The license renewal fee of \$35 has been increased by \$5 to \$40.

- You may be disciplined by the Commission for giving it a "bad check" or dishonored credit card payment for any fees paid to the Commission.

- The procedure for requesting a Commission hearing when a license applicant's character is in question has been expanded to include applicants for approval as real estate instructors, directors, coordinators, schools or sponsors.

- A procedure has been established for dismissing claims made to the Real Estate Recovery Fund when the application for payment is incomplete or incorrectly filed.

- Real estate schools will no longer be required to get advance approval from the Commission for certain program changes or to submit quarterly reports on courses or students. Other education rules were amended affecting program structuring, course completion requirements, videotapes submitted in connection with applications for instructor approval, update course instructor requirements, the completion of "distance education" elective courses, and the electronic transfer of continuing education course information to the Commission.



### Commission Assists Egyptian Real Estate Association

The Real Estate Association of Egypt (REA) has requested the North Carolina Real Estate Commission to provide technical assistance in helping it modernize the real estate industry in Egypt that, the Association proudly proclaims, has "survived seven millennia". The Commission has agreed to assist REA by preparing for its use a document identifying the major components of a real estate licensing and regulatory program based upon the North Carolina model and licensing programs in other states.

According to Association General Secretary Fathallah Fawzi and REA founding member Dr. Ahmed El-Sharkawy, "Current market conditions and the increasing sophistication of the market players (buyers and sellers) demand initiating a more formal, transparent and sophisticated framework to better regulate the real estate market in Egypt. REA believes that a framework will create the right environment to foster continuous improvement in the real estate market, which constitutes a considerable part of Egypt's economy." They add that the "proposed document identifying the major components of the licensing program shall be the foundation on which REA will work towards defining the blueprints of the REA licensing program."

Hesham El-Boulaki, MCE, PE, who is both a native of Egypt and a North Carolina resident, will on behalf of REA, liaise with Commission Executive Director Fisher, Director of Education and Licensing Larry Outlaw and Legal Counsel Thomas R. Miller in developing the document and furthering the working relationships between REA and Real Estate Commission.



# Commission Initiates Commercial Brokerage Education Proposals

By Larry A. Outlaw,  
Director of Education and Licensing

The Real Estate Commission has accepted and begun to implement the recommendations of an advisory committee to work with interested education sponsors to improve educational opportunities in the field of commercial real estate brokerage and to enhance licensees' awareness of the need for greater education in this and other specialty areas of practice.

## Specific Proposals

The Commission's Commercial Brokerage Education Advisory Committee (CBEAC) recently reviewed commercial brokerage educational opportunities and specifically proposed that the Commission:

- Make the materials comprising the chapter on "Commercial Real Estate Brokerage" in the Commission's North Carolina Real Estate Manual available for education sponsors to use in providing a six-hour "Introduction to Commercial Real Estate Brokerage" continuing education elective course, provided that proposed instructors meet special qualification requirements established by the Commission.

- Provide education sponsors of CE elective courses on commercial brokerage with suggestions for possible subject matter for courses that licensees could take after completing the introductory course.

- Through the Real Estate Bulletin and mandatory CE update course, address the issue of licensee competence necessary to engage in commercial brokerage and property management, and make licensees aware of educational opportunities in these fields.

## Formed in 2001

The CBEAC was formed in 2001 to assist the Commission in developing a plan for a commercial brokerage education certificate program designed to make available basic instruction to licensees, especially those with occasional commercial transactions.

The development and operation by the Commission of such a program had been recommended by the Commission's Specialty Licensing Advisory Committee that studied the issue of possible separate licensure or certification of commercial brokerage and property management practitioners. The Commission agreed with the committee's recommendation that it not pursue the establishment of a separate licen-

sure or certification program for specialty area practitioners, but instead develop and operate a commercial brokerage education certificate program.

After considerable deliberation, the CBEAC recommended that the Commission reconsider its tentative plans to develop and administer a basic commercial brokerage education certificate program.

## Primary Concern

Several factors contributed to the CBEAC's conclusion. A primary concern was that issuance of a program certificate

by the Commission would imply to licensees and consumers that certificate holders are especially competent to practice commercial brokerage.

The fact is, however, that the amount of information that could be conveyed in even a high quality introductory-level program of some 30 classroom hours would be completely inadequate to achieve the necessary

level of competence. The committee also had other concerns about the likelihood of program participation by the primary target audience, competition with an existing similar program in Charlotte and the high cost of development.

The CBEAC members were Peter T. Chenery, Raleigh, Richard D. Whitney, Asheville, and William C. Maus, Wilmington, Commercial Brokers; Ernest D. Wilkinson III, Atlantic Beach, Dewey L. Brantley, Jr., Wilson, and Roy H. Harvel, Southern Pines, General Practitioners; Cindy S. Chandler, Charlotte, Educator and Commercial Broker; William C. Lackey, Jr., Charlotte, General Practitioner and Commission Member; and Chris Rhodes, Director of Professional Development, NC Association of REALTORS®, Ex Officio Member. Commission staff advisors for the committee were Larry Outlaw, Director of Education and Licensing, and Pamela Rorie, Continuing Education Officer.

The Commission appreciates the contributions of the CBEAC members who willingly devoted their valuable time to assist the Commission in this matter.



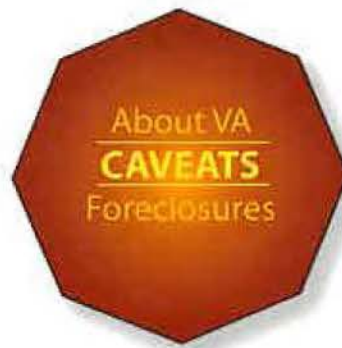


When the Veterans Administration is forced to foreclose on a real estate loan which it has guaranteed, it typically arranges with a local real estate broker to act as its "property manager" to get the property ready to re-sell. It then posts the property on its website for any licensed real estate broker to sell.

Selling VA-foreclosure properties can be rewarding, but agents should be aware that:

*The VA will not list its property with any individual agent or company. Therefore,*

**You cannot give a "broker price opinion" (BPO) on the property, even if you are the "property manager."** Real estate brokers and salespersons can perform BPO's only if they expect to obtain a listing on the property (which



they cannot) or if they are licensed appraisers.

**You cannot act as a seller's agent or subagent.** To act as agent for the seller, you must have a signed listing agreement (which you cannot have). You can only act as a buyer's agent. And, if you act as both the buyer's agent and the VA's "property manager", you should disclose to the VA and the buyer what your relationship is to each of them.

**You must not imply in your adver-**

tisements that the VA foreclosure property is listed with your firm or that you have the exclusive right to market it. By including "this is not a company listing" or "inventory available on VA website" in your advertising, you can dispel this impression.

*The VA sells its property "as is" and does not require an attorney to close the transaction. Therefore,*

**You should encourage your buyer-client to have the property inspected by a licensed home inspector, get a pest inspection, a survey, etc., and to retain an attorney to protect the buyer's legal interests.** [Document in your files that you made these recommendations to the buyer.]

## Education

*(Continued from page 1)*

**Standards for Prelicensing and CE Update Course Instructors** — Prospective CE update course instructors have long been required to demonstrate by videotape that they possess minimally acceptable basic teaching skills. Prelicensing instructors are now subject to this requirement and new instructors must attend a Commission-sponsored *New Instructor Seminar*. In addition, prelicensing instructors must obtain *instructor continuing education* to renew their approval.

**CE Update Course** — The Commission-developed mandatory update course, featuring entirely different subject matter each year, is highly regarded for the quality of information and instruction.

**CE Elective Course Standards** — The Commission utilizes very strict elective course approval standards in an effort to assure that approved courses serve the public interest and meet minimum quality standards regarding the information to be provided, course design, materials and similar matters.

**Instructor Training** — The Commission sponsors a two-day *Real Estate Educators Conference* each year for the benefit of approved instructors and other

real estate educators. The Commission also conducts two six-hour training sessions for CE update course instructors each year to help prepare them to teach the update course for that year.

**Broker-in-Charge Course** — Since October 2000, all newly designated brokers-in-charge must take this Commission-developed course within 90 days of being designated. The 4½-hour, PowerPoint®-based course focuses on the legal and practical responsibilities of brokers-in-charge and is conducted by the Commission 4-5 times a month at various locations across the state.

**Trust Account Course** — The Commission conducts both a *Basic Trust Account Course* and a *Resort Property Managers Trust Account Course* for licensees. The basic course is taught once a month in Raleigh and both are taught each spring in several locations across the state. The courses utilize a PowerPoint®-based instructional program.

**North Carolina Real Estate Manual** — The Commission publishes biennially this text on North Carolina real estate law and brokerage practices. It is used in the broker prelicensing course and also serves as a reference book for practitioners. The 718-page *Manual* fea-

tures detailed coverage and many practical examples not found elsewhere.

**Information Publications for Licensees and Consumers** — The Commission publishes a *licensee newsletter*, the *Real Estate Bulletin*, a *Working with Real Estate Agents* brochure (which licensees must provide to prospective sellers and buyers), and a *Residential Square Footage Guidelines* booklet. In addition, the Commission publishes free of charge to licensees and consumers a series of **Question and Answer** brochures on \*Fair Housing, \*Renting Residential Real Estate, \*Tenant Security Deposits, Condos and Townhouses, Residential Subdivisions and Planned Communities, Home Inspections, and Purchasing Coastal Real Estate in North Carolina (\* available in a **Spanish language edition**).

The Commission is very proud to have received the ARELLO award recognizing its achievements in the education area. [ARELLO is an international organization of real estate licensing agencies and individuals involved with regulation of the real estate industry.]





## Bulletin Changes

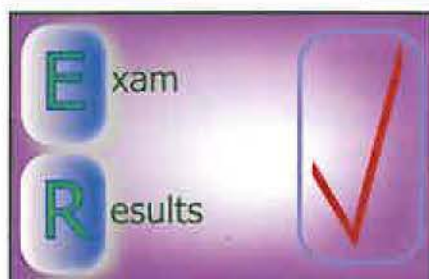
Changes have been made in the Bulletin beginning with this issue:

¶ Paper stock - a coated stock for better reproduction.

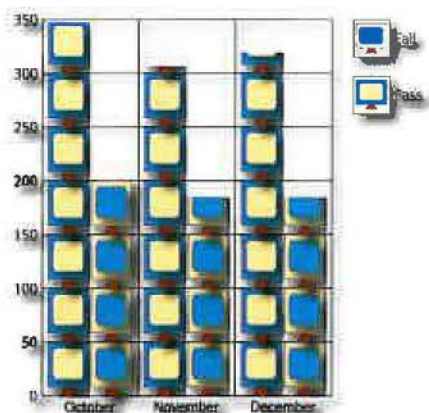
¶ Color photography (a first in the Bulletin's history) and full color throughout each issue.

¶ Text type - graphically more interesting and more readable.

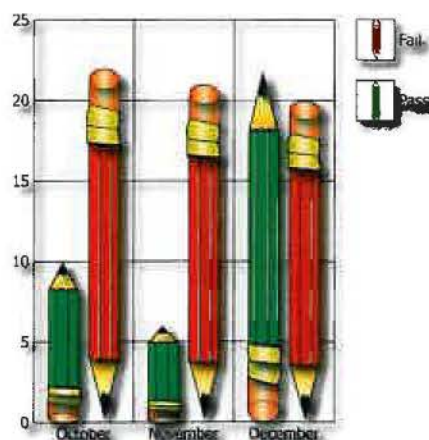
¶ Publication frequency - three times a year, rather than four, with expansion as needed.



By Computer



By Paper and Pencil



## PUBLICATIONS ORDER FORM

Quantity  
Requested

### Residential Square Footage Guidelines

(One free copy per agent per firm; \$.65 each additional copy.)

### Working With Real Estate Agents

(One free copy per agent per firm; \$.20 each additional copy.)

Amount Enclosed:

\$

**Checks only. We cannot take credit card orders for publications.**

### The following publications are free of charge:

#### Residential Property Disclosure Statement and Guidelines

(Please limit request to one copy; duplicate as needed.)

**Also available on the Commission's web site.)**

#### Questions and Answers On:

Fair Housing

Tenant Security Deposits

Condos and Townhouses

Residential Subdivisions and Planned Communities **(New)**

Purchasing Coastal Real Estate in North Carolina

Renting Residential Real Estate

Home Inspections

#### Spanish Translations

Trato Con Agentes de Bienes Raíces

(Working With Real Estate Agents)

Preguntas y Respuestas sobre: (Questions and Answers On:)

Vivienda Justa

(Fair Housing)

El Depósito de Seguridad del Inquilino

(Tenant Security Deposits)

Alquiler de Inmuebles para Viviendo

(Renting Residential Real Estate)

Name

Phone (include area code)

Street Address (NOT P.O. BOX)

City

State

Zip

Please allow two weeks for delivery.

Return the completed form to:

**North Carolina Real Estate Commission**

**ATTN: Publications**

**P. O. Box 17100**

**Raleigh, NC 27619-7100**



## Commission Pursues Increase In State Licensing Reciprocity



The Real Estate Commission at its December meeting approved the recommendations of its Interstate Brokerage Cooperation Advisory Committee to aggressively pursue reciprocal licensing arrangements with other states and study ways to expedite the processing of applications for non-resident real estate licenses.

The Commission also directed staff to explore the feasibility of issuing "temporary practice permits" to out-of-state licensees.

Representatives from commercial real estate brokerage organizations had requested the Commission's assistance in facilitating brokerage across state lines.

Specifically, they asked the Commission to explore ways to enable real estate licensees in other states to transact commercial business in North Carolina through "partnering arrangements" with North Carolina licensees.

In response, the Commission formed the Interstate Brokerage Cooperation Advisory Committee and expanded the scope of its inquiry to also include residential transactions.

The Commission charged the committee to identify any legal or other obstacles facing real estate licensees from other states who wish to engage in real estate brokerage in North Carolina; demonstrate how these obstacles affect North

Carolina real estate consumers, licensees and others; and recommend ways to remove any obstacles without reducing protections afforded consumers.

The Commission gratefully acknowledges the assistance of the following committee members: Jim Anthony (Raleigh), Randall Morrison (Sunset Beach), Ben Orme (Charlotte), Deidre Rogers (Mt. Airy), Assistant Attorney General Harriet F. Worley, and North Carolina Association of REALTORS® Governmental Affairs Director Stephanie Mansur. Commission Member Bill Lackey (Charlotte) represented the Commission on the advisory committee. Commission staff members Larry Outlaw, Miriam Baer and Legal Counsel Tom Miller served as staff advisors, and Executive Director Phillip Fisher facilitated the discussions.

## UNDERSTANDING YOUR LICENSE STATUS

The Real Estate Commission has become aware that some brokers and salespersons who are members of the Association of REALTORS® are confused about the Association's dues policy and, as a result, may have mistakenly placed their licenses on "inactive" status.

If you have questions concerning your membership in the REALTOR® Association, you are advised to contact the North Carolina Association of REALTORS®, 4500 Weybridge Lane, Greensboro, NC 27407, Phone 336/294-1415. Before changing the status of your real estate license with the Real Estate Commission, you should fully understand the differences between "active," "inactive" and "expired" license status.

### "Active" Status

If your license is on "active" status, you can perform any acts and services

which require a license. For example, brokers may engage in sales and rental management (either independently or with a firm), and salespersons may engage in brokerage activities under the supervision of a broker-in-charge. However, you are reminded that to keep your license "active," you must take two Commission-approved continuing education courses annually (the Update course and an elective), and you must renew your license with the Real Estate Commission by June 30 of each year.

### "Inactive" Status

If your license is on "inactive" status, you are considered licensed, but you may not engage in any acts or services for which a license is required—including receiving "referral fees." To prevent your "inactive" license from expiring, you must pay the annual license renewal fee, but you are not required to take any continuing education. [Note: To activate

your license, you will be required to take the Update course and up to three elective courses.]

### "Expired" Status

Your license will automatically expire July 1 if you do not renew it with the Commission. Once it is expired, you may not engage in any activity which requires a real estate license. And if it is expired for more than one year, you may be required to retake prelicensing education and/or the license examination in order to get it back.

### In Summary

If you are engaged in any activity requiring a license, be sure to maintain your license on active status. If you are presently not engaged in brokerage but think you may want to do so in the future, you may wish to place your license on "inactive" status. But if you let your license expire, you may have to take significant education and the license examination in order to get it back.



# Do Not Act Without Authorization!

By *Stephen L. Fussell*,  
Consumer Protection Officer

Agency agreements authorize a real estate firm and its associates to act on behalf of their clients -- to market a seller-client's property, to search for and assist a buyer-client with purchasing a suitable property or to manage an owner's rental property. All agency agreements authorize agents to perform certain duties, but they do not give the agents unlimited authority to act on behalf of clients or to make decisions for their clients or customers. The following is a partial list of services for which agents must obtain authorization.

**1** A listing agent may not advertise a seller's property or perform any service on behalf of a seller-client without first entering into a written listing agreement with the seller.

**2** A listing agent should not advertise a seller's property at any price other than the price selected by the seller.

**3** A listing agent must not decide on his or her own whether an offer is acceptable. The agent must deliver the offer to the seller to enable the seller to decide whether the offer is acceptable.

[Note: Even when an offer is negotiated via telephone, the listing agent must send or deliver any written offer to the seller for review.]

**4** A listing agent or buyer agent should refrain from giving a buyer or prospective buyer keys or possession of a seller's property without first obtaining the seller's express permission. If a closing occurs so late on a Friday afternoon that the new deed will not be recorded until the following Monday or later, then the agents must obtain the seller's permission before giving keys to the buyer and should recommend that the parties enter into a written agreement to permit the buyer's possession before closing. (Remember, the standard form Offer to Purchase and Contract defines "closing" as the date and time the deed is recorded.)

**5** A listing agent or buyer agent should avoid signing closing statements or other documents on behalf of a client without first obtaining written authority, preferably in the form of a power of attorney. Agents should avoid signing anything for customers.

**6** A listing agent or buyer agent should not contract for services (e.g. repair services, inspections, closing attorneys, surveys, termite treatments, etc.) on behalf of a client or customer without first obtaining authorization from the client or customer. Otherwise, the agent may be held responsible for paying for the services rendered.

**7** A listing agent or buyer agent should refrain from advising clients and customers that a contract has been formed or that they have a "done deal" until all parties have signed the offer, initialed all changes made to it and communicated to all parties that the offer has been signed and initialed by all parties. Until then, agents must refrain from using the term, "verbal contract," as it falsely implies that a valid, binding agreement has been formed.

**8** A property manager must refrain from entering into a lease containing terms not authorized by the owner including the lease rate and lease term.

**9** A property manager may not permit a tenant to use a property for any purpose other than that which is authorized by the owner, by restrictive covenants and by zoning restrictions.

**10** A property manager may not permit a tenant to have pets or to exceed the occupancy limit set by the owner without first obtaining the owner's permission.

Real estate agents must act in the best interests of their clients at all times and should avoid taking any action for which they have not received express authority from their clients and customers. A real estate agent's duty is to communicate information to the parties involved so that they can make informed decisions rather than the agent making them alone. Complaints received by the Commission alleging any of the ten items listed above may result in disciplinary action. Therefore, to protect your license, obtain authorization before acting on behalf of someone else.



## 2002 Trust Account Caravan Registration Form

Four (4) hours continuing education credit will be awarded for completion of each course.

### Asheville Renaissance Asheville Hotel, 1 Thomas Wolfe Plaza

- ☐ March 19, 2002 9 am – 1 pm Basic Trust Account Procedures
- ☐ March 20, 2002 9 am – 1 pm Basic Trust Account Procedures
- ☐ March 21, 2002 9 am – 1 pm Trust Account Procedures for Resort Property Managers

### Greensboro Ramada Inn-Greensboro Airport, 7067 Albert Pick Road

- ☐ April 2, 2002 9 am – 1 pm Basic Trust Account Procedures
- ☐ April 3, 2002 9 am – 1 pm Basic Trust Account Procedures

### Charlotte Hilton Charlotte University Place, 8629 J.M. Keynes Drive

- ☐ April 4, 2002 9 am – 1 pm Basic Trust Account Procedures
- ☐ April 5, 2002 9 am – 1 pm Basic Trust Account Procedures

### Boone Quality Inn Appalachian Conference Center, 949 Blowing Rock Road

- ☐ April 9, 2002 9 am – 1 pm Basic Trust Account Procedures
- ☐ April 10, 2002 9 am – 1 pm Trust Account Procedures for Resort Property Managers

### Fayetteville Holiday Inn Bordeaux, 1707 Owen Drive

- ☐ April 15, 2002 1 pm – 5 pm Basic Trust Account Procedures
- ☐ April 16, 2002 9 am – 1 pm Basic Trust Account Procedures

### Wilmington Coast Line Convention Center, 501 Nutt Street

- ☐ April 22, 2002 1 pm – 5 pm Basic Trust Account Procedures
- ☐ April 23, 2002 9 am – 1 pm Trust Account Procedures for Resort Property Managers

### Morehead City Crystal Coast Civic Center, 3505 Arendell Street (Highway 70)

- ☐ April 24, 2002 9 am – 1 pm Basic Trust Account Procedures
- ☐ April 25, 2002 9 am – 1 pm Trust Account Procedures for Resort Property Managers

### Kill Devil Hills Ramada Inn Outer Banks Resort & Conference Center, 1701 South Virginia Dare Trail

- ☐ April 30, 2002 9 am – 1 pm Basic Trust Account Procedures
- ☐ May 1, 2002 9 am – 1 pm Trust Account Procedures for Resort Property Managers

The fastest way to register is online at [www.ncrec.state.nc.us](http://www.ncrec.state.nc.us). Otherwise, please complete this form (make copies for additional persons) and mail with a check for the \$45 tuition fee. Each session is limited to 40 participants.

NAME \_\_\_\_\_ PHONE ( ) \_\_\_\_\_

ADDRESS \_\_\_\_\_  
Street, P. O. Box City State Zip

LICENSE NO. \_\_\_\_\_

#### MAIL TO:

North Carolina Real Estate Commission  
ATTN: Audits and Investigations Division  
P. O. Box 17100  
Raleigh, NC 27619-7100

#### Save Time!

Registering online is easier, faster. Just have your credit card information and license number available.



# Is Your Business Worth More Than Zero?

B. M. Brogden, Jr., Chief Deputy Legal Counsel

I went to lunch one day and ended up in a slow line at my favorite fast food outlet. The fellow next to me in that line was a respected licensee with a similar taste in traditional southern cuisine. We fell to "talking shop," including the various methods for valuing an ongoing real estate brokerage business. At the end of a complex discussion of ratios and formulas, he explained, "Now if the trust account is short, the value of the business is either zero or a negative number."

OK. Simple. According to at least one licensee, if your trust account is short, no matter how many clients, contracts and other assets you have, your business is worthless. Does that mean that if the bank statement shows money in the trust account, you can just stop there? No!

## Enough Money

Why? Just because you have what seems like enough money in the trust account doesn't mean you are in compliance. Consider the following example:

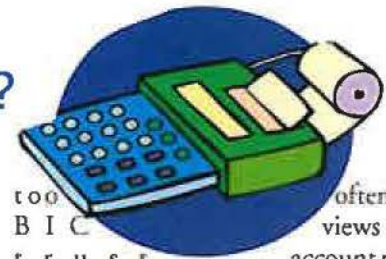
Firm A does not correctly utilize an owner ledger system that balances to a journal, or perform the monthly reconciliation required by Commission rule. It is only when the Commission trust account auditor comes around for a visit that the BIC finds out that the firm routinely pays out earnest money from the

trust account for closings when it is not actually holding that money because the deposit went to a builder. One would expect this to show up pretty soon with bounced checks, so the BIC at first can't believe this.

However, because the BIC also was not closely reviewing the trust account records, he also had not figured out that in other transactions, where the closing attorney had credited the earnest money held by the firm in the trust account against the total amount of commission due at closing, Firm A had never taken those funds out of the trust account after closing. So, by unlawful commingling (which kept money belonging to the firm in the trust account instead of being transferred to its operating account, reducing the actual amount of the firm income it could spend), the BIC managed to keep himself from finding out that trust money was being misapplied!

I don't have to make this example up -- it happens all too often. Done intentionally, this kind of misconduct can be used by crooks to hide trust account embezzlement for awhile. Done unintentionally, the BIC disguises the value of the firm with a pretense of solvency. Either way, the licenses of the firm and its BIC are at risk, as is the money of the firm's clients and customers.

The heart of the problem is that all



too often, the BIC views the trust account record keeping as a burden or a homework assignment in a foreign language. Yet, how can the BIC know if the business itself is healthy and profitable if he or she really does not understand what the trust account is doing on a regular basis? Brokers-in-Charge have a responsibility to understand their office bookkeeping systems and to know what's going on.

## Ledger System

The key is that the BIC must understand how a ledger system is created, how the ledger system relates to the journal, and that simply balancing the bank statement to the journal is only the first step in the monthly reconciliation. The total of all the pending or open ledger balances should equal the reconciled bank balance which should equal the running balance on the journal. If to reach this balance, the firm must include negative balances on owner ledgers, there is a serious problem. No owner ledgers should ever have a negative balance.

If you are the BIC or bookkeeper and if the concepts described above don't make sense to you, it's time to take the trust account course and other educational programs to get yourself up to speed. Otherwise, you may wind up asking yourself, "Why isn't my business worth more than zero?"

## New Q&A Brochure

### Residential Subdivisions and Planned Communities

The new Questions and Answers on: Residential Subdivisions and Planned Communities brochure will educate consumers in both the new development and re-sale markets. It is the 10th Q&A brochure in the series including three in Spanish.

A companion brochure to Questions & Answers on: Condos and Townhouses, it includes information on road maintenance issues and how North Carolina's Planned Community Act applies to residential developments.

The brochure is free and may be ordered using the Publications Order Form on page 7 of this issue of the *Bulletin*.

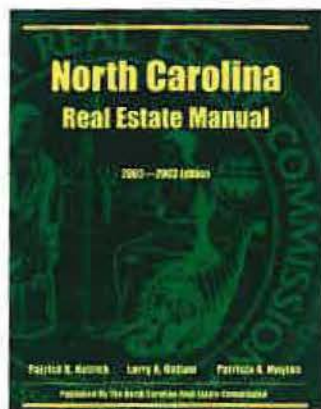




2002-2003 Edition

# NORTH CAROLINA REAL ESTATE MANUAL

The *North Carolina Real Estate Manual*, published by the Real Estate Commission, is a comprehensive reference addressing real estate law and brokerage practice, North Carolina Real Estate License Law and Commission rules. It includes updated coverage of the July 1, 2001 agency rule changes and an expanded discussion of federal Lead Based Paint Disclosure laws. It serves as the authorized textbook for the real estate broker pre-licensing course and is highly recommended for licensees, attorneys, instructors and anyone else engaged or interested in real estate law and brokerage practice.



**HOW TO ORDER:**

## ONLINE

At the Commission's web site, [www.ncrec.state.nc.us](http://www.ncrec.state.nc.us), select the Manual icon to link directly with the book distributor. Follow the instructions for ordering with your MasterCard or Visa credit card.

BY MAIL, FAX OR EMAIL

Mail, fax or email the form below with payment. For credit card payments, MasterCard and Visa are accepted. For checks, please send only cashier's or certified check or money order, payable to: North Carolina Real Estate Manual. (Sales tax is \$2.27 per Manual).

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# EMPLOYMENT OPPORTUNITY

## Auditor/Investigator

Please direct questions or requests for additional information to the Commission's Director of Administration, N.C. Real Estate Commission, P.O. Box 17100, Raleigh, N.C. 27619-7100.

- Salary:** Beginning salary \$34,452 and up depending upon experience.
- Benefits:** Blue Cross health insurance; retirement contribution; paid vacation and sick leave.
- Duties:**
1. Audits and inspects real estate brokerage trust account records on a state wide basis when the Commission determines that the records are pertinent to the investigation of a specific complaint against a real estate broker or salesperson or time share project.
  2. Conducts routine, periodic audits of real estate trust accounts to determine compliance with the Real Estate License Law and Commission rules.
  3. Investigates consumer complaints against licensees involving misrepresentations, loan fraud, mishandling of client funds, and other improper acts in connection with real estate sales and leasing transactions.
  4. Writes reports for review by the Director of Audits and Investigations concerning results of investigations.
  5. Testifies before the N.C. Real Estate Commission on investigative findings.
  6. Performs other related duties at the direction of the Director of Audits and Investigations.

**Minimum Qualifications:** Graduation from a four-year college or university including nine (9) semester hours in accounting or a major in business administration or police science, and either one (1) year of accounting and/or auditing experience, or one (1) year of law enforcement or investigative experience.

**Other Requirements:** Must reside in or be willing to relocate to Raleigh (no moving expenses or allowance will be paid by the Commission), and have automobile available for use at work.

**To Apply:**

1. Complete the State of North Carolina Application for Employment form (PD 107). This form is available upon request from the Commission at (919) 875-3700, Ext. 117, or may be downloaded from the Commission's Web site at [www.ncrec.state.nc.us](http://www.ncrec.state.nc.us) by clicking on the position.
2. Include a writing sample (articles, reports, papers, etc., that you have written)
3. Mail your application form and written samples to the following:

N.C. Real Estate Commission  
P.O. Box 17100, Raleigh, NC 27619-7100  
Attn: Director of Administration

4. No telephone inquiries or requests for appointments, please!
5. Application for Employment and related materials must be in the Real Estate Commission office by April 30, 2002.

**Employment Schedule:**

Application Deadline - April 30, 2002  
Preliminary Interviews - May 8, 2002  
Commission Interviews - May 15, 2002  
Employment Date - June 3, 2002 (negotiable)

EQUAL OPPORTUNITY EMPLOYER



# AUDITOR'S CORNER

*Look in the Auditor's Corner for tips on properly maintaining your trust account records. This issue's article discusses the Commission's Compliant Software list.*



**By Emmet R. Wood, Director, Audits and Investigations**

The Commission is in the process of evaluating computer software for compliance with the Real Estate License Law, Commission rules and Trust Account Guidelines. In order to comply, the software must have the capability to generate a trust account journal, supplemental deposit and disbursement worksheets, ledger sheets, bank reconciliation and ledger reconciliation worksheet as required by Commission Rule A.0107 and as illustrated in the Trust Account Guidelines.

Once the Commission determines that the computer reports submitted by a vendor comply, the software is put on the Commission's Compliant Software List. This list will be published in the Real Estate Bulletin and on

the Commission's web site at [www.ncrec.state.nc.us](http://www.ncrec.state.nc.us). Users should be certain that they are using the current updated version of a compliant software.

Not all computer software programs are evaluated. For example, Quick Books would not be evaluated because the software is not set up or programmed to account for the handling of trust funds. This would not preclude a licensee from using that software to account for trust funds. However, someone using Quick Books would have to possess a good working knowledge of not only accounting but also the Commission's reporting requirements and they would then have to set up the software to generate the appropriate compliant reports.

When a licensee does elect to use software on the Commission's Compliant Software List, then the licensee should evaluate the software for its usefulness and utility to the real estate company. For example, if a licensee is in the long term rental management business, then the licensee may want the software to print a list of the tenants who are delinquent with their rent or a list of the rental units that are vacant.

Keep in mind that the reports generated by Commission compliant software are only as good as the data entered by the computer user who should have competence in accounting and possess a good working knowledge of the Commission's rules and guidelines.

*Related Article: "Is Your Business Worth More Than Zero?", Page 11*



**REAL ESTATE COMMISSION**  
HANDY REFERENCE LIST

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Legal Services	<a href="mailto:legal@ncrec.state.nc.us">legal@</a>
Records	<a href="mailto:records@ncrec.state.nc.us">records@</a>





*(Penalties for violations of the Real Estate License Law and Commission rules vary depending upon the particular facts and circumstance present in each case summarized below.)*

**SELBY G. BENTON** (Warrenton) – The Commission accepted the voluntary surrender of Mr. Benton's broker license for a period of one year effective March 1, 2001. The Commission dismissed without prejudice allegations that Mr. Benton violated provisions of the Real Estate License Law and Commission rules. Mr. Benton neither admitted nor denied any misconduct.

**DOUGLAS R. BRINDLEY** (Corolla) – By Consent, the Commission suspended the broker license of Mr. Brindley for a period of two years effective December 1, 2001. Three months of the suspension are to be active and remainder stayed for a probationary term ending December 1, 2004. The Commission found that Mr. Brindley, as broker-in-charge, failed for two years to conduct the monthly trust account reconciliation required by Commission rules and thus failed to properly account for funds held for others. The Commission noted that Mr. Brindley promptly undertook steps to remedy this situation.

**CALLIHAN TEAL SKELLEY & ASSOCIATES, t/a ERA CALLIHAN, TEAL, SKELLEY** (Calabash) – By Consent, the Commission revoked the firm broker license of Callihan Teal Skelley & Associates effective December 3, 2001. The Commission found that the firm continued to operate and renew its firm license every year despite the revocation of its Certificate of Authority in September 1993 by the Secretary of State's office for failure to file annual reports. The Commission also found that the firm failed to perform monthly trust account reconciliation, failed to maintain property ledgers, engaged in commingling of funds and failed to properly account for the funds of others.

**CENTURY 21 DOROTHY ESSEY & ASSOCIATES, INC.** (Long Beach) – By Consent, the Commission reprimanded the firm of Century 21 Dorothy Essey & Associates effective December 1, 2001. The Commission found that Century 21 Dorothy Essey & Associates disbursed a \$5,000 earnest money deposit without either a court order or written release by all parties to a failed contract to purchase property listed by the firm, even though the deposit was in dispute between the owner and prospective buyers. The firm reimbursed \$2,500 to the owner under the terms of the listing agreement.

**ALAN B. CONNER** (Monroe) – By Consent, the Commission suspended the salesperson license of Mr. Conner for a period of two years effective January 1, 2002. Six months of the suspension are to be active and the remainder stayed for a probationary term ending July 1, 2004. The Commission found that Mr. Conner, without authority, signed an earnest money release form for the parties to a sales transaction. The Commission also found that Mr. Conner, upon receiving the disbursement check, endorsed and cashed the check without the authorization of the parties. Mr. Conner subsequently reimbursed the parties.

**CROSSMAN COMMUNITIES OF NC, INC.** (Calabash) – By Consent, the Commission reprimanded the firm of Crossman Communities effective December 1, 2001. The Commission found that Crossman Communities failed to perform monthly trust account reconciliations, failed to maintain property ledgers, engaged in commingling of funds and failed to properly account for the funds of others. These problems occurred in the Calabash office, which has since been closed.

**ELMER DAVIS** (Mebane) – By Consent, the Commission suspended the salesperson license of Mr. Davis for a period of one year effective October 1, 2001. Three months of the suspension are to be active and the remaining period stayed for a probationary term of one year. The Commission found that Mr. Davis, in brokering a sale of real property in which he had an ownership interest, failed to include upon the closing statement a note received for a portion of the purchase price and closing expenses.

**TERESA ELLISON** (Leicester) – By Consent, the Commission suspended the

salesperson license of Ms. Ellison for a period of two years effective January 1, 2002. The Commission found that Ms. Ellison failed to disclose 1985 and 1987 convictions to the Commission on her license application and failed to notify the Commission of name and address changes.

**DOROTHY H. ESSEY** (Long Beach) – By Consent, the Commission reprimanded Dorothy Essey effective December 1, 2001. The Commission found that Dorothy Essey disbursed an earnest money deposit without either a court order or written release by all parties to a failed contract to purchase property listed by the firm, even though the deposit was in dispute between the owner and prospective buyers. Ms. Essey reimbursed \$2,500 to the owner under the terms of the listing agreement.

**LONNIE W. GLASPIE, JR.** (Clinton) – By Consent, the Commission reprimanded Mr. Glaspie effective October 3, 2001. The Commission found that Mr. Glaspie, when purchasing property for his own account, concealed his acquisition of title from a lender in order to avoid enforcement of the due-on-sale clause in a deed of trust on the property.

**JOHN MARK HANCOCK** (Raleigh) – The Commission accepted the voluntary surrender of Mr. Hancock's broker license for a period of one year effective October 15, 2001. The Commission dismissed without prejudice allegations that Mr. Hancock violated provisions of the Real Estate License Law and Commission rules. Mr. Hancock neither admitted nor denied any misconduct.

**JW CONCEPTS LLC** (Cary) – By Consent, the Commission revoked the firm broker license of JW Concepts effective January 1, 2002. The Commission found that JW Concepts failed to have its trust account records created and maintained in the manner required by Commission rules. Funds were expended from the account when not held for the purpose for which spent and were commingled with the funds held for others by the firm. The Commission noted that JW Concepts acted promptly to end commingling practices, rectify improper expenditures and implement the necessary record keeping system for the funds of others. J. W. Concepts neither admitted nor denied any misconduct. (See *Disciplinary*, page 16)



## Disciplinary

(Continued from page 15)

**PATRICIA A. KEYES** (South Brunswick) – By Consent, the Commission reprimanded Ms. Keyes effective December 1, 2001. The Commission found that Ms. Keyes, acting as bookkeeper for the real estate firm where she also held a salesperson license, handled all of the rental business herself without the supervision of her broker-in-charge. The Commission also found that the firm's books and records were not kept in compliance with the Real Estate License Law and the Commission rules.

**THOMAS R. T. MCINTOSH** (Durham) – By Consent, the Commission suspended the broker license of Mr. McIntosh for one year effective December 1, 2001, then stayed the suspension upon Mr. McIntosh's satisfactory completion of certain coursework and placed him on probation until December 1, 2003. The Commission found that Mr. McIntosh in 1992 answered "no" to the broker license application question concerning prior convictions of any criminal offense when, in fact, he had been convicted in 1988 in Guilford County, NC, of Driving While Impaired. The Commission also found that Mr. McIntosh sent the Commission checks to renew his license in 1995 and 2000, which were initially returned for insufficient funds. The Commission further found that in July 1999 the Appraiser Board suspended Mr. McIntosh's appraiser license for three months for paying a course sponsor for a continuing education course with a check that was returned for insufficient funds.

**NORTH CAROLINA REAL ESTATE SERVICES, CORP.** (Clinton) – By Consent, the Commission reprimanded North Carolina Real Estate Services, Corp., effective October 3, 2001. The Commission found that the firm, while managing property owned by its principal shareholder, concealed from a lender having a deed of trust on the property the transfer of title to real property of the owner of the firm in violation of a due-on-sale clause contained in the lender's deed of trust.

**MICHAEL G. SCHRIBER** (Pinehurst) – By Consent, the Commission reprimanded Mr. Schriber effective December 1, 2001. Also, effective December 1, 2001, the Commission withdrew for 90 days its approval of Mr. Schriber as a

pre-licensing and continuing education update course instructor. The Commission then stayed the withdrawal for a probationary period of one year. The Commission found that Mr. Schriber made certain remarks in a Commission-approved broker pre-licensing course that were unnecessary to the course subject matter and offended the sensibilities of students.

**JEANNETTE SILVERTHORNE** (Greensboro) – By Consent, the Commission suspended Ms. Silverthorne's broker license for ninety days effective October 1, 2001. Thirty days of the suspension were active and the remaining period stayed for a probationary period of one year. The Commission found that Ms. Silverthorne, as a broker in the sale of a house and lot, failed to disclose to the closing attorney or the lender providing a loan secured by the property a loan of \$2,000 from the seller to the buyer to use as part of the purchase price. The transaction closed and the closing attorney's office failed to properly record the loan payment on the closing statement provided to the parties and the lender.

**ELIZABETH E. TAYLOR** (Kitty Hawk) – By Consent, the Commission revoked Ms. Taylor's broker license effective October 1, 2001. The Commission found that Ms. Taylor, while engaged in rental management with a real estate company, purchased a computer for more than \$1,500 using a company credit card and made a false statement that the computer was intended as an amenity for a client's property. The Commission also found

that Ms. Taylor failed to report convictions for driving while impaired and misdemeanor larceny as required by Commission rules. Ms. Taylor neither admitted nor denied the Commission findings, but did consent to the revocation of her license based upon the Commission making those findings.

**LYNN R. WARREN** (Henderson) – The Commission accepted the voluntary surrender of Ms. Warren's salesperson license for a period of one year effective November 1, 2001. The Commission dismissed without prejudice allegations that Ms. Warren violated the Real Estate License Law. Ms. Warren neither admitted nor denied any misconduct.

**CASEY M. YORK** (Greenville) – By Consent, the Commission suspended the salesperson license of Ms. York for a period of two years effective January 10, 2001. The Commission found that Ms. York failed to amend an offer to purchase and to disclose that an earnest money deposit received for the purchase of Ms. York's residence had been withdrawn from the firm trust account. The Commission also found that Ms. York, who received the money for repairs, signed a false settlement statement indicating that the earnest money was on deposit when it was not.



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