



# REAL ESTATE BULLETIN

Volume 35 • May 2004 • Number 1

## Nonresident Licensees Can Apply July 1 for New Commercial Licenses

Beginning July 1, 2004, anyone who holds an active real estate broker or salesperson license from a state other than North Carolina (the individual's "qualifying state") and also resides in another state, may obtain a North Carolina **limited nonresident commercial real estate broker or salesperson license**.

They will not be required to take any prelicense education or license examination in North Carolina, nor is it necessary that their qualifying state offer a similar licensing option to North Carolina licensees. However, if the state where they are residing has a reciprocal licensing arrangement with North Carolina, they will find it more advantageous to acquire a regular license by reciprocity.

Legislation authorizing this special license was obtained last year at the urging of North Carolina's organized commercial brokerage community. It is hoped that by making it easier for nonresident commercial

(See **Commercial**, page 10)

## 2004-05 Update Course Contract Changes, Safety Practices

Changes to the standard Offer to Purchase and Contract form and real estate agent safety are the two principal topics planned for the 2004-2005 CE Update Course. All licensees are required to take the four-hour Update course (plus a four-hour elective course) to fulfill the continuing education requirements for renewing a

(See **Update**, page 4)

## It's Time to Renew Your License; Online is Faster, Easier and Free

Make this note at the very top of your to-do list: Renew your real estate license now!

And, better yet, get it done faster, easier and at no extra cost by renewing online at the Commission's website, [www.ncrec.state.nc.us](http://www.ncrec.state.nc.us). You can check your continuing education credits at the same time, an especially good idea if you have

completed a course or

courses in the past two or three weeks because those recent credits may not appear on the mailing label on this issue of the Bulletin.

**Forms Mailed May 15**

Renewal forms are in the mail as of May 15 to the delivery address on record for you. If active, that address will be that of your broker-in-charge. If inactive, it will be your residence address.

You can verify your address online and make changes to your residence and email addresses and fax number, if needed.

The renewal fee for the 2004-05 year is \$40, the same as last year and the same whether paid by check or online.

(See **License Renewal**, page 3)



## Commission Visits Fayetteville

At the Real Estate Commission's March meeting in Fayetteville, Chairman Allan Dameron (fifth from right) received the key to the city from Mayor Marshall B. Pitts, Jr. Other Commission members in attendance were, from left to right, Buddy Bass, Sang Hamilton, William Lackey, Rick Watts, Marsha Jordan, Wanda Proffitt, Skip Alston and Jerry Mannen. Various presentations and greetings were made by Senate Majority Leader Tony Rand, Fayetteville Association of REALTORS® President Phillip Guy, Cumberland County Register of Deeds J. Lee Warren, Jr., Cumberland County Board of Commissioners Chairwoman Jeannette M. Council, and State Representative Margaret Highsmith Dickson. The Commission honored former chairmen and Fayetteville residents Thomas Council and J. Edward Poole at the meeting.

## 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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Phone (919) 875-3700

Michael F. Easley, Governor

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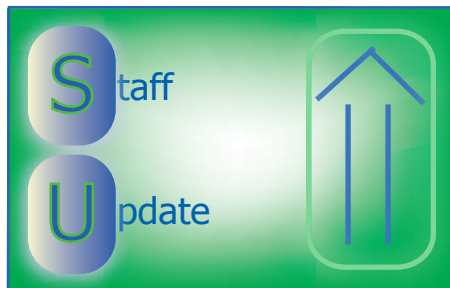
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**Editor-In-Chief**  
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## Appearances

**Miriam J. Baer**, Assistant Director of Legal Services, spoke to the Durham Association of REALTORS® on Virtual Office Websites (VOWs) and other topics of interest.

**Blackwell M. Brogden, Jr.**, Chief Deputy Legal Counsel, spoke to the Kerr Lake Board of REALTORS® on procuring cause, and the Outer Banks Association of REALTORS® on resort real estate concerns.

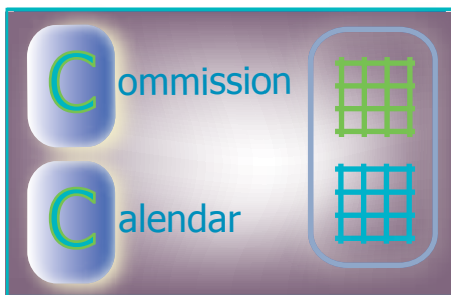
*To request a speaker from the Commission, please submit the "Request for Program Presenter" form available on the Commission's Web site, [www.ncrec.state.nc.us](http://www.ncrec.state.nc.us).*

**Janet B. Thoren**, Deputy Legal Counsel, participated in a panel discussion entitled "Fraud, Flippers and Forgers - Recognizing and Dealing with Fraudulent Loans" at a meeting of the Mortgage Bankers Association of the Carolinas in Charlotte.



## Staff Members Receive Service Awards

*Eight members of the Commission staff received Service Awards recently. Shown with Allan R. Dameron, Commission Chairman, they are (l. to r.) Gloria T. Williams, License Applications Specialist, 30 years; Vickie R. Crouse, Data Processing Administrator; Larry A. Outlaw, Director of Education and Licensing, and Mary Frances Whitley, Director of Administration, all 25 years; Brenda H. Badger, Chief Records Specialist, and Anita R. Burt, Education and Examination Officer, both 15 years; and Joan H. Floyd, Consumer Protection Officer, and Susan M. Tysor, Records Specialist, both five years.*



## License Renewal

(Continued from page 1)

Your renewal online is verified by a confirmation notice that you should print and save in case proof is needed that you completed the payment process before receiving your pocket renewal card. The confirmation notice eliminates any doubts about whether the Commission has received your renewal and before the deadline of midnight, June 30.

### Reinstate a License

Reinstatement of a license that has been expired for more than six months (i.e., after December 31) requires submission of a new application form with a criminal record report. In addition, salespersons must take the pre-license fundamentals course or the license examination and brokers must take the pre-license broker course or the license examination.

If the period of expiration is less than six months (i.e., before December 31), the only requirement is payment of a \$55 reinstatement fee.

See "Online Renewal Tips", Page 4

## Little, Schweidler Memorial Scholarships Awarded

Thomas Bonti of Fayetteville is the winner of the Joe Schweidler Memorial Scholarship and Ronald Porter of Forest City the winner of the Blanton Little Memorial Scholarship, two Real Estate Commission scholarships for outstanding scholastic achievement at the REALTORS® Institute. Both scholarships are awarded annually in honor of Schweidler and Little who were former Executive Directors of the Commission.

June 16

July 14  
(Highlands)

August 11

September 8

*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.*

### 2004 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.

☐ May 11

☐ June 1

☐ July 6

☐ August 3

☐ September 7

☐ October 5

☐ November 2

☐ December 6

Name \_\_\_\_\_

Address \_\_\_\_\_

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

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

☐ Broker

☐ Salesperson

☐ Bookkeeper

(Lic # \_\_\_\_\_)

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.**



## Online Renewal Tips

Use Visa or MasterCard only. Know your card's billing address (your home address or your business).

- 1 On or after May 15, click on *login* at the Commission's website.
- 2 Enter your license and PIN (last four digits of your Social Security number if you have not changed it) numbers and click on Login.
- 3 Click on Renew, the first of five choices on the screen. (From this screen you can also check your CE credits and update your record).
- 4 Click on Next to proceed to the screen that will take your credit card information.
- 5 Enter your credit card number and the expiration date (drop down menus enable you to enter the date in the correct format). Following this entry, an address will appear. Be certain that the address shown is the same as the billing address for the credit card you are using. If not, change it on this screen.
- 6 "Please wait..." appears as the charge is processed and a final screen confirms your license renewal, asking you to print it out as a receipt.

## Update

(Continued from page 1)

license on active status.

Pending changes to the standard sales contract form were promulgated by the North Carolina Association of REALTORS® and the North Carolina Bar Association. The course will address these changes and any revisions to related forms.

The primary proposed contract form change provides an alternative to the current approach to handling home inspections and repair demands/requests by buyers. Many agents consider the current procedures undesirable because of confusion and differences in the house conditions addressed by the contract inspections provision and by home inspectors in their reports. Also, the current process of negotiating for repairs to be performed by the seller is frequently difficult and unsatisfactory to both parties.

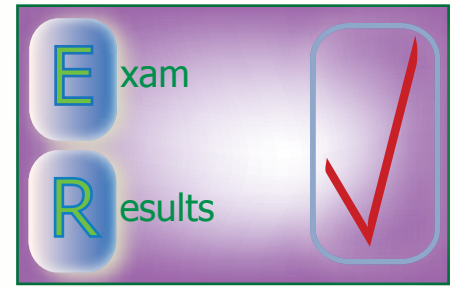
The revised contract would retain the current inspections provision as one alternative, but would add a new choice that allows a buyer to pay the seller a specified sum (option money) for the right to walk away from the contract for any reason prior to a stated date. If the buyer walks (i.e., exercises the option to

terminate), the seller retains the option money. If the date passes without the buyer exercising the option to terminate, then both parties remain obligated to perform under the terms of the contract, and the option money is credited toward the purchase price.

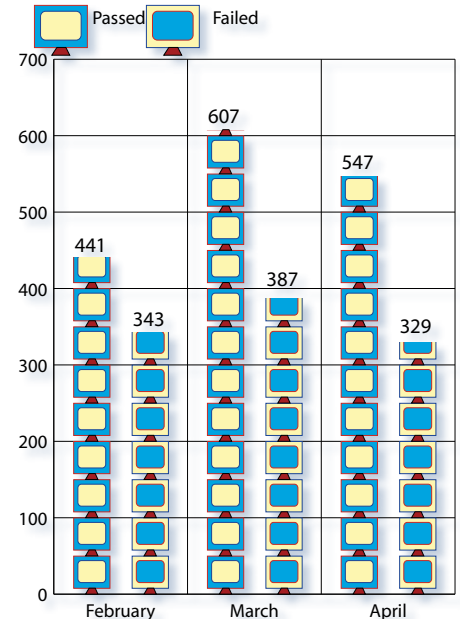
Real estate agent safety, the second main topic of the Update course, will involve a review and discussion of the North Carolina Real Estate Agent Safety Guide, a joint publication of the North Carolina Association of REALTORS® Real Estate Safety Council and the North Carolina Real Estate Commission.

The Safety Guide contains numerous common sense safety tips compiled from crime victims and real estate associations across the country. It is based on the Washington Real Estate Safety Council's Personal Safety Guide. Real estate firms will be encouraged to implement a formal safety program that includes regular safety education classes for their agents.

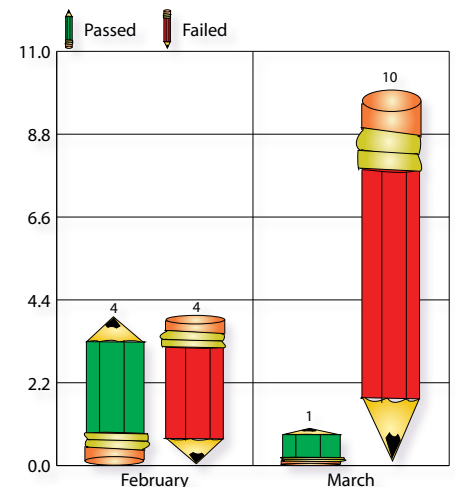
The remaining time in the Update course will focus on recently revised statutes and rules.



## By Computer



## By Paper and Pencil



The paper and pencil method of testing ended with the March examinations.

A record number of real estate instructors, school officials and publisher representatives attended the 2004 Real Estate Educators Conference held in Raleigh on March 8-9, 2004. The 194 persons in attendance represent the highest level of participation since the Real Estate Commission began sponsoring these annual conferences in 1979.

Real estate license examination performance was a focal point of the first morning's program. Data presented by Larry Outlaw, the Commission's Director of Education and Licensing demonstrated the dramatic effect of time elapsed between completing the Salesperson Pre-license Course and taking the license exam. The data confirmed, as everyone had suspected, that the sooner students take the license examination after salesperson course completion, the better their examination performance. Instructors were urged to share this information with their students in an effort to encourage them to avoid delays in taking the license examination after course completion. Instructors were also urged to do a better job of assisting students with proper completion of their license applications to minimize the likelihood of applications being returned due to improper completion.

The related issue of school and instructor accountability for students' performance on the real estate license examination also was the subject of considerable discussion. Mr. Outlaw advised participants that the Commission would fully consider the concerns expressed by participants and in a letter to the Commission from the North Carolina Real Estate Educators Association.

The first morning also included a very helpful panel discussion on successful instructional approaches featuring Marlene O'Day of the Bill Gallagher School of Real Estate, Rashad Phillips of Central Piedmont Community College and Wade Phillips of the Dan

Mohr School of Real Estate.

The North Carolina Real Estate Educators Association held its traditional luncheon meeting and awards presentation led by President Sandy Williams of the Mingle School of Real Estate. The Association presented its "Educator of the Year" award to **Kimberly Stotesbury** of the J. Y. Monk Real Estate Training Center and its "Program of the Year" award to **Deborah Long** of the Fonville-Morisey Center for

## Educators Conference Draws Record Attendance

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

Real Estate Studies for her CE course entitled "For Your Own Good: REALTOR® Ethics."

Also during the luncheon, Commission Chairperson Allan R. Dameron presented the Commission's Billie J. Mercer Excellence in Education Award to NCREEA's Educator of the Year, **Kim Stotesbury**.

In addition to Ms. Stotesbury's outstanding instruction in both prelicense and continuing education courses, she also serves as a co-instructor of the Commission's Broker-in-Charge Course. This award is presented annually in memory of former Commission member and chairperson, Billie Mercer, who was especially dedicated to the cause of real estate education. The name of each year's award winner is engraved on the Mercer award cup that is displayed in the Commission's lobby. Commission members Raymond A. "Buddy" Bass, Jr., Sang J. Hamilton, Wanda J. Proffitt and Matthew J. "Rick" Watts were also in attendance for the presentation.

Following the luncheon, the Commission's Licensing Officer, Katherine Kader, reviewed license application

problems and changes in criminal record report procedures. Participants were then treated to two excellent presentations by Deborah Long. Ms. Long first showed participants some of her favorite clips from movies and TV shows and discussed how to effectively and lawfully use such materials to augment classroom instruction. In her second presentation, Ms. Long acquainted instructors with a number of websites that have helpful resource information and demonstrated how to more efficiently search the web for materials instructors can use to enhance their instruction.

On the second day, Mr. Outlaw conducted a detailed review of the Broker Prelicense Course syllabus to obtain from instructors suggestions for improving the syllabus or changing the course. With only a few minor suggestions, the instructors indicated overwhelming support for the current course and syllabus.

Pamela Rorie, the Commission's Prelicense and Continuing Education Officer, reviewed various CE issues, including rules revisions, possible topics for the next update course, and new procedures being implemented to reduce continuing education course completion reporting errors.

The conference concluded with a legal update session by the Commission's Legal Education Officer, Patricia Moylan, featuring a review of recent law/rule changes and of selected judicial and disciplinary cases from North Carolina and other states.

The Commission thanks North Carolina's real estate educators for their continued support and congratulates Kim Stotesbury and Deborah Long for their achievements.



**Mercer Award**

# After First Renewal, Broker Applicants Must Have Completed CE Before Filing

The Commission rule governing continuing education requirements changed April 1 for North Carolina-licensed *salespersons who are applying for a broker license after having completed at least one license renewal.*

Under the revised rule, annual continuing education must be completed for the year in which a broker license application is made and prior to its filing.

The annual continuing education requirement includes the mandatory

four-hour Update course plus one approved, four-hour elective.

If you complete either CE course within 30 days of filing your broker license application, submit copies of the CE course completion certificates with your application since your CE record at the Commission may not yet reflect those credits.

An application is considered "filed" when it is received by the Commission properly completed and with all required enclosures.

CE courses must have been taken during the license period in which the broker application is filed. A carry-over elective course credit from the previous license period will not count toward this requirement.

(SEE EXAMPLES, PAGE 7)

## FREE PUBLICATIONS

### Quantity Requested

#### 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  
(Please limit request to one copy; duplicate as needed.  
**Also available on the Commission's web site.)**

NAME \_\_\_\_\_

ADDRESS \_\_\_\_\_

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

Telephone \_\_\_\_\_

Email \_\_\_\_\_

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

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[www.ncrec.state.nc.us](http://www.ncrec.state.nc.us)

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ATTN: Publications  
P. O. Box 17100  
Raleigh, NC 27619-7100

#### Fax

1-919-877-4227

**This form  
for free  
publications  
only.**

# EXAMPLES

(Continued from page 6)

#1	Licensed before July 1, 2003, completed the Broker licensing course and filing your application <i>before July 1, 2004</i> .	CE for 2003-04 year must be completed before filing.
#2	Licensed before July 1, 2003, completed the Broker licensing course and filing your application <i>between July 1, 2004 and June 30, 2005</i> .	CE for 2004-05 year must be completed before filing.
#3	Licensed on or after July 1, 2003, <i>not yet renewed your salesperson license</i> , completed the Broker licensing course and filing your application before July 1, 2004.	No CE required for the 2003-04 license year.



## PURCHASE PUBLICATIONS

Publication	Quantity Requested	Totals
Residential Square Footage Guidelines (\$ .65 per copy)	_____	\$ _____
Working With Real Estate Agents (\$ .25 per copy)	_____	\$ _____
Questions and Answers on: Home Inspections (\$ .25 per copy)	_____	\$ _____
Questions and Answers on: Earnest Money Deposits (\$ .25 per copy)	_____	\$ _____
North Carolina Real Estate License Law and Commission Rules (\$3.00 per copy)	_____	\$ _____
Real Estate Agent Safety Guide (\$ .25 per copy) <b>NEW!</b>	_____	_____
Amount Enclosed		\$ _____

### How To Order:

Mail, fax or email this form with method of payment indicated - check or credit card (MasterCard or Visa). Please do not remit cash.

#### Online:

[www.ncrec.state.nc.us](http://www.ncrec.state.nc.us).

Select the publication icon on the home page. Follow the instructions for ordering with your MasterCard or Visa credit card.

#### Mail to:

Commission Publications  
P. O. Box 7484  
Winston-Salem, NC 27109

#### Fax

1-800-529-9162

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☐ MasterCard ☐ Visa

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

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Expiration Date

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

Please allow 7 days from receipt of payment for delivery.



# The Many Faces Of Loan Fraud

How to Recognize Them and What You Should Do

By Janet B. Thoren, Deputy Legal Counsel

Loan fraud involves making false representations to a lender in order to obtain a loan of a larger amount or on more favorable terms than a borrower is otherwise qualified for under the lender's guidelines. Loan fraud is a federal crime, punishable by up to 30 years in prison and \$1 million in fines. In the past, most loan frauds consisted of a single transaction in which the purpose of the fraud was to get a particular buyer into a particular property that the buyer could not otherwise afford. Some examples of this single-transaction type of loan fraud include the following:

- *False Gift Letter.* A false gift letter is created so that it appears funds being provided to the borrower by another party are a gift, when in fact the funds are being offered as a loan and repayment is expected.
- *Contract Kiting.* Two contracts are created for the same transaction. One contract contains the actual terms of the agreement between the buyer and the seller. The second contract reflects a higher purchase price and is given to the lender and the appraiser in order to obtain a higher appraisal amount and permit the borrower to obtain a larger loan than he would otherwise be qualified to receive in the transaction.
- *False down payment.* The contract shows a large down payment made directly to the seller when in fact no down payment was made or the source of funds was not the borrower.
- *Secret Second Mortgage.* The buyer is not qualified to borrow the full amount needed so the seller consents to a "secret second" in

which the seller or real estate agent loans additional funds to the borrower and receives a second mortgage on the property, which may or may not be recorded after closing but which is not disclosed to the lender.

- *Secret Concessions or Undisclosed Rebates.* The seller or broker offers concessions to the borrower for repairs, closing costs, or other items but fails to disclose these concessions to the lender or show them on the closing statement.
- *False Statement of Owner Occupancy.* The buyer represents to the lender that the property will be the buyer's primary residence, when in fact the property is being purchased for rental or other investment purposes.
- *False Qualifications of the Borrower.* Information related to the buyer's credit-worthiness, such as income or sources of cash, is misrepresented to the lender through false documentation or other means.

Within the last three years, the FBI's mortgage fraud caseload in North Carolina has tripled, and real estate agents are being caught up in the newer and more sophisticated schemes. Loan fraud has advanced beyond the stage of a single transaction. Its purpose is no longer to put a single buyer in a particular home, but to intentionally steal loan funds directly from lenders. It has become a business through which a handful of individuals have made millions, but with recent arrests by federal and state authorities, those individuals are now beginning to pay the price.

In order for loan fraud to work on such a large scale, participants in the

fraud typically include appraisers and mortgage loan brokers, and occasionally real estate agents and closing attorneys. The newer types of scams have different variations, but basically work like this:

- The scam organizer or promoter identifies himself or his company as a type of real estate developer or investor. The promoter selects a home, usually a new construction property, and negotiates a purchase price with the seller/builder - let's say \$200,000. This price is usually at market value, or it may be significantly lower if the home has been on the market for a while or if the promoter arranges to purchase multiple properties from the same seller/builder. Once the promoter has a property lined up, he recruits a buyer. These buyers are usually homeowners with relatively good credit, but typically don't have enough income to purchase a second home in a legitimate transaction.
- The promoter offers the buyer the property at a greatly inflated price - for our scenario, let's say \$300,000. The written contract is usually between the seller/builder and the buyer, but reflects the \$300,000 purchase price. The promoter convinces the buyer that he can purchase the home with no money down and, in most cases, even promises to give the buyer anywhere from \$1,000 to \$5,000 in cash outside closing if the transaction closes. The promoter promises the buyer that a tenant is ready to move into the property, and that the rent the tenant pays will be used to pay the mortgage payment. The promoter promises the buyer that the house will be sold

(See **Loan Fraud**, page 9)



## Loan Fraud

(Continued from page 8)

- within a relatively short period to the tenant for a huge profit, and that the promoter and buyer will then split the profits from the sale.
- Once the buyer is on board, the promoter directs the buyer to a particular mortgage broker and sometimes a closing attorney. Appraisers are used who greatly inflate the value of the property in order to substantiate the purchase price the buyer is to pay for the property. A mortgage broker creates false documents to show that the buyer intends to live in the property, to make sure the buyer appears to be qualified for the loan and to make the property appear to be worth more than the true market value. When the actual lender receives the paperwork, everything appears to be in order and the loan is approved.
- At closing, the promoter has to make sure that he gets the profits from the loan, not the seller/builder. The seller/builder's existing loan is paid off and he gets \$200,000 for the property, less his closing costs. Closing costs may include a commission to a real estate agent that is based on the amount the seller agreed to receive, \$200,000, rather than on the \$300,000 purchase price shown on the HUD-1. The promoter receives the remaining funds from the loan, usually shown on the closing statement as a false second mortgage payoff or false assignment fee. Although the closing statement shows the buyer bringing funds to closing, in fact the promoter uses the funds from the loan to pay the buyer's closing costs, and pay off the appraiser, mortgage broker, and buyer outside of closing. In the end, the promoter walks away with an average profit of \$35,000 - \$50,000 per transaction.
- The tenant, if there is one, pays rent to the promoter, who in many cases is running an unlicensed property management business. The promoter makes a few mortgage payments and then quits. In many cases, no tenant ever moves into the property and no mortgage payments are ever made. The buyer can't afford to make two mortgage payments, and the property soon goes into foreclosure. The lenders can't come close to recovering the full amount of their loans through foreclosure, and the buyer's credit is ruined.

Banks and other lenders lose millions of dollars every year through mortgage loan fraud. Losses are often passed on to consumers through higher fees. Losses on government-insured loans end up being paid for by taxpayers. Individual  
(See **Loan Fraud**, page 10)

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## How real estate agents can avoid being caught up in a loan fraud scam!



*If it sounds too good to be true, it probably is.* Any scenario in which a buyer is told he can pay nothing down, buy a second home, and a renter will cover the mortgage payment, is suspect.



*Property flips.* A flip occurs when a house is purchased for a lower price and then quickly sold for a substantial profit. A flip can be legal and a sign of a wise investment - it can also be loan fraud under certain circumstances. Be on the lookout for back-to-back closings, "sellers" who never actually take title to the property, or false information being provided to the lender. Remember that effective June, 2003, HUD's new rule regarding "flipping" makes properties ineligible for FHA mortgage insurance if the resale date is not more than 90 days from the date of acquisition by the seller.



*Large assignment fees or second mortgage payoffs shown on the closing statement.* If you are a listing agent in the transaction, you should know how many mortgages your seller has on the property and about how much it would take to pay them off. If your seller only told you about his first mortgage, why is a payoff for a second showing up? Don't be afraid to ask questions - who is receiving this assignment fee, and why? What is it that is being assigned?



*Real estate commissions based on a sales amount that is less than the purchase price shown on the closing statement.* If the closing statement shows a purchase price of \$300,000, the seller isn't paying a commission on that amount when he is only going to receive \$200,000 from the sale. Why are you, as the agent, getting a commission based on an amount that is less than the purchase price?



*Any scenario that contemplates an exchange of funds connected to the closing but handled outside the closing and not shown on the closing statement.* If the lender won't permit it to be shown on the HUD-1, having the exchange of funds occur outside closing may constitute loan fraud. This includes additional fees or other funds paid to real estate agents, appraisers, parties to the transaction, and third parties.



*Contract prices not supported by other comparable sales.* If you've done your homework for your client, you know what similar houses in the same neighborhood are selling for - if the price on a property is out of line, find out why.

## Reporting Loan Fraud

If you are involved in a transaction in which you suspect loan fraud, what can you do?

- » Ask as many questions as possible.
- » Be prepared to challenge the answers you receive. If the closing attorney or mortgage broker says "we do this all the time," don't take that as a final answer.
- » Advise your clients of any appearance of impropriety and the dangers of loan fraud and encourage them to seek advice from their private attorney before proceeding with the transaction. Disclose your concerns to all parties, including the closing attorney, the mortgage broker, and the real lender.
- » Call an appropriate agency if you have any questions about your participation in a particular transaction.

North Carolina Real Estate Commission (919) 875-3700

North Carolina Banking Commission (919) 733-3016

North Carolina Appraisal Board (919) 420-7920

- » Back away from any transaction that is suspect. No amount of commission is worth your license and your freedom.

## Loan Fraud

(Continued from page 9)

consumers who dreamed of a business opportunity that seemed "too good to be true" learn the truth of the old adage the hard way when their credit is ruined and in many cases they are forced into



**Licensees Should  
Remain Alert**

bankruptcy. In addition, because promoters have targeted certain subdivisions repeatedly, false appraisals have caused property tax values in those subdivisions to soar, leaving the few existing legitimate home purchasers in houses that are overvalued for tax purposes and stigmatizing the neighborhoods with numerous foreclosures.

The FBI and SBI have been vigorously pursuing groups of promoters across the state. Some promoters, appraisers, and mortgage brokers have already been charged and other investigations are ongoing. The U.S. Attorney's office has made a commitment to vigorously prosecute mortgage fraud at all levels, including individuals holding professional licenses who are seen as key factors in safeguarding the system. Such professionals include real estate agents. In addition, the Real Estate

Commission has taken an active role in identifying real estate agents involved in these types of transactions and taking disciplinary action when appropriate, including the revocation of licenses and pursuing injunctive relief against unlicensed participants.

Loan fraud can be disguised in many ways. Whether it's a single transaction loan fraud or a sophisticated scam, the Real Estate Commission expects its licensees to be the guardians of consumers and lenders alike. As such, it is your responsibility to further investigate any real estate transaction in which you are involved if it appears to include possible elements of loan fraud. You are required by law to make full disclosures to all parties, including the ultimate lender, if you suspect fraudulent behavior. Failure to do so may result in disciplinary action against your license, or criminal prosecution by federal and state authorities.

## Commercial

(Continued from page 1)

cial real estate agents representing out-of-state clients to do business in North Carolina, the businesses they represent will be encouraged to locate in North Carolina. The Commission recently adopted rules implementing the licensing program.

An eligible person must first apply to the Real Estate Commission and obtain a limited nonresident commercial real estate license before engaging in any real estate brokerage activity in North Carolina. The application fee for an original license will be \$100. Applicants must provide proof of their licensure in their qualifying state and a criminal record report, as is required for any other applicant. The Commission must find that the applicant possesses the requisite moral character for licensure.

A limited nonresident commercial real estate licensee may perform real estate brokerage acts in North Carolina for compensation with the following two primary limitations:

1. Practice in North Carolina will be limited to transactions involving "**commercial real estate**" as defined in Commission rules; and

2. Before using the license, the nonresident commercial licensee must enter into a **brokerage cooperation agreement** and **declaration of affiliation** with a resident North Carolina broker and must be *supervised by the North Carolina broker* while performing brokerage services in North Carolina.

The resident North Carolina broker with whom the nonresident commercial licensee affiliates must:

(1) verify the nonresident licensee's North Carolina licensure;

(2) actively and personally supervise the licensee;

(3) hold all trust monies received by the licensee in connection with North Carolina brokerage activities; and

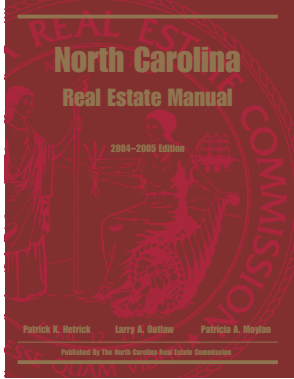
(4) maintain transaction records and copies of cooperation and affiliation agreements as required by Commission rule.

**Beginning July 1, 2004**, persons interested in this licensing program may obtain program information and an application form by contacting the Commission office or accessing the Commission's website at [www.ncrec.state.nc.us](http://www.ncrec.state.nc.us).

# 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 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

Go to the Commission's web site, [www.ncrec.state.nc.us](http://www.ncrec.state.nc.us), select either "Licensees" or "Applicants" and click on NC Real Estate Manual to link directly with the book distributor. Follow the instructions for ordering using your MasterCard or Visa credit card.

BY MAIL OR FAX

Mail or fax an order form with payment. For credit card payments, only 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. (The Manual sales price is \$34.95 plus sales tax and shipping.)

**MAILING ADDRESS:**

North Carolina Real Estate Manual  
P. O. Box 7484  
Winston-Salem, NC 27109

**FAX/VOICE MAIL:**

1-800-529-9162

**EMAIL:**

manual@ncrec.state.nc.us

## Order Form

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Single Manual @ \$43.40\* (incl. Tax, Shipping) \$ 43.40

Additional Manuals @ \$38.40\* each (incl. Tax, Shipping) X \_\_\_\_\_\$ \_\_\_\_\_

Quantity

TOTAL \$

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[illegible]

Exp Date

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

\*Manual sales price is \$34.95 plus \$2.45 sales tax and shipping. **Please allow 7 days from receipt of payment for delivery.**

# AUDITOR'S CORNER



## Earnest Money Deposits: Recording Receipt, Disbursement On Individual Ledger Sheets

**By Emmet R. Wood**

**Director, Audits and Investigations**

If you are the broker-in-charge of a real estate sales office, you are responsible for preparing individual property or owner ledger sheets for each sales transaction. When preparing a sales transaction ledger sheet and recording the receipt of an earnest money deposit, you must identify the following:

- 1) Property
- 2) Parties to the transaction
- 3) Date
- 4) From whom the earnest money deposit is received
- 5) Purpose of the deposit
- 6) Amount
- 7) Running balance

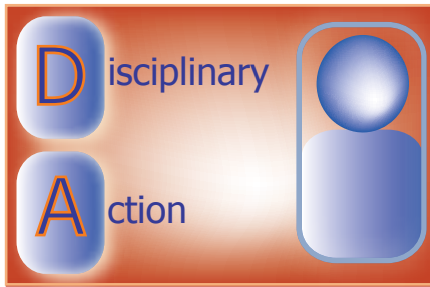
When recording the disbursement of an earnest money deposit on a sales transaction ledger sheet, you must identify the following:

- 1) Date
- 2) Payee
- 3) Purpose of disbursement
- 4) Check #
- 5) Amount of the check
- 6) Running balance

If computer software is utilized to maintain your trust account records, then the software must have the capability to generate a report that identifies all the items above in order to have a sales transaction ledger sheet in compliance with the Commission Rules.

NAME: <i>Jones (Seller) to Wood (Buyer)</i>		ACCOUNT NO.				
ADDRESS: <i>119 Maple St</i>		SHEET NO.				
DATE		ITEMS		DEPOSITS	CHECKS	BALANCE
<i>1/03</i>	<i>OX</i>	<i>John Wood EMD</i>	<i>OX-1</i>	<i>\$1,000.00</i>		<i>\$1,000.00</i>
<i>1/30</i>	<i>OX</i>	<i>Perry Mason - Closing</i>	<i>104</i>		<i>\$1,000.00</i>	<i>\$0.00</i>





*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.*

**JOSEPH J. AFONSO** (Andrews)

– By Consent, the Commission reprimanded Mr. Afonso effective May 1, 2004. The Commission found in a spot audit that Mr. Afonso failed to properly reference deposits and corresponding sales transactions ledgers, failed to maintain a personal funds ledger, and failed to maintain adequate reconciliations of his trust account on a monthly basis. The Commission noted that no consumers were harmed as a result.

**ALBERT T. BACON, JR.** (Lexington)

– The Commission revoked the broker license of Albert T. Bacon, Jr., effective November 25, 2003. The Commission found that Mr. Bacon pleaded guilty to willfully taking immoral, improper and indecent liberties with a child and was incarcerated for four months and ordered to serve five (5) years of supervised probation and placed in the sexual offender control program. The Commission also found that Mr. Bacon refused to respond to Letters of Inquiry from the Commission and allowed his license to expire in June 2002.

**RICK C. BLACK** (Fayetteville)

– By Consent, the Commission revoked the broker license of Mr. Black effective May 1, 2004. The Commission found that Mr. Black, a broker and rental agent during the period 1999 to 2003, failed to comply with Commission requests during 2003 for records of rent and deposit monies he received from clients and tenants.

**WILLIAM J. BRINN, JR.** (Chapel Hill)

– By Consent, the Commission reprimanded Mr. Brinn effective February 12, 2004. The Commission found that Mr. Brinn, as broker-in-charge for a licensed firm engaged

in on-site marketing of a residential subdivision, failed to adequately supervise the sales staff and advertising under his control with regard to future development plans and uses for a

### 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.

certain small area of the subdivision. Mr. Brinn neither admitted nor denied misconduct, but did not contest the findings of the Commission.

**JOSEPH T. BUSH** (Ponte Vedra, FL) – By Consent, the Commission accepted the voluntary surrender of the broker license of Mr. Bush for a period of two years effective March 1, 2004. The Commission dismissed without prejudice allegations that Mr. Bush had violated provisions of the Real Estate License Law and Commission rules. Mr. Bush neither admitted nor denied misconduct.

**SUNNY A. CAUDLE** (Waynesville)

– By Consent, the Commission

suspended the salesperson license of Ms. Caudle for a period of six months effective February 12, 2004. The Commission then stayed the suspension for a probationary period of six months. The Commission found that Ms. Caudle represented in her 2002 salesperson license application that she had not been convicted of any crime when, in fact, she had been convicted of two misdemeanor offenses in 1996.

**MARK E. CONNOR** (Raleigh)

– By Consent, the Commission suspended the salesperson license of Mr. Connor for a period of one month effective April 12, 2004. The Commission then stayed the suspension for a probationary period of six months. The Commission found that Mr. Connor failed to disclose on his 1997 salesperson license application that he had been convicted of a misdemeanor larceny in 1992. The Commission noted that Mr. Connor had employed an attorney in 1996 to have the conviction expunged and did not receive the attorney's communications that she had been unable to obtain an expungement. The Commission also noted that Mr. Connor did disclose the conviction on his 2003 broker license application.

**ERIC CRAWFORD** (Charlotte)

– By Consent, the Commission revoked the salesperson license of Mr. Crawford effective February 1, 2004. The Commission found that Mr. Crawford, acting as a buyer agent in a transaction, failed to obtain a written buyer agency agreement. The Commission also found that Mr. Crawford falsely represented to the buyer that his company owned the property for which the buyer was making an offer to purchase when in fact Mr. Crawford's company was under contract to purchase the property for

(See **Disciplinary**, page 14)

## Disciplinary

*(Continued from page 13)*

\$30,000 less than the price offered by the buyer.

**MARY C. CUDE** (Franklin) – The Commission accepted the voluntary surrender of the broker license of Ms. Cude for a period of two years effective April 1, 2004. The Commission dismissed without prejudice allegations that Ms. Cude had violated provisions of the Real Estate License Law and Commission rules. Ms. Cude neither admitted nor denied misconduct.

**KIMON R. DAVIES** (Carolina Beach) – By Consent, the Commission suspended the broker license of Mr. Davies for a period of six months effective May 1, 2004. The Commission then stayed the suspension for a probationary period of one year. The Commission found in a spot audit that Mr. Davies as the principal broker and broker-in-charge of a real estate brokerage firm, failed maintain the trust account books and records in compliance with the Real Estate License Law and Commission rules. The Commission also found that Mr. Davies took an “advance” of \$2,000 from his rental trust account for management fees not yet earned when such a disbursement was not permitted.

**DAVIES REALTY COMPANY, LLC** – (Carolina Beach) - By Consent, the Commission suspended the firm license of Davies Realty for a period of six months effective May 1, 2004. The Commission then stayed the suspension for a probationary period of one year. The Commission found in a spot audit that Davies Realty failed maintain the trust account books and records in compliance with the Real Estate License Law and Commission rules. The Commission also found that Davies Realty took an “advance” of \$2,000 from its rental trust account for management fees not yet earned when such a disbursement was not permitted.

**EAST POINTE, INC.** (Hampstead) – By Consent, the Commission suspended the firm license of East Pointe for a period of one year effective

March 15, 2004. The Commission then stayed the suspension for a probationary period of two years. The Commission found that East Pointe, a licensed firm broker, allowed one of its shareholders, licensed as a salesperson, to administer its vacation rental business without adequate supervision or control. The Commission also found that the salesperson embezzled trust funds

### Continuing Education Checklist

- ✓ Check your course completion certificate to see that it has your correct and current license number.
- ✓ Check your continuing education credits online at [www.ncrec.state.nc.us](http://www.ncrec.state.nc.us) to confirm their accuracy.

belonging to others and to the firm. The Commission noted that East Pointe cooperated with the Commission investigation, its shareholders funded the trust account shortage to repay all consumers what was owed and made substantial improvements to its handling of vacation rental funds received for others during the Commission audit.

**ANDREW GADRE, a.k.a. ATUL GADRE** (Charlotte) – The Commission revoked the salesperson license of Mr. Gadre effective January 30, 2004. The Commission found that Mr. Gadre misrepresented in his 2001 salesperson license application the states in which he held a real estate license, his places of residence, his employment and whether any charges were pending against him in connection with any real estate license that he held. The Commission

also found that Mr. Gadre failed to file with the Commission a written report of the disciplinary action taken against him by the Georgia Real Estate Commission within 60 days of the final order in the case and failed to disclose to the Commission at any time during his licensure his correct employment, residence and licensing history.

**GEORGE P. GILLESPIE** (Durham)

– By Consent, the Commission suspended the broker license of Mr. Gillespie for a period of two years effective April 15, 2004. Three months of the suspension are to be active and the remainder stayed for a probationary period of two years. The Commission found that Mr. Gillespie accepted compensation from a seller of a parcel of land without having a written listing agreement with the seller as required by Commission rules.

**MARIE C. HINTON** (Fayetteville)

– By Consent, the Commission suspended the broker license of Ms. Hinton for a period of one year effective April 1, 2004. The Commission then stayed the suspension for a probationary period of two years under certain conditions. The Commission found that Ms. Hinton, while acting as a broker-in-charge, failed to maintain trust account and transaction records in the manner required by Commission rules. The Commission noted that during its investigation Ms. Hinton voluntarily cooperated in reforming the record keeping system and accounting for all funds received by the firm.

**JOHN C. HOOFF** (Savannah, Georgia) – By Consent, the Commission reprimanded Mr. Hooff effective February 12, 2004. The Commission found that Mr. Hooff represented on his 2002 salesperson license application that he had not been convicted of any crime when, in fact, he had been convicted of Driving Under the Influence in 1997. The Commission noted that Mr. Hooff did disclose the conviction on his 2003 broker license application.

**DUANE A. JORDAN** (Greensboro)

*(See Disciplinary, page 15)*

## Disciplinary

(Continued from page 14)

– By Consent, the Commission reprimanded Mr. Jordan effective February 12, 2004. The Commission found that Mr. Jordan represented on his 2002 salesperson license application that he had not been convicted of any criminal offenses when, in fact, he had been convicted of a simple worthless check charge in 1998, fishing without a license in 1989 and DWI in 1987. The Commission noted that he did disclose the convictions on his 2003 broker license application and that he did not appreciate that these offenses were criminal convictions.

**LAMBETH OSBORNE REALTY, INC.** (Greensboro) – By Consent, the Commission suspended the broker license of Lambeth Osborne Realty for a period of three months effective June 1, 2004. The Commission then stayed the suspension for a probationary period of one year. The Commission found in a spot audit that Lambeth Osborne Realty failed to maintain its trust account records in compliance with Commission rules and that it had engaged in deficit spending, resulting in a shortage in its trust account.

**MARIE HINTON REAL ESTATE, INC.** (Fayetteville) – By Consent, the Commission reprimanded Marie Hinton Real Estate effective April 1, 2004. The Commission found that the firm failed to maintain trust account and transaction records in the manner required by Commission rules. The Commission noted that during its investigation the firm voluntarily cooperated in reforming the record keeping system and accounting for all funds received by the firm.

**DOUGLAS P. MARSHALL** (Durham) – By Consent, the Commission reprimanded Mr. Marshall effective March 15, 2004. The Commission found that Mr. Marshall in his 2000 broker license application failed to disclose a 1991 misdemeanor conviction of driving while impaired. The Commission noted

that Mr. Marshall voluntarily disclosed the conviction upon learning that such disclosure was required.

**CHER D. MCCLEARY** (Charlotte) – Following a hearing on March 26, 2003, the Commission revoked the broker license of Ms. McCleary and further provided for the reinstatement of her salesperson license under certain conditions. The Commission found that Ms. McCleary made false statements on her January 2000 application for a salesperson license, and her December 2000 application for a broker license, concerning a judgment outstanding against her. Ms. McCleary appealed to the Gaston County Superior Court, which affirmed the Commission's decision. On February 4, 2004, by consent, Ms. McCleary became eligible for the reinstatement of her salesperson license under certain conditions. Said license will be suspended for a period of one year, with the suspension stayed and Ms. McCleary placed on probation during the entire period.

**LAURA L. MOORE** (Oak Island) – By Consent, the Commission suspended the salesperson license of Ms. Moore for a period of six months effective April 19, 2004. The Commission then stayed the suspension for a probationary period of six months. The Commission found that Ms. Moore failed to disclose on her 2003 salesperson license application four misdemeanor convictions including two DWIs (1993 and 1994), Driving While License Revoked (1994), and Intoxicated and Disruptive (2001).

**EDDIE B. MULLINS** (Fayetteville) – By Consent, the Commission revoked the broker license of Mr. Mullins effective March 12, 2004. The Commission found that Mr. Mullins, acting as broker-in-charge of a property rental firm, failed to maintain trust account records and the funds of others entrusted to him in an escrow account, and could not account for monies entrusted to him as a real estate broker. Mr. Mullins neither admitted nor denied the Commission findings and conclusions.

**HUGH D. OSBORNE**

(Greensboro) – By Consent, the Commission suspended the broker license of Mr. Osborne for a period of three months effective June 1, 2004. The Commission then stayed the suspension for a probationary period of one year. The Commission found in a spot audit that Mr. Osborne failed to maintain his trust account records in compliance with Commission rules and that he had engaged in deficit spending, resulting in a shortage in his trust account. The Commission noted that Mr. Osborne fully funded his trust account, took the Basic Trust Account course, and no longer engages in deficit spending and that no consumers were harmed as a result.

**JOSEPH C. PATTERSON, III** (Charlotte) – By Consent, the Commission revoked the broker license of Mr. Patterson April 1, 2004. The Commission found that Mr. Patterson failed to obtain a license for a real estate brokerage firm he owned and operated, collected excess rent from a tenant and failed to account for it, and did not maintain trust account records in compliance with Commission rules. Mr. Patterson's two trust accounts were short \$8,500 and \$34,000, respectively, and he could not account for the discrepancies. Mr. Patterson is eligible under certain circumstances to apply for a salesperson license.

**KIMBERLY R. PRICE** (Butner) – By Consent, the Commission suspended the broker license of Ms. Price for a period of six months effective October 1, 2004. The Commission then stayed the suspension for a probationary period of one year. The Commission found that the North Carolina Secretary of State's office revoked Ms. Price's notary commission after it determined that Ms. Price, when applying for reappointment as a notary, used another notary's seal and forged the other notary's signature on her application for reappointment. The Commission noted that no consumers were harmed by Ms. Price's conduct.

**ROBERT V. RAY** (Wake Forest) – By Consent, the Commission suspended  
(See **Disciplinary**, page 16)



## Disciplinary

(Continued from page 15)

the salesperson license of Mr. Ray for a period of six months effective March 15, 2004. The Commission then stayed the conviction for a probationary period of six months. The Commission found that Mr. Ray on his 2000 salesperson license application disclosed one driving while impaired conviction but failed to disclose a prior conviction for misdemeanor possession of marijuana and drug paraphernalia, two additional DWI's and related offenses.

**SPECTRUM INVESTMENT GROUP, INC.** (Atlantic Beach) – By Consent, the Commission reprimanded Spectrum Investment Group. The Commission found that Spectrum Investment Group, a real estate firm engaged in vacation rental management was aware that its ledger system for individual owner accounts showed negative balances, and could not perform monthly reconciliation of its ledgers to journal and bank statements as required by Commission rule. The Commission noted that Spectrum Investment Group took the necessary steps to correct its accounting problems that arose from a failure by its employees to properly utilize the computer software installed in the office in 2001.

**KENT L. STANTON** (Wilmington) – By Consent, the Commission suspended the salesperson license of Mr. Stanton for a period of six months effective April 19, 2004. The Commission then stayed the suspension for a probationary period of six months. The Commission found that Mr. Stanton failed to disclose on his 1999 salesperson application convictions for underage drinking, driving while impaired, and misdemeanor unauthorized use of a "motor vehicle", namely a bicycle, all of which occurred in the late 1980's. The Commission noted that Mr. Stanton disclosed his entire criminal history on his 2003 broker license application.

**ELIZABETH A. THOMASON** (Dillsboro) – By Consent, the Commission suspended the broker

license of Ms. Thomason for a period of 12 months effective June 1, 2004. The Commission found that Ms. Thomason, as broker-in-charge of a real estate brokerage firm, failed to keep proper and accurate records of monies belonging to others and entrusted to the firm and failed to reconcile the firm's records with bank statements.

**TRIAD REALTY & MANAGEMENT, INC.** (Lexington) – By Consent, the Commission accepted the voluntary surrender of the firm license of Triad Realty & Management for a period of two years effective April 1, 2004. The Commission dismissed without prejudice allegations that Triad Realty & Management had violated provisions of the Real Estate License Law and Commission rules. Triad Realty & Management neither admitted nor denied misconduct.

**KENNETH C. WAGNER** (Atlantic Beach) – By Consent, the Commission reprimanded Mr. Wagner effective March 24, 2004. The Commission found that Mr. Wagner, as broker-in-charge of a real estate firm engaged in vacation rental management, was aware that the firm's ledger system for individual owner accounts showed negative balances,

but could not for over a year perform monthly reconciliation of its ledgers to journal and bank statements as required by Commission rule. The Commission noted that Mr. Wagner took the necessary steps to correct its accounting problems that arose from a failure by the firm's employees to properly utilize the computer software installed in the office in 2001.

**JAMES E. YEZARSKI, JR.** (New Bern) – By Consent, the Commission suspended the broker license of Mr. Yezarski for a period of four years effective September 1, 2003. The suspension was active until April 2004. Mr. Yezarski has been placed on probation for the remainder of the four-year period. The Commission found that Mr. Yezarski failed to disclose a 1993 conviction on the salesperson and broker license applications he submitted in 2000. The Commission also found that Mr. Yezarski was convicted of three other counts in 2002 and given a sentence of four to five months' incarceration that was suspended for a probationary term ending in 2004.

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