



# REAL ESTATE BULLETIN

Volume 40 • January 2010 • Number 3

## Executive Director Phillip T. Fisher To Retire After 34 Years of Service

### Executive Director Position

The North Carolina Real Estate Commission (NCREC) is seeking qualified candidates for the position of Executive Director. The Executive Director is responsible for carrying out the programs and policies of the North Carolina Real Estate Commission and for the overall administration of the Commission's staff, programs and operations in accordance with the policies and directives of the Commission. The NCREC employs a staff of 54 people. Candidates must possess outstanding organizational and communication skills with strong financial management and budgeting experience with a working knowledge of the real estate industry and state government.

The ideal candidate must be able to introduce and integrate additional technologies into the NCREC daily work flow. The salary range is \$140,000 - \$165,000 with the hiring rate dependent upon experience and qualifications. Interested individuals should submit a letter of interest, résumé, salary history and three references to [leigh@youngandassociates.com](mailto:leigh@youngandassociates.com). For further information, please call David Young at (828) 691-6555. Submission deadline is February 28, 2010. The North Carolina Real Estate Commission is an Equal Opportunity Employer. □

### Bart T. Bryson

The Commission regrets the passing of Bart T. Bryson of Hendersonville, a member of the Commission from 1979 to 1985 and a former Chairman. □

Phillip T. Fisher, Executive Director of the Real Estate Commission, will retire April 1 after 34 years of service, it was announced by Commission Chairman Marsha H. Jordan.

Fisher is the longest-serving administrator of the Commission since its creation as the North Carolina Real Estate Licensing Board in 1957. Joining the Board in 1975 as Administrative Assistant to Secretary-Treasurer Blanton Little, he then succeeded Little upon his retirement in 1981.

In 1983, the Licensing Board was renamed the Real Estate "Commission" and his title changed to Executive Director. He prides himself on never having missed a Commission meeting in his nearly 29-year career as Secretary-Treasurer and Executive Director.

A Kannapolis native, Fisher graduated from the University of North Carolina

at Chapel Hill in 1970. While serving as a Sergeant in the US Army Reserves, he entered the real estate business as a broker and then vice-president of Fisher Real Estate of Kannapolis, also becoming one of the state's first real estate instructors.

In his more than three decades with the Commission, he witnessed the expansion of the Commission from five to nine members and a four-fold growth in the number of real estate licensees from approximately 25,000 to nearly 100,000. The Commission also expanded from less than a dozen primarily clerical positions to fifty-four including professionals in law, (See Fisher, page 8)



*Executive Director Fisher administered Commission affairs for more than three decades.*

## Benjamin Cone, III, Elected Commission Vice Chairman



Benjamin Cone, III, of Charlotte has been elected Vice Chairman of the North Carolina Real Estate Commission, it was announced by Phillip T. Fisher, Executive Director.

A member of the Commission since 2007, Cone is Managing Director of

Milestone Partners, LLC, in Charlotte. He has held management positions in the textile and commercial furniture industries.

Cone is a graduate of the University of North Carolina with a Bachelor of Arts in Economics and North Carolina State University with a Bachelor of Science in Textile Management, Magna Cum Laude. □

## REAL ESTATE BULLETIN

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

### NORTH CAROLINA REAL ESTATE COMMISSION

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[www.ncrec.gov](http://www.ncrec.gov)

Beverly E. Perdue, Governor

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Phillip T. Fisher  
Executive Director

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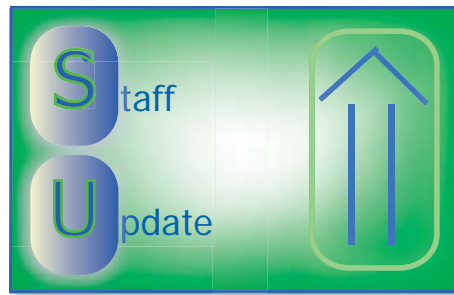
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Peter B. Myers	Information Officer
Elizabeth W. Penney	Information Officer
Jean A. Wolinski-Hobbs	Information Officer

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

**Editor**  
Robert L. Forshaw



## Appearances

**Miriam J. Baer**, Legal Counsel and Assistant Director of Legal Services, spoke to the Annual Property Management Seminar of the Fayetteville Association of REALTORS® on property management complaints and to the Top Producers Council of the Raleigh Regional Association of REALTORS® on "How to stay out of REALTOR® jail; or ignorance of the law is no excuse."

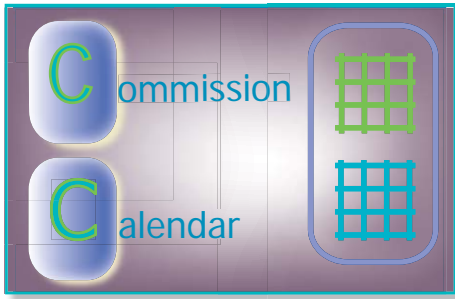
**Gary Caddell**, Chief Auditor/Investigator, spoke to the Outer Banks

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

Association of REALTORS® Property Management Committee about property management complaints and recent changes to the Vacation Rental Act and to laws governing landlords and tenants.

**Betsey W. Penney**, Information Officer, spoke to the Haywood County Board of REALTORS®.

**New Commission Web Site Address:**  
**[www.ncrec.gov](http://www.ncrec.gov)**



February 10  
 March 10  
 Winston-Salem  
 April 14  
 May 12

*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.*

## Public Hearing Set for Proposed Rule Changes

A public hearing for comments on proposed rule changes will be held at 9:00 a.m., February 10, 2010 in the Conference Room of the Commission's office.

Following is a summary of proposed Commission rule changes which, if approved, would become effective July 1, 2010:

- Require retention of trust account and transaction records for a period of five years instead of three as the current rules require.

- Add questions to the Residential Property Disclosure Form for home sellers to disclose whether their properties are located within one mile of the boundary of certain military facilities and to disclose noise, air traffic, vibrations, lights and other impacts from nearby military facilities.

- Allow postponement and completion of continuing education, Broker-in-Charge, and postlicensing courses, and the payment of license renewal fees for brokers and approved instructors

who are members of the United States armed forces serving in combat or in presidentially-declared disaster areas.

- Clarify when and under what circumstances students in the Broker-in-Charge Course and in all continuing education courses may be absent during the scheduled classroom hours and still receive continuing education credit for attending the course. □

## COURSE SCHEDULES

This schedule provides locations, dates, and times for the courses indicated through June, 2010.

Register online at the Commission's Web site, [www.ncrec.gov](http://www.ncrec.gov).

### Broker-in-Charge Course

**Two-days. Day one, 1-5 p.m.; Day two, 8:30-5:30 p.m.)**

Asheville	February 24, 25 May 12, 13	Holiday Inn East/Blue Ridge Parkway
Banner Elk	April 22, 23	Best Western Mountain Lodge
Charlotte	March 9, 10 April 20, 21 June 2, 3	Hilton Charlotte Executive Park
Greensboro	February 16, 17 May 19, 20	Clarion Hotel
Kill Devil Hills	March 30, 31	Ramada Plaza Resort
Raleigh	February 8, 9 March 15, 16 April 12, 13 May 4, 5 June 7, 8	McKimmon Conference Center
Wilmington	April 7, 8	Coast Line Convention Center

### Basic Trust Account Procedures Course

Asheville	May 11	Holiday Inn Airport
Charlotte	June 3	Hilton Charlotte Executive Park
Raleigh	April 6	McKimmon Conference Center

Confirm dates and times at the Commission Web site.

# Commission Creates Financial Fraud Unit

**W**ith the number of mortgage fraud investigations rapidly escalating, the Commission created a new Financial Fraud Unit to investigate these cases and to work with state and federal law enforcement agencies to bring appropriate cases for criminal prosecution.

Janet B. Thoren, the Commission's Chief Deputy Legal Counsel and a Special Assistant United States Attorney, will supervise the unit. Michael Gray, the Commission's former Chief Auditor/Investigator, has been designated as the Chief Financial Fraud Investigator. As an investigator with the Commission for the past 14 years, Mr. Gray focused almost exclusively on mortgage fraud cases since 2000. In addition, the Commission has employed D. Scott Schiller in the position of Financial Fraud Investigator. Mr. Schiller, a former Special Agent with the Internal Revenue Service Criminal Investigation Division, has an extensive background in criminal investigation and mortgage fraud.

The Financial Fraud Unit is responsible for investigating mortgage fraud cases involving real estate licensees and working with federal and state agencies to promote the criminal prosecution of those involved in mortgage fraud. □

## Federal Agencies Gain Assistance From Commission in Fraud Cases

**T**he Real Estate Commission has worked with various federal agencies to assist in the investigation of several mortgage fraud cases recently resolved in the federal criminal system.

On December 14, 2009, William Roosevelt Cloud was sentenced in a Charlotte federal court to 27 years of imprisonment. After a two-week trial, Cloud was convicted of conspiracy to commit mortgage fraud, three counts of mail fraud, 13 counts of bank fraud, one count of money laundering conspiracy, and six counts of money laundering, all related to his role in a large mortgage fraud scheme. Prior to his trial, 19 other participants in the scheme had already pled guilty, including Cloud's wife.

Federal prosecutors in the Western District showed that Cloud and others purchased and immediately flipped homes in the Charlotte area after artificially inflating the values of the homes. They recruited buyers by promising them they could buy an investment home with no money down, offering to place tenants in the homes, and assuring the buyers that the homes would be resold within a short period for a profit, at which time the buyers would be repaid for participating. Instead, the houses did not sell and went into foreclosure, leav-

ing the buyers with their credit ruined and the lenders with homes for which they had loaned more than the true value of the properties.

In another case, Mary Rose Wright was charged in November, 2009, in federal court in the Eastern District of North Carolina with conspiracy and wire fraud related to a separate mortgage fraud scheme.

Wright submitted an offer to purchase a Raleigh, North Carolina property for \$1,650,000.00. She obtained a power of attorney giving her the authority to execute the purchase documents for the property on behalf of the buyer,

### Borrower Beware

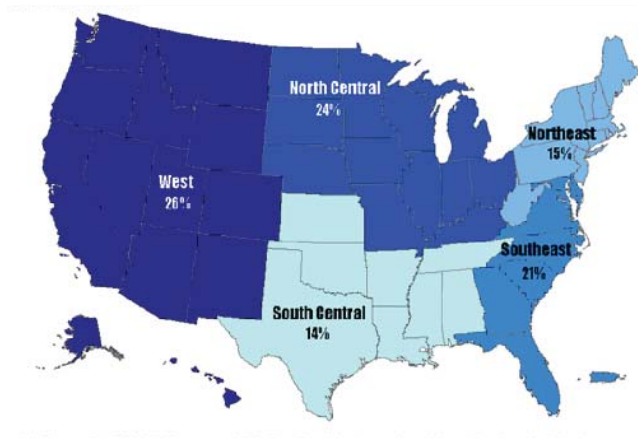
Many borrowers fudge a little when applying for a loan. The truth is, any lying on a real estate loan application is mortgage fraud.

Speaking about mortgage fraud, U.S. Attorney General Eric Holder said "these crimes have devastated and driven away many who were once willing to invest in our economy. They've robbed people of their homes and their economic security. They've depleted bank accounts and pension funds. In some places, they've dried up philanthropic giving and shuttered charities. They've placed unfair challenges before cash-strapped governments, local police departments, small businesses, and American workers and consumers."

Given the steep rise in foreclosures and bank failures from bad loans, and the resulting economic decline, licensees should know now that even "little white lies" constitute mortgage fraud. □

who was also involved in the scheme.

Wright prepared a false verification of employment, false tax returns, and a false bank statement to assist the buyer in obtaining a loan in the transaction. She also submitted a loan application to the lender that contained false information. The lender made the loan and after closing Wright moved into the property. No mortgage payments were ever made, and the property went into foreclosure. □



*FBI Pending Mortgage Fraud Investigations by Region (FY2008)*

## Agents Should Be Aware Of Fraudulent Schemes

Agents should be aware of fraudulent schemes, refuse to participate, and report any questionable activity to the proper authorities.

These schemes proliferate in distressed real estate markets. The lack of sales and the high foreclosure rate in 2008 and 2009 gave perpetrators the opportunity to reinvent themselves and create new mortgage fraud methods in response to tighter lending regulations. These included:

*Builder-Bailout Schemes* - In these, builders offer excessive incentives to buyers, which are not disclosed on the mortgage loan documents.

*Short Sale Schemes* - These combine with foreclosure rescue schemes by promoters recruiting real estate agents and paying them referral fees for locating and soliciting homeowners in foreclosure. Promoters then convince the homeowner to deed their property to a false land trust controlled by the promoter who then negotiates to purchase the property via a short sale with the lender, getting the property for less than the amount owed by the owner. The real estate agent lists and sells the property for a profit to a buyer previously identified by the promoter. The lender takes the loss, the owner takes a hit on his or her credit, and the promoter walks away with the profit. □



## Dates to Remember

June 10	Continuing Education Deadline - No CE courses are available between June 11 and July 1.
June 30	License Renewal Deadline - Renewals must be received in the Commission office before 5 p.m., June 30, or, if renewing online, by midnight, June 30.
Date of provisional license issuance	If your license status is "Provisional", you must complete at least one 30-hour postlicensing education course within one year of the licensing date and one additional 30-hour course within each of the succeeding two years.
Date within 120 days after designation as a Broker-in-Charge	You must complete the 12-hour Broker-in-Charge Course during this period.
Date in licensing year to complete Broker-in-Charge Annual Review Course	To maintain eligibility, brokers-in-charge must take this course annually beginning in the first full licensing year following the license year of designation. If you were designated a broker-in-charge between July 1, 2008 and June 30, 2009, you must take the annual review course by June 10, 2010. If designated during the 2009-2010 license year, you must take it between July 1, 2010 and June 10, 2011.

For Broker-in-Charge course scheduling, see page 3 of this issue of the *Real Estate Bulletin* or the Commission Web site, [www.ncrec.gov](http://www.ncrec.gov). For Broker-in-Charge Annual Review course scheduling, see the Commission website under Continuing Education.

## Tenant Security Deposits Brochure Text Revised

The text of the Commission's *Questions and Answers on: Tenant Security Deposits* brochure (English and Spanish versions) has been changed to incorporate recent revisions to the law concerning the return of residential security deposits by landlords to tenants.



The main change relates to the second to the last question concerning the deadline to return the security deposit. While the law still requires a refund and/or accounting for the deposit within thirty days, as explained in the brochure, "where the full amount of damage cannot be determined within 30 days, the landlord or agent may send [the tenant] a written interim accounting of deductions claimed, followed by a final accounting no later than 60 days following the end of the tenancy." In addition, the brochure now adds in the last question a statutory reference to the Tenant Security Deposit Act: N.C. Gen. Stat. § 42-50 et seq.

New reprints of the free brochure are available and should replace existing inventory. Digital files on the Commission Web site, [www.ncrec.gov](http://www.ncrec.gov), are also available. □

# HUD Revises HUD-1 Settlement Statement, Introduces New “Good Faith Estimate” Form

*HUD acts to provide real estate borrowers better information on loan/closing costs to facilitate “loan shopping” and reduce loan/closing costs.*

Under authority granted by the Real Estate Settlement Procedures Act (RESPA), the U.S. Department of Housing and Urban Development (HUD) has issued new rules effective January 1, 2010 designed to facilitate “shopping” for mortgage loans and reduce loan/closing costs for borrowers. These goals are to be met primarily through the use of a new mandatory Good Faith Estimate “GFE” form that lenders must provide to potential borrowers and a revised HUD-1 Settlement Statement form that settlement agents (closing attorneys in North Carolina) must use at closing.

By eliminating certain abusive practices and providing better information to borrowers, HUD expects its reforms will save borrowers nationally between \$6.48 and \$8.38 billion annually in loan and settlement costs, or about \$518 - \$670 per loan.

## **RESPA’s Purpose and Scope**

RESPA was enacted by Congress in 1974 to help protect consumers when borrowing funds and utilizing services to close most residential real estate transactions. The law and HUD’s implementing regulations (“Regulation X”) have for many years

- Required lenders to give loan applicants a HUD-prescribed settlement costs information booklet and a “good faith estimate” (GFE) of closing costs within three business days following loan application.
- Required settlement agents to use a standardized HUD-1 Settlement Statement form.
- Required the GFE and HUD-1 statement to disclose any fees paid by a lender to a mortgage broker in connection with a loan.
- Required servicers of mortgage loans to disclose to loan applicants wheth-

er the servicing of their loan may be sold or assigned to another entity during the term of the loan.

- Established limits on the amounts that mortgage lenders (or servicers) may require a borrower to deposit into an escrow account for real estate taxes and insurance.
- Prohibited lenders, appraisers, attorneys, inspectors, real estate agents and others from paying or receiving any fee, kickback or other “thing of value” to or from any person for referring business incidental to a real estate settlement service.

## **Problems with Mortgage Lending Practices and Good Faith Estimates**

Comprehensive studies by HUD over several years found numerous problems with the mortgage lending practices of some lenders and the good faith estimates they provided to borrowers. For example, some lenders would

- Charge non-competitive fees to borrowers who often faced wide variations in closing costs for both loan origination and third-party settlement services.
- Issue GFEs in a variety of formats that typically contained a long list of confusing individual charges and made it more difficult for consumers to shop for loans and control settlement charges.
- Include estimated closing costs on GFEs that were frequently unreliable or incomplete, with consumers often surprised to find at closing that actual charges were significantly higher than those shown on the GFE.
- Require potential borrowers to pay a substantial loan application fee before they would issue them a GFE, a practice that discouraged borrowers from shopping around for the best loan rates and fees.
- In order to increase profits for themselves and subsequent investors, pay fees (called “yield spread premiums”) to mortgage brokers for mak-

ing loans at an interest rate higher than what borrowers were qualified for, and then pass the fee on to borrowers who were unaware they were being charged an above-market interest rate and excessive loan origination charges.

As a result of its findings, HUD determined that reforms were needed to provide prospective borrowers better information about loan costs to help them shop for the best loan, and to reduce their loan origination and closing costs. These reforms have been undertaken by changing RESPA regulations rather than amending the law. Real estate agents will encounter the most significant reforms in the new mandatory, standardized GFE form and the substantially revised HUD-1 form that lenders and settlement agents have been required to use since January 1.

## **New Standardized GFE Form and Procedures**

Now, prior to issuing the GFE, lenders can charge potential borrowers no more than the cost of a credit report in connection with the loan application. This is intended to reduce the amount borrowers must pay to receive a GFE and thereby encourage them to shop for the best loan.

Also, for the first time, HUD has mandated the use of a standard three-page GFE form that will hopefully be easier for borrowers to understand, promote lower loan origination and closing costs, and facilitate loan shopping. The new form includes a summary of all key loan terms, a comprehensive loan origination charge that includes all direct costs for obtaining the loan, and a presentation of other settlement charges in a clear standardized format. It also contains a “shopping chart” showing the terms of the proposed loan and providing spaces for borrowers to enter similar terms and costs of other loans if they use it to loan shop, as well as a “tradeoff table” (which

*(See HUD, page 7)*

## HUD

(Continued from page 6)

lenders may choose not to complete) showing two additional options for a loan in the same amount – one with lower settlement costs and a higher interest rate and monthly payment, and one with a lower interest rate and a lower monthly payment but higher settlement costs.

Following are some new reforms in GFE procedures:

- If a lender pays a “yield spread premium” to a mortgage broker for an above-market interest rate loan, the full amount of this fee must be credited on the GFE toward the borrower’s loan origination charge.
- Between the time they issue a GFE and closing, lenders can only change certain charges within strict limits, and these restrictions are clearly explained on the GFE. For example, quoted loan origination charges cannot increase at closing and quoted charges for services by providers selected by the lender (or by the borrower from the lender’s approved list of providers) cannot increase by more than 10% at closing, but quoted charges for services by borrower-selected providers not on the lender’s approved list can change by any amount at closing.
- To increase competition among lenders and service providers and lower third-party fees, lenders may now use average charges for many third-party settlement services and quote these charges on the GFE form.

### Revised HUD-1 Form

The HUD-1 settlement statement form is now a three-page form organized to correlate closely to the GFE form. The first two pages are essentially the same as the old form in format and content but there are differences in how some entries are handled, such as fees for “title services” (closing attorney, title insurance, courier fees) and buyer closing costs being paid by the seller. To clarify how the HUD-1 line items correlate to GFE line items, many of the line items for settlement charges on page 2 of the HUD-1 form reference the corresponding line

item on the GFE. [Note: As of this writing, some uncertainties remain as to how some charges will be recorded on the HUD-1 form in North Carolina closings, but it is expected that these questions will soon be resolved.]

The new third page of the HUD-1 form shows the loan terms stated in the GFE, and it compares the loan costs and settlement charges shown on the GFE with those on the HUD-1. The charges that are not permitted to increase (such as the loan origination charge) cannot, of course, be higher on the HUD-1 than on the GFE (but may be lower). Likewise, the total of the charges that can increase a maximum 10% cannot exceed that limit when compared to the total of such charges on the GFE; however, charges for a particular service may increase by more than 10%. Other charges permitted to change by any amount are also shown so that the borrower can readily identify the changes. An unpermitted increase in a charge (a “tolerance violation”) must be corrected or “cured” by the lender within thirty days. If not corrected prior to closing, the closing attorney must issue a corrected HUD-1 form after the lender cures the tolerance violation by reimbursing the buyer for the overcharge(s). However, it is expected that lenders and closing attorneys will attempt to resolve any tolerance violations prior to the actual closing and issuance of the HUD-1 form.

### Forms and Information

HUD has issued an updated settlement costs booklet titled *Shopping for Your Home Loan* that provides a comprehensive explanation of the GFE and HUD-1 forms and encourages borrowers to use GFEs from various lenders to shop for the best loan. The GFE form, HUD-1 form and settlement costs booklet, as well as the RESPA rules, form completion guidelines and questions relating to the forms, may be found on the “RESPA-Real Estate Settlement Procedures Act homepage” ([www.hud.gov/respa](http://www.hud.gov/respa)) on the HUD website. You should also be able to acquire the new forms from local lenders and real estate attorneys.

## Real Estate Brokers

Real estate brokers should become familiar with these new forms in order to properly advise buyer clients/customers during their loan search process and to assist both seller and buyer clients/customers at closing.

The Real Estate Commission will devote a portion of its 2010-11 continuing education *Update* course to this topic (available after July 1, 2010), and it is hoped that education providers will offer seminars and perhaps a continuing education elective course on RESPA reform during the spring of 2010.

## Don't Delay Your Postlicensing Education

Provisional brokers need to be more prompt than ever in taking their required postlicensing education. With the sharp decline in license applicants over the past two years, there are substantially fewer provisional brokers needing these courses than in the past. This means that the demand for the courses is much lower and sponsors are not only scheduling fewer course offerings but also are frequently having to cancel scheduled courses due to a lack of sufficient enrollment. Consequently, provisional brokers who wait to take a needed course until 90 days or less prior to their deadline are either having difficulty finding a course or having to travel farther to get a course. *If you are a provisional broker, you should arrange to take the course you need at least six months ahead of your deadline.* Remember that if you fail to take a required course by the end of the first or second year after licensure, your license will be made inactive, and if you don't take all required courses by the end of the third year, your license will be canceled.

## Fisher

(Continued from page 1)

education, financial auditing, and investigations.

Fisher led the Commission through a period of substantial change in the licensing and regulation of the real estate profession in North Carolina as the marketplace became increasingly more sophisticated and complicated.

To assist licensees in navigating the growing complexity of the business and to protect the interest of consumers, he developed the largest publications program of any real estate licensing regulatory organization in the United States and abroad.

To assist the Commission in shaping policy, he also planned, facilitated the discussions and prepared the reports for numerous advisory committees addressing such issues as agency disclo-

sure, broker-in-charge responsibilities, community association management, incentive disclosure, interstate brokerage cooperation, specialty licensing and vacation rental management.

He was also instrumental in the formulation of the residential square footage guidelines and the formation of what is now The Appraisal Board.

Currently the senior member of the Association of Real Estate License Law Officials (ARELLO), he served as its President in 1991 when he was named by Governor Martin to The Order of the Long Leaf Pine. He is now considered the foremost authority on this awards program and composed in its honor a song, "The Long Leaf Pine", which has been performed by the North Carolina Symphony.

The Commission congratulates Mr. Fisher on the completion of his long and distinguished service to real estate

consumers, practitioners and the citizens of North Carolina and wishes him and his wife, Sandy, much happiness in his well-deserved retirement. □

The North Carolina Real Estate Commission has employed Young and Associates to assist the Commission in the search for a new Executive Director. All interested persons should send a resume to [leigh@youngandassociates.com](mailto:leigh@youngandassociates.com). Any questions should be directed to David Young at 828.691.6555. □

## Commissionaires Turn 21



Current members of the Real Estate Commission's choral group, the Commissionaires, are (l. to r.) Publications Officer Robert Forshaw, Education/Examination Officer Anita Burt, Executive Director Phillip Fisher, Continuing Education Officer Pamela Rorie, Associate Legal Counsel Curtis Aldendifer, Technology Specialist Diana Carnes, Senior Consumer Protection Officer Joan Floyd, Audits and Investigations Director Emmet Wood, Legal Case Management Specialist Samantha Morgan, Information Officer Elizabeth Penney, Special Deputy Attorney General Thomas R. Miller, Legal Education Officer Patricia A. Moylan, Legal Assistant Sammye Isenhour, Information Officer Peter Myers, Information Specialist Amber Cloutier, Auditor/Investigator Pamela Vesper, Education and Licensing Director Larry Outlaw, Chief Auditor/Investigator Gary Caddell, Licensing Specialist Amber Reed, Administrative Specialist LaToya Simms, Assistant Director, Legal Counsel Miriam Baer. Not pictured are Deputy Legal Counsel Charlene Moody, Information Specialist Bradford Cox, Information Specialist Christin Hunter, and Information Officer Jean Wolinski-Hobbs.

In 1989, Executive Director Fisher asked for volunteers among Real Estate Commission staff members to form a choral group to be named the "Commissionaires" to perform primarily during the holiday season at nursing homes and senior centers around Raleigh.

Fisher, who will retire April 1, recalls that in the beginning, when Commission staff was half its present size, choristers totaled hardly more than half a dozen. Today, the number totals more than 20.

The group's first director was Education/Examination Officer Anita R. Burt, who taught and directed choral music at Meredith College prior to joining the Commission. These duties are now under the baton of Miriam J. Baer, Legal Services Assistant Director and Legal Counsel.

The Commissionaires have brightened the holiday season for audiences in the past two years at the Veteran's Administration Hospital in Durham, the historic State Capitol building, and the Mayview Convalescent Center in Raleigh. In 2007, they helped commemorate the Commission's 50th Anniversary observance and in 2005 the dedication of the Commission office building. □



**Free Publications**

**Quantity**

Questions and Answers on:

- Fair Housing \_\_\_\_\_
- Tenant Security Deposits \_\_\_\_\_
- Condos and Townhouses \_\_\_\_\_
- Residential Subdivisions and Planned Communities \_\_\_\_\_
- Purchasing Coastal Real Estate in North Carolina \_\_\_\_\_
- Renting Residential Real Estate \_\_\_\_\_
- 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) \_\_\_\_\_
- Real Estate Licensing in North Carolina (Contains license application) \_\_\_\_\_
- Residential Property Disclosure Statement (Available online) \_\_\_\_\_

**How To Order:**

**Online:** [www.ncrec.gov](http://www.ncrec.gov)

**Mail:** NC Real Estate Commission, ATTN: Publications, P. O. Box 17100, Raleigh, NC 27619-7100

**Fax:** 1-919-877-4227

**This form for free publications only.**

NAME \_\_\_\_\_

ADDRESS \_\_\_\_\_

CITY/STATE/ZIP \_\_\_\_\_

Telephone \_\_\_\_\_ Email \_\_\_\_\_

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

**Purchase Publications**

**Quantity Totals**

- Residential Square Footage Guidelines (\$ .65 per copy) \_\_\_\_\_ \$ \_\_\_\_\_
- Working With Real Estate Agents (\$ .25 per copy) \_\_\_\_\_ \$ \_\_\_\_\_
- Questions and Answers on:
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# Auditor's Corner

## Pay Now Or Pay Later

By Emmet R. Wood, Director, Audits and Investigations

A year ago, we introduced an additional way of auditing Trust Accounts – the “Inspections by Letter” Program. Announced in the January 2009 Auditor's Corner, the program supplemented our ongoing method of “spot” audits, conducted during unannounced, on-site visits.

To review briefly, our letters to brokers-in-charge requested specific types of records:

Bank reconciliations	Trial balances	Cancelled checks
Journal	Deposit tickets	Ledger cards

Once your records were received, a staff auditor examined them and, if any clarification was needed, contacted you. We then mailed a report explaining the compliance (or noncompliance) of your trust account records with the Commission's rules and Trust Account Guidelines.

After working our way through all the mail it generated, we discovered some interesting things from the “Inspections by Letter” program:

- ***Merely attending our Basic Trust Account Course does not mean you're going to get it right!***

You have to apply the principles taught in the course. For example, the course teaches BICs that after reconciling the trust account bank statement to the trust account journal, a trial balance of the ledger cards should be prepared. BICs with the most serious violations had not prepared trial balances.

- ***Merely hiring a bookkeeper is not enough!***

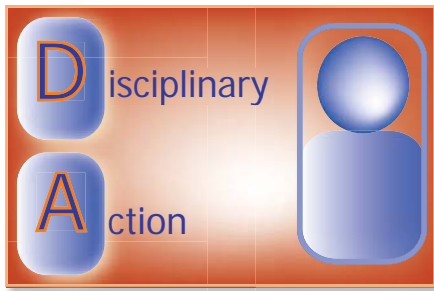
This is especially true – and too often the case – when the BIC was not requiring the bookkeeper to prepare a trial balance. If you do not fully understand this process, you may find it helpful to review the Basic Trust Account Course materials and to read the May 2008 Auditor's Corner on “Examining Your Bookkeeper's Trust Account Trial Balance”.

- ***Merely purchasing Commission compliant software and attending a class on how to use it does not guarantee compliance!***

Although you buy the software and attend the vendor's training class, when you return to the office you fail to record the trust account transactions correctly. To make matters worse, no effort is made to contact the computer software support personnel for assistance in using the software. In addition, because you don't fully understand the software and you distrust the reports it issues, you may waste time maintaining books as you did before acquiring the software – thus developing redundant sets of books.

- ***Merely do it right the first time!***

Generally, if trust account bookkeeping is not done properly and the brokerage firm's trust account records are audited by the Commission, it will be necessary for the BIC to correct the situation by paying an outside accounting consultant to reconstruct the records. This is usually more expensive than hiring the right bookkeeper from the beginning, plus the BIC could face the embarrassment of disciplinary action. So, you could pay now or pay later.



*Penalties for violations of the Real Estate 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.*

**ALBERT REALTY LLC** (Asheville) – By Consent, the Commission revoked the firm license of Albert Realty effective November 5, 2009. The Commission found that Albert Realty, a firm conducting sales and property management, produced some, but not all, of the trust account records requested by the Commission.

**BETTER BEACH RENTALS** (Oak Island) – By Consent, the Commission suspended the firm license of Better Beach Rentals for a period of one year effective December 1, 2009. The Commission then stayed the suspension for a probationary period of one year on certain conditions. The Commission found that an unlicensed employee embezzled approximately \$170,000 from the firm's trust account and that the firm failed to maintain trust account records in accordance with Commission rules. The Commission also found that the firm advertised a property as having eight bedrooms and showed accommodations for as many as twenty people when the septic permit had a maximum occupancy of eight people. The Commission noted that the trust accounts were balanced and fully funded.

**KEENAN GHAALIB ABDUL MALI BEY** (Kannapolis) – By Consent, the Commission suspended the broker license of Mr. Bey for a period of one year effective December 1, 2009. Forty five days of the suspension were active with the remainder stayed for a probationary period to the end of the suspension term. The Commission found that Mr. Bey, a provisional broker, timely reported a conviction on May 28, 2008 for Criminal Use of Counterfeit Trademark. The Commission also found that

Mr. Bey disclosed on his broker license application a 2006 disciplinary action by the North Carolina Board of Barber Examiners for allowing an unlicensed barber to rent a booth in his shop as well as a 1991 conviction for Driving After Drinking with a Provisional License

and Commission rules even though he was licensed in North Carolina at that time. The Commission noted that Mr. Brady completed his disciplinary action in Georgia and is now on active status in that state and that he reported the Georgia disciplinary action on his North Carolina license reinstatement application.



when he was 16 years old, and that in October 2008, he was disciplined by the NC Board of Barber Examiners for operating his shop with an expired license.

**CHRISTOPHER HOPKINS BRADY** (Atlanta, Georgia) – By Consent, the Commission suspended the broker license of Mr. Brady for a period of one year effective July 21, 2009. Sixty days of the suspension were active with the remainder stayed for a probationary period extending to the end of the one-year term on certain conditions. The Commission found that Mr. Brady's Georgia broker license was suspended by the Georgia Real Estate Commission effective January 1, 2007 and he failed to report the Georgia discipline to the North Carolina Commission as required by the Real Estate Law

**CITYWIDE REALTY SERVICES, INC.** (Wrightsville Beach) – The Commission accepted the permanent voluntary surrender of the firm license of Citywide Realty Services effective January 1, 2010. The Commission dismissed without prejudice allegations that Citywide Realty Services violated provisions of the Real Estate License Law and Commission rules. Citywide Realty Services neither admitted nor denied misconduct.

**PAUL R. GWAZ** (Fort Lauderdale, Florida) – The Commission revoked the broker license of Mr. Gwaz effective December 17, 2009. The Commission found that Mr. Gwaz falsely represented the arrangements and details of a real estate investment scheme to investor-clients; failed to maintain investor-client funds in a trust account as required by Commission rules and converted funds received from investor-clients to his own use; failed to provide information and records requested by a representative of the Commission; and incompletely prepared a lease-option agreement on a form not intended for that purpose using ambiguous terms and conditions.

**JOHN GLASS HAMILTON** (Oak Island) – By Consent, the Commission suspended the broker license of Mr. (See **Disciplinary Action**, page 13)

## DISCIPLINARY ACTION

(Continued from page 12)

Hamilton for a period of two years effective December 1, 2009. The Commission then stayed the suspension for a probationary period of two years. The Commission found that Mr. Hamilton, as broker-in-charge of his property management firm for approximately five months, failed to perform monthly trust account reconciliations and failed to maintain complete records to identify ownership of trust account funds. Prior to and during Mr. Hamilton's tenure as broker-in-charge, an unlicensed employee embezzled approximately \$170,000 from the firm's trust account. The Commission also found that Mr. Hamilton hired his firm to act as property manager for his own rental property and allowed the property to be represented as having eight bedrooms and showing accommodation for as many as 20 people when the septic permit had a maximum occupancy of eight.

**MARY ANNE HARMON** (Hendersonville) – By Consent, the Commission suspended the broker license of Ms. Harmon for six months effective January 1, 2010. The Commission then stayed the suspension for a six-month probationary period on certain conditions. The Commission found that Ms. Harmon served as listing agent for a property and represented its square footage as 2,645 square feet of heated living area when it was actually approximately 2,400 square feet, an error of approximately 10%. The Commission also found that the error was discovered when the property, purchased by an investor who made subsequent improvements, failed to appraise at resale.

**RONALD M. HAVERLAND** (Graham) – By Consent, the Commission suspended the broker license of Mr. Haverland for a period of 18 months effective December 1, 2009. The Commission then stayed the suspension and placed Mr. Haverland on probation for the suspension term on certain conditions. The Commission found that Mr.

Haverland was the broker-in-charge of a sole proprietorship providing property management and home owners association (HOA) management services, and that his unlicensed bookkeeper wrote two checks on an HOA trust account to pay approximately \$20,000 in property taxes for Mr. Haverland's personally owned properties and admitted taking cash payments for homeowners' dues

### Licensees Must Report Convictions

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

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

If you have questions about this rule, please call the Commission's Legal Services Division at 919-875-3700 for more information.

and using this cash to pay bills for the firm. The Commission noted that Mr. Haverland and the bookkeeper repaid all of the embezzled funds.

**MICKIE HELMS** (Wrightsville Beach) – By Consent, the Commission permanently revoked the broker license of Ms. Helms effective January 1, 2010. The Commission found that Ms. Helms, as broker-in-charge of a real estate brokerage firm, sold a property she owned and disclosed to the lender on the HUD closing statement that she was paying a \$16,620 marketing fee to another firm when, in fact, she had agreed that the fee was to be paid by that firm to the buyer as a seller concession.

**SUSAN D. HENSLEY** (Asheville) – By Consent, the Commission revoked

the broker license of Ms. Hensley effective November 5, 2009. The Commission found that Ms. Hensley, qualifying broker and broker-in-charge of Albert Realty, produced some, but not all, of the trust account records requested by the Commission.

**LISA C. HOOVER** (China Grove) – By Consent, the Commission revoked the broker license of Ms. Hoover effective June 15, 2009. The Commission found that Ms. Hoover, acting as broker-in-charge of a firm managing approximately 100 rental properties, failed to keep accurate records of funds of others in their possession and failed to reconcile trust account records to the records provided by the bank. The Commission noted that Ms. Hoover terminated the employment of the firm's rental manager/bookkeeper and attempted to bring the firm's books and records into compliance with Commission rules, that she eventually accounted for and remitted the security deposits to their clients or successor manager, and that there are no known outstanding monetary claims. Ms. Hoover neither admitted nor denied the Commission's findings.

**KATHLEEN E. JONES** (New Bern) – By Consent, the Commission suspended the broker license of Ms. Jones for a period of one year effective November 1, 2009. The Commission then stayed the suspension for a probationary period of one year on certain conditions. The Commission found that Ms. Jones failed to take steps to deal with tenants who did not pay rent, failed to properly inform the owners about the condition of their properties, and neglected to secure a security deposit from a tenant. The Commission also found that Ms. Jones failed to review trial balances on the property management trust accounts and was unaware of deficit spending and overages in the accounts.

**KIMBERLY M. KEESEE** (Oak Island) – By Consent, the Commission (See **Disciplinary Action**, page 14)

## DISCIPLINARY ACTION

(Continued from page 13)

suspended the broker license of Ms. Keesee for a period of one year effective December 1, 2009. The Commission then stayed the suspension for a probationary period of one year on certain conditions. The Commission found that Ms. Keesee served as broker-in-charge of a licensed firm providing property management services from which an unlicensed employee embezzled approximately \$170,000 in trust monies. The Commission further found that Ms. Keesee failed to adequately supervise the activities of the firm, failed to perform monthly reconciliations, and failed to maintain complete records to identify ownership of trust account funds in accordance with Commission rules.

**MAREK KUCHARSKI** (Durham) – By Consent, the Commission reprimanded Mr. Kucharski effective January 1, 2010. The Commission found that Mr. Kucharski, acting as a buyer's agent with a Spanish-speaking buyer, allowed a bilingual broker associated with his firm and assisting him in the transaction, to access the MLS lock box code for the property being purchased by the buyer when the broker was not a member of the MLS. The Commission also found that the associated broker, despite the seller's refusal, allowed painters to enter the property and begin work on it before the deed was recorded. Finally, the Commission found that Mr. Kucharski failed to respond to Letters of Inquiry from the Commission.

**SAMUEL LONGIOTTI** (Chapel Hill) – By Consent, the Commission reprimanded Mr. Longiotti effective December 31, 2009. The Commission found that Mr. Longiotti, acting as broker and agent for the owners of a shopping center in 2003, did not keep certain client monies in trust accounts designated as such and, while Mr. Longiotti kept a record of clients' money, his bookkeeping did not conform to the requirements of Commission rules.

The Commission also found that an unlicensed associate of Mr. Longiotti's firm received client monies from the firm's bank account without authority. The Commission noted that when the unauthorized use of monies was discovered, the monies were restored, the unlicensed employee was separated from Mr. Longiotti's firm, and Mr. Longiotti changed his accounting methods to

**Receive Credit  
Where and When  
Credit is Due!**

When continuing education sponsors fail to report credits to the Commission in a timely manner, licensees may find themselves on Inactive Status on July 1.

You can avoid this problem by going online to the Commission Web site, [www.ncrec.gov](http://www.ncrec.gov), to verify your CE credits.

Similarly, if you completed your CE online, verify that your sponsor submitted your affidavit to the Commission in time for your CE record to be updated.

comport with Commission rules.

**JULIA MARIA MATTESON MCINTOSH** (Cary) – By Consent, the Commission revoked the broker license of Ms. McIntosh effective December 1, 2009. The Commission found that Ms. McIntosh, acting as broker-in-charge of her sole proprietorship, permitted an unlicensed person, her husband, to negotiate a contract and a commission to be paid to Ms. McIntosh in a transaction in which she did not represent any of the parties. The Commission also found that Ms. McIntosh failed to obtain a written agency agreement with any party, failed to provide agency disclosure, failed to obtain a property disclosure statement for the buyer, failed to collect an earnest money deposit from the buyer and failed to disclose to the

lender in the transaction that a portion of her commission was to be rebated back to the buyer in the form of an hvac unit for the property.

**ROBERT MELVIN NELSON** (Gastonia) – The Commission accepted the voluntary surrender of the broker license of Mr. Nelson for a period of three years effective November 5, 2009. The Commission dismissed without prejudice allegations that Mr. Nelson violated provisions of the Real Estate Law and Commission rules. Mr. Nelson neither admitted nor denied misconduct.

**PLAZA ASSOCIATES** (Raleigh) – By Consent, the Commission suspended the firm license of Plaza Associates for a period of six months effective July 13, 2009. The Commission then stayed the suspension for a probationary period of one year. The Commission found that Plaza Associates, acting as broker and agent for the owners of a shopping center in 2003, did not keep certain client monies in trust accounts designated as such and, while the firm kept a record of clients' money, its bookkeeping did not conform to the requirements of Commission rules. The Commission also found that an unlicensed associate of the firm received client-monies from the firm's bank account without authority. The Commission noted that when the unauthorized use of monies was discovered, the monies were restored, the unlicensed employee was separated from the firm, and the firm changed its accounting methods to comport with Commission rules.

**REGENCY REAL ESTATE HOLDINGS L.L.C.** (Wilson) – By Consent, the Commission revoked the firm license of Regency Real Estate Holdings effective December 20, 2009. The Commission found that an unlicensed member/manager of the firm accessed the trust accounts and used certain money for his own purposes. The Commission also found that Regency Real Estate Holdings failed to assure that its trust accounts and the records  
(See **Disciplinary Action**, page 15)

## DISCIPLINARY ACTION

(Continued from page 14)

pertaining to them were properly maintained and was unable to make its trust account records available for inspection by the Commission's representatives.

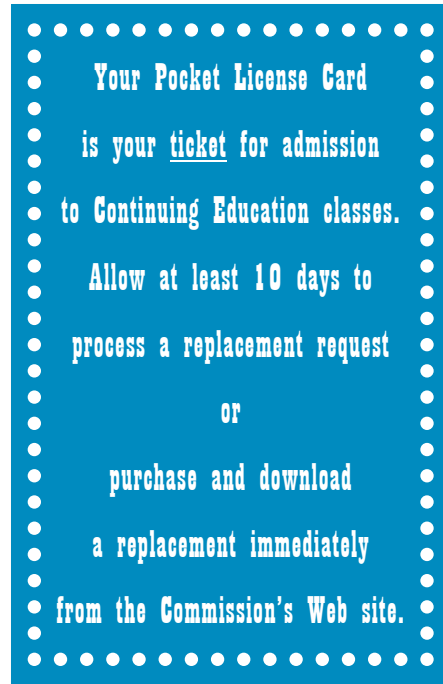
**SARRA PROPERTY GROUP, INC.** (Charlotte) - By Consent, the Commission revoked the firm license of Sarra Property Group effective June 15, 2009. The Commission found that Sarra Property Group, a firm managing approximately 100 rental properties, failed to keep accurate records of funds of others in its possession and failed to reconcile trust account records to the records provided by the bank. The Commission noted that Sarra Property Group's broker-in-charge terminated the employment of the firm's rental manager/bookkeeper and attempted to bring its books and records into compliance with Commission rules, that it eventually accounted for and remitted the security deposits to its clients or successor manager, and that there are no known outstanding monetary claims. Sarra Property Group neither admitted nor denied the Commission's findings.

**ROBERT C. STOKES** (Wilson) – The Commission accepted the permanent voluntary surrender of the broker license of Mr. Stokes effective January 14, 2010. The Commission dismissed without prejudice allegations that Mr. Stokes violated provisions of the Real Estate License Law and Commission rules. Mr. Stokes neither admitted nor denied misconduct.

**PHYLLIS C. WILCOX** (Winston-Salem) – By Consent, the Commission reprimanded Ms. Wilcox effective December 9, 2009. The Commission found that Ms. Wilcox, acting as dual agent for a 7.3-acre tract, failed to deliver *Working With Real Estate Agents* brochures to either buyer or seller and had no buyer agency agreement although she did have in her files a signed dual agency addendum. The Commission also found that Ms. Wilcox failed to

adequately discuss specific inspections with her buyer-clients, thus complicating their attempt to obtain a septic permit. The Commission noted that the buyers were eventually able to obtain a five-bedroom septic permit.

**DIANNE S. WILSON** (Wilson) – By Consent, the Commission revoked the broker license of Ms. Wilson effective



December 20, 2009. The Commission found that Ms. Wilson, as the qualifying broker and broker-in-charge of a rental property management firm, did not oversee the firm's trust accounts and an unlicensed member/manager of the firm accessed the trust accounts and used certain money for his own purposes. The Commission also found that Ms. Wilson failed to assure that the trust accounts and the records pertaining to them were properly maintained and was unable to make the trust account records available for inspection by the Commission's representatives.

**THOMAS F. WRIGHT** (Raeford) – The Commission accepted the permanent voluntary surrender of the broker license of Mr. Wright effective December 14, 2009. The Commission dismissed without prejudice allegations

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

**ROSS C. ZANG** (New Bern) – By Consent, the Commission suspended the broker license of Mr. Zang for a period of one year effective November 1, 2009. Forty-five days of the suspension were active with the remainder stayed for a probationary period through the end of the suspension term. The Commission found that Mr. Zang, who conducted real estate brokerage and property management services, failed to take steps to deal with tenants who did not pay rent, failed to properly inform the owners about the condition of their properties, and neglected to secure a security deposit from a tenant. The Commission also found that Mr. Zang allowed properties to be damaged including allowing a buildup of trash and debris such that one owner was required to pay a fine for violation of the town's nuisance ordinance.

## COMMISSION SURVEY

The Commission is conducting a survey to determine interest in receiving the Real Estate Bulletin in electronic form via email instead of its current printed form.

You can respond to this survey by logging into your record on the Commission Web site, [www.ncrec.gov](http://www.ncrec.gov), and clicking on the appropriate field. Also, please verify the accuracy of your email address.

Please respond by April 1, 2010.

And, thank you in advance for your participation.

## Safety Tip

### Safety Tip #12 - FIGHT OR FLIGHT?

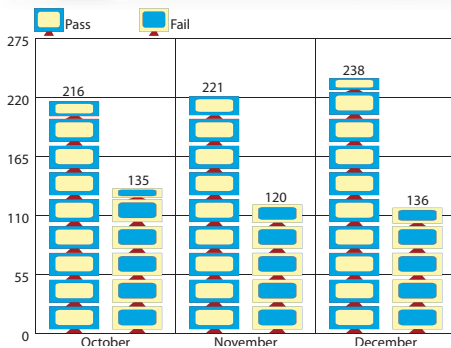
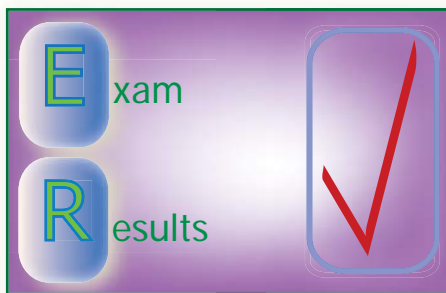
- Yell "fire" to get attention
- Select a response that fits the situation
- Run and call 911 when you can
- Take a self-defense training course
- If you strike, mean it

Reprinted from the North Carolina Real Estate Agent Safety Guide.

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## New Year's Resolutions For Brokers-in-Charge

I resolve to:

- Be certain that records of brokers affiliated with my office are accurate and complete.
- Review the continuing education records of all brokers in time for completion of necessary courses.
- See that all provisional brokers are in compliance with Commission rules relating to postlicensing education.
- Notify the Commission within 10 days of broker address changes.