



# REAL ESTATE BULLETIN

Volume 36 • May 2005 • Number 1

## Commission Amends Rules

Following a rulemaking hearing February 9 in Greensboro, the Real Estate Commission adopted rule changes which, if approved by the Rules Review Commission, will become effective July 1, 2005.

In addition to technical changes, the new rules address real estate school advertising, facilities, prelicensing instructors, course completion reporting and payment of fees; minimum size of digital images of trust account checks maintained by banks; continuing education exemption for licensees who are sitting members of Congress; and penalties for obtaining, attempting to obtain and/or using license examination questions.

The rule changes also change the term "principal broker" to "qualifying

(See **Rules**, page 6)

## License Renewal Period Begins; Save Time, Renew Online Now

The time has come once again to renew your real estate license for the year beginning July 1. Do it now!

In less time than it takes to read this article, you can renew online at the Commission's website, [www.ncrec.nc.state.us](http://www.ncrec.nc.state.us). Thousands already do, having learned that it's faster and easier.

Renewal forms have been sent out as of May 13 to the delivery address on record for you. If active, the address is that of your broker-in-charge. If inactive, it is your residence address.

The renewal fee remains at \$40 and is the same whether paid by check or online.

If you completed a continuing education course in the last two or three

weeks, those credits may not appear on the mailing label of this issue of the Bulletin. If that's the case, go to the Commission's website, log on and review your record there. You can also verify your address online and make changes to your residence and email addresses and fax number, if needed.

When renewing your license online,  
(See **Renewal**, page 12)

**Renewing online is faster and easier!**  
See Online Renewal Tips, page 12.

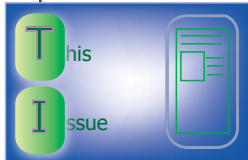
## Commission Building Dedicated

On February 22, the Real Estate Commission dedicated its Raleigh office building in honor of State Senator Tony Rand. More than 100 persons attended a dedication ceremony including Lieutenant Governor Beverly Perdue, members of the Council of State and General Assembly,

members of the Real Estate Commission, and family and friends of Senator Rand and his wife, Karen.

Commission Executive Director Phillip Fisher presided over the ceremony which began with an invocation delivered by Senate Chaplain Mike

(See **Dedication**, page 3)



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(Left photo) Attending the Commission building dedication were State Auditor Les Merritt and Senator Tony Rand; (middle) Lt. Gov. Beverly Perdue; (right) Attorney General Roy Cooper with Senator Rand, his son Superior Court Judge Ripley E. Rand, and his grandson Greene Joseph Rand.

## 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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Phillip T. Fisher

### Editor

Robert L. Forshaw



## People

**Lisa C. Blackwood** has assumed the position of Records Specialist in the Administration Division. She maintains licensee records, completes renewals, and assists newly licensed brokers. Prior to joining the Commission, she was associated with Nextel Communications as a customer relations representative.



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

## Appearances

**Miriam J. Baer**, Assistant Director of Legal Services, spoke to a meeting of owners, managers and assistant managers of the Raleigh Regional Association of REALTORS®; to the Triangle Mortgage Lenders Association; and on "broker only" licensing and increased requirements to become a broker-in-charge to the North Carolina Association of REALTORS® Association Executives.

**Blackwell M. Brogden, Jr.**, Chief Deputy Legal Counsel, spoke to the Wilkes County Board of REALTORS® on measuring, calculating and reporting square footage of residential buildings.

**Janet B. Thoren**, Deputy Legal Counsel, spoke on mortgage loan fraud to the Raleigh/Triangle Chapter of the National Association of Professional Mortgage Women and to the Catawba Valley Association of REALTORS®.

**Joan H. Floyd**, Consumer Protection Officer, spoke to the High Point Regional Association of REALTORS®.

## Commission Meets Outside Of Raleigh

Continuing its efforts to increase its accessibility to licensees, the Real Estate Commission held its February meeting in Greensboro.

The Commission was welcomed by the Honorable Bruce E. Davis, chair of the Guilford County Board of Commissioners and by Guilford County Manager Willie A. Best and also met with members and staff of the Greensboro Regional REALTORS® Association, the High Point Regional Association of REALTORS® and the North Carolina Association of REALTORS® who joined in welcoming the Commission to its first-ever meeting in Greensboro.

The Commission will hold its July meeting in New Bern.



June 8  
July 6  
New Bern  
August 10  
September 7

*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.*

## Dedication

(Continued from page 1)

Morris, followed by the presentation of colors by the Color Guard from the Army ROTC at Senator Rand's alma mater, UNC-Chapel Hill.

Commission Vice-Chairman Marsha Jordan led the audience in the Pledge of Allegiance, and Kirby Ann Troutman sang the National Anthem. A choral group of Commission staff members accompanied by pianist Ronald Williams then performed a state anthem composed by Mr. Fisher entitled "The Longleaf Pine".

In her keynote remarks, Lieutenant Governor Perdue praised Senator Rand for his leadership and contributions to North Carolina, and Commission Chairman Matthew J. "Rick" Watts formally dedicated the building "The Tony Rand Building."

Senator Rand closed the ceremony by accepting the honor, stating that "The real estate industry in North Carolina is such an important part of what North Carolina is about...not only to the economy of our state but to the human condition, that persons have a place to live and call their own, a spot that is particular to them and a place of refuge."

In a separate ceremony following the dedication of its office building, the Commission dedicated its conference room in memory of former Commission Chairman Billie J. Mercer who served on the Commission from 1995 until her passing in 2001. In addition to members of the Real Estate Commission and staff, the ceremony was attended by former Commission members Mona Hill, John Bridgeman and Kemp Sherron who served with Mrs. Mercer, and by Immediate Past-President of the N.C. Association of REALTORS® Connie Corey who was a close friend of Mrs. Mercer.

## 2005-2006 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.

☐ July 6      ☐ August 2      ☐ September 6  
☐ October 4      ☐ November 1      ☐ 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.**



No, it's hardly a "dream listing", but imagine for a moment that you have just listed, knowingly or unknowingly, a former **"Meth" House** or lab – a place where methamphetamine, a highly addictive, controlled substance was illegally manufactured.

Or, imagine you are a licensee and property manager or agent for an owner or asset management firm and are managing such a property.

The walls of the property once witnessed the mixing and "cooking" of a witch's brew of harmful chemicals required to produce methamphetamine. Those same walls, along with the plumbing, air vents, filters, furniture, appliances, carpets, draperies and other household components, quite likely absorbed its vapors and may still bear its splatters and spills.

Perhaps, gases and fumes from the toxic by-products of the manufacturing process exploded or caught fire, scattering contamination in a wider swath about the property. Even if nothing of such magnitude occurred, the production of just one pound of "meth" on the property could have created five to seven pounds of hazardous waste including hydrogen chloride gases. As so often happens, these wastes may have been dumped on or around the property, and in nearby rivers and streams. The septic system, well, ground water, soil and other environmental elements may have been too contaminated for safe use.

\* \* \* \*

If this scenario sounds "far-fetched," think again. There were 322 "meth" lab "busts" in 2004 in North Carolina, up from 177 in 2003 and nine four years earlier, according to the State Bureau of Investigation. Through April 11 of this year, there have been 121.

Once a site is cleared of illegal activity and under the control of the state, law enforcement officials post a notice on the property that it was used as a "clandestine methamphetamine laboratory". The local health department is notified, which in turn informs the property owner or agent that the site must be vacated and that "a responsible party" is

required to "remediate the property".

Clean-up is generally possible, but may be expensive, depending upon the level of contamination. Even after cleaning, some contamination may be left on surfaces, in absorbent materials such as carpet and furniture, and in sinks, drains, and ventilation systems. Lingering contaminants may pose health threats, including respiratory problems, skin and eye irritation, headaches, nausea, and dizziness. Because of the potential risk, more extraordinary remediation measures are required.

*What is a real estate agent to do? First, it is important to know the law and rules concerning "meth" houses.*

North Carolina law makes the manufacture of "meth" a Class C felony, and prohibits related criminal activity surrounding its manufacture, distribution, and sale.

This year, at the request of North Carolina Attorney General Roy Cooper, legislation was introduced to limit public access to pseudoephedrine, a primary ingredient in the manufacture of methamphetamine, by requiring that it be sold behind the counter in pharmacies only, and that buyers be required to register their purchases.

In addition, under a new state mandate, the Department of Health and Human Services ("DHHS") created rules establishing decontamination standards for certain properties to assure they are reasonably safe for human habitation. The law requires compliance with these decontamination standards by the property "owner, lessee, operator, or other person in control of a residence or place of business, and who has knowledge that the property has been used for the manufacture of methamphetamine..."

The DHHS rules require a "responsible

*See Meth House, page 5*

## Meth House

(Continued from page 4)

party” to:

- Perform a pre-decontamination assessment to determine the level of contamination and scope of remediation;
- Decontaminate the property; and
- Document the assessment and remediation.

The documentation must be retained by the local health department for a period of three years.

### Licensee's Duty

*Next, licensees should learn how the law may impact them.*

Property managers and other licensees may be viewed as persons “in control of a residence or place of business” under the DHHS law and rules. If so, this could create heightened responsibility for licensees with regard to decontamination. However, the law is unclear concerning the extent of responsibility a property manager or agent might have, if any, especially compared with that of the actual owner or lessee.

**A**s a licensee, you are required to disclose material facts concerning a property *when you are, or should be, aware of them.*

Because properties used as “meth” labs may have potential lingering health consequences and responsible parties must undertake clean-up and

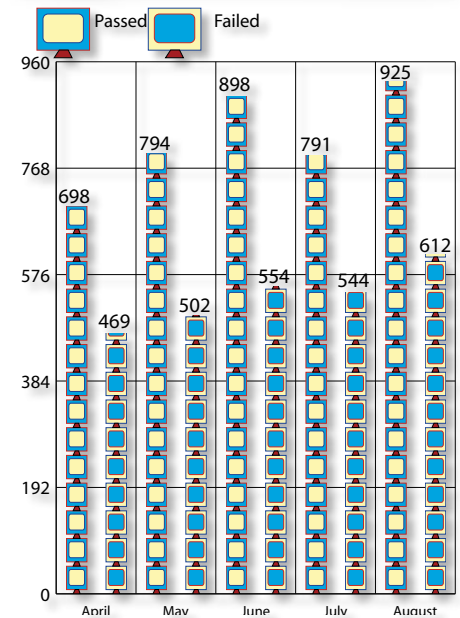
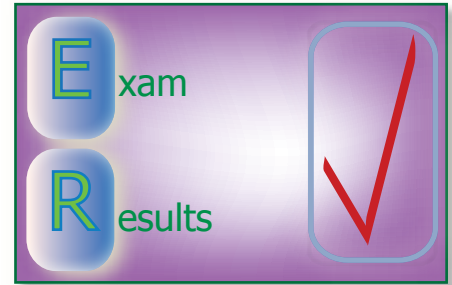
reporting, the prior use of a property as a “meth” lab is material. However, it is also important to remember that your duty to disclose only arises when you know, or reasonably should know, that the property was once used as a “meth” lab. As with all issues concerning material facts, whether an agent reasonably should have known that a property once was a “meth” lab must be evaluated on a case by case basis.

At this time, the Commission does not require licensees to check with the county health department, local law enforcement officials, and the SBI, each time they list a property to see if decontamination or criminal records exist indicating the property was once used for the manufacture of “meth”. On the other hand, licensees who encounter properties they know or should know were formerly operated as “meth” labs should make inquiries to determine the status of the property.

If the inquiry reveals that remediation is complete, no disclosure is required, assuming that clean-up has been properly documented.

The problem of illegal manufacture of methamphetamines is growing, and the state has responded with new laws and rules. Licensees encountering properties that they suspect may have been used as a “meth” lab should take care to stay informed about the law.

Listing or managing a “Meth” house requires careful attention to Commission and new Department of Health and Human Services rules.



## Rules

(Continued from page 1)

broker" to more accurately reflect the duties of persons qualifying firms for licensure, and the term "personally" to "directly" in the rule requiring brokers-in-charge to supervise their salespersons recognizing that, in this era of cell phones, e-mail, etc., regular face-to-face contact is not always necessary to adequately supervise salespersons.

Two additional rule changes are likely to affect most practicing brokers and salespersons. The first one addresses the new Alternative 2 in the North Carolina Association of REALTORS®/

North Carolina Bar Association Offer to Purchase and Contract form where a buyer may pay a seller an "option fee" for the right to terminate the purchase contract by a certain date for any or no reason. In such cases, if the option fee is given to the buyer's or seller's agent, the agent must deliver it to the seller within three days of receipt; however, if during the period while the agent is holding the check the buyer requests that it be returned, the agent must do so.

The other rule change likely to affect licensees is a new requirement that licensees display their real estate license

number on listing agreements, buyer agency agreements, and any other agreement for brokerage services, as well as the Working With Real Estate Agents publication to help consumers and other licensees verify licensure.



## 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 \_\_\_\_\_

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Mail, fax or email this form to the Real Estate Commission.

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Select the publication icon on the home page. Complete the online form.

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

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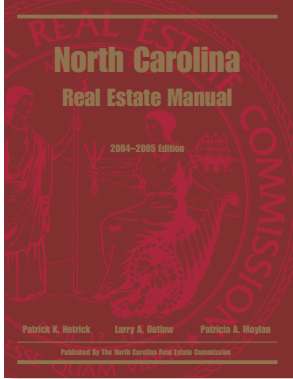
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**Please allow 7 days from receipt of order for delivery.**



# NORTH CAROLINA REAL ESTATE MANUAL

## HOW TO ORDER:



Go to the Commission's web site, [www.ncrec.state.nc.us](http://www.ncrec.state.nc.us), select "Publications/Bulletin" 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.

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.)

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

1-800-529-9162

manual@ncrec.state.nc.us

# NORTH CAROLINA REAL ESTATE MANUAL

NAME \_\_\_\_\_

ADDRESS \_\_\_\_\_

CITY/STATE/ZIP \_\_\_\_\_ Street (NOT P.O. BOX) \_\_\_\_\_

Telephone

Email

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

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

Quantity

TOTAL \$

☐ MasterCard ☐ Visa

[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.**



# Commission Supports Resale Dealer Legislation

Law would require disclosures by resale dealers before entering into transaction with seller.

**T**he Real Estate Commission has voted to support legislation proposed by North Carolina Attorney General Roy Cooper to address abuses in real estate transactions where dealers contract to purchase for resale real estate subject to an existing loan or deed of trust.

The legislation would not apply to real estate licensees because resale dealers who have real estate licenses are regulated by the Commission.

Problems with resale dealers arise when a purchase contract enables the dealer to buy and resell property for a profit, “subject to” an existing loan. The terms of most loans call for repayment of the entire amount owed if the property is sold. Often, the person from whom the dealer purchased the property is not aware of this “due on sale” clause and assumes that the dealer is responsible for paying off the loan. However, the original owner is still responsible for the loan.

If the resale effort is unsuccessful and the dealer simply walks away, the owner may face an immediate demand for payment of the loan from the original financing source.

The legislation proposed by Attorney General Cooper would require a resale dealer to make certain disclosures at least seven days before entering into a real estate transaction with a homeowner/seller. These would include statements disclosing that:

- The homeowner/seller is not relieved of responsibility for the existing mortgage and will be held responsible for any delinquencies or defaults if the real estate resale dealer

fails to make payments.

- The current mortgage loan or deed of trust may contain a “due on sale” clause obligating the homeowner/seller to inform the lender at any time title to the property is transferred and that the lender has the right to call the entire amount of the loan due at that time.


- The homeowner/seller should consult an attorney as to his or her liability and obligations for providing insurance and for maintenance of the property.

- The resale dealer has secured a bond as required by state law with the surety company’s name and address provided and advice to check with the surety company to determine the bond’s current status.

- The nature of the resale dealer’s business and people involved with it including the number of transactions entered into within the preceding 12 months and a description of services to be rendered.

Additional disclosures relate to tenant/buyers and encompass deposits, down payments and payment for options to purchase, any existing deed of trust and related obligations, advice concerning eligibility for a mortgage and the dealer’s securing of a bond.

If the law passes, copies of the disclosure statements must be filed with the Secretary of State’s office before any advertising is undertaken or representation to buyers is made. A copy of the state law must be provided to participants in any real estate resale transaction seminar. Finally, any resale dealer who offers to assist a purchaser in securing financing must be licensed as a mortgage broker.



**Owner may  
be responsible  
for loan, not  
dealer**

A record 202 educators attended the annual North Carolina Real Estate Educators Conference sponsored by the Real Estate Commission on March 7-8, 2005. This was the largest turnout in the 26 years the educators conference has been held.

## Attendance Sets Record At Educators Conference

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

While attendance at these annual conferences is always excellent, educators were especially interested this year in learning more about the Commission's proposed legislation to establish a "broker only" license structure, strengthen the education requirements for licensing, and increase broker-in-charge qualification requirements.

A majority of the first day's program was devoted to a discussion of this proposed legislation. The discussion was led by Larry Outlaw, the Commission's Director of Education and Licensing, who explained that the legislative proposals resulted from recommendations of the 2004 Broker-in-Charge Advisory Committee formed by the Commission to consider broker-in-charge duties and requirements. Mr. Outlaw reviewed the proposals, which had been disseminated to participants prior to the conference, and explained the rationale of the advisory committee and the Commission for the proposals, as well as Commission plans for implementation of the legislation if enacted. Participants then engaged in a lively discussion of the various proposed changes.

Conference attendees enjoyed very helpful presentations by three experienced instructors. Tony Hawkins spoke on "Working with the Adult Learner," Dick Norwood addressed "Using Real-

Life Examples in Teaching the Broker Course," and Cindy Chandler shared suggestions on "Teaching the Commercial Section of the Broker Course."

The first day also featured the annual North Carolina Real Estate Educators Association awards luncheon and business meeting. Tom Mangum, NCREEA President pre-

anticipated NCREEA-recommended salesperson course final examination was now available for purchase following a lengthy development and pretesting process. She reported that the Association would continue working with Commission staff to produce another version of the examination during the coming year.

The second day of the 1½-day conference primarily featured presentations by members of the Commission's education staff. Anita Burt, Examination and Education Officer, reported on progress being made to update the license examination, describing an online job analysis project that was under way and the development activities of staff and an Examination Item (Question) Review Committee.

Pam Rorie, Continuing Education Officer, reviewed several rule changes and addressed pertinent issues relating to both CE and prelicense education. Tricia Moylan, Legal Education Officer, presented and discussed summaries of several interesting NC court cases relevant to real estate practice.

Finally, Tom E. Smith, President-Elect of the North Carolina Housing Opportunity Foundation, acquainted attendees with the Foundation's Homes4NC program that seeks to facilitate and increase housing opportunities in the state, noting particularly how NC REALTORS® can contribute to the Homes4NC program by participating in the Interest on Real Estate Trust Accounts (IORETA) program.

Conference participants were also able to gain information from exhibitors that included the country's leading real estate publishers and had the opportunity to network among their peers. All in all, the 2005 conference was a resounding success.



*Commission Chairman Matthew J. "Rick" Watts presents the Billie J. Mercer Excellence in Education Award to Priscilla Senecal, who was also honored as "Educator of the Year".*

sided over the meeting, and Sandy Williams, NCREEA Immediate Past President, presented the Association's annual awards.

Cindy Chandler of Charlotte received the Program of the Year award for her "Fundamentals of Commercial Real Estate" course, and Priscilla Senecal of Cornelius was honored as the Educator of the Year. Ms. Senecal was also presented the Commission's Billie J. Mercer Excellence in Education Award by Matthew J. "Rick" Watts, Chairman of the Real Estate Commission.

Ms. Williams also announced during the morning session that the much

# Follow Commission Guidelines For Homes4NC Contributions

**R**eal estate brokerage firms and individual licensees may contribute interest earned from trust accounts to the Housing Opportunity Foundation's Homes4NC, the new non-profit established by the North Carolina Association of REALTORS® in 2004. Licensees who desire to do so should review the guidelines set forth below.

Homes4NC derives funds from interest earned on real estate brokerage trust fund accounts and donations from members and community contributors.

The organization awards grants to nonprofit organizations that enhance the ability of those below 80% of median income to secure housing, provides disaster relief funds on an "as needed" basis to non-profits assisting with an emergency disaster, and promotes access to training opportunities for REALTORS® to increase their knowledge of resources to assist with affordable housing.



The non-profit completed its first grant cycle last fall.

NCAR, in establishing Homes4NC last year, cited statistics that one out of every five people in North Carolina pay more than 30% of their income in mortgage payments. Earnings over \$14 per hour are required to afford an average two-bedroom apartment and almost \$27 per hour to afford the average home.

There is a shortage of affordable housing in the state affecting 20.7 percent of homeowners and 33.4 percent of renters, who spend more than 30 percent of their income on housing payments, NCAR said.

The Housing Opportunity Foundation is organized to promote decent, safe and affordable housing, support education and research of housing issues, provide technical assistance to groups seeking to deal with housing issues and needs, and enhance the ability of state citizens with incomes at or below 80% of median income to secure housing.

## Practices and Procedures

**T**he Real Estate Commission determined that the contribution of trust account interest to Homes4NC is in compliance with the Real Estate License Law and Commission rules when participating brokerage firms and licensed individuals adhere to certain practices and procedures:

- There must be specific written authority from the principals in a transaction for a licensee to deposit trust money into an interest-bearing account. This authority must be obtained by the licensee prior to making the deposit, provide for the disbursement of the interest, and be clear and conspicuous. It must specify that the interest is being disbursed to the Foundation or the licensee, and describe how the disbursement will be made.
- When authority is given to disburse to the Foundation, consumers should be given meaningful disclosure of the nature of the Foundation and the purposes to which the interest will be put.
- If a particular client or customer declines to allow the licensee to earn interest for the benefit of the Foundation (or the licensee) on the funds in which he or she has an interest, the licensee must segregate those funds in a separate account that does not bear interest, or that earns interest as directed and agreed by the parties and the licensee.
- As with other trust money, funds which are earmarked to earn interest for the benefit of the Foundation must be deposited in an insured North Carolina bank or savings and loan with the accounts subject to negotiable instruments of withdrawal.

Additional detail relating to these accounts is provided in a Commission opinion letter under Housing Opportunity Foundation on NCAR's website, [www.ncrealtor.org](http://www.ncrealtor.org), or the Commission's website, [www.ncrec.state.nc.us](http://www.ncrec.state.nc.us).



## Staff Members Celebrate Eighty-Five Years of Service

Commission staff members with a total of 85 years of service received Service Awards recently. Commission Chairman Matthew J. "Rick" Watts, standing left, presided at the awards presentations with Frances Scott, co-anchor of ABC 11 Eyewitness News, second from left, and Phillip T. Fisher, Commission Executive Director, standing far right. Receiving service awards were (l. to r., standing) Chief Deputy Legal Counsel Blackwell M. Brogden, Jr., 20 years; Administrative Officer Wendy C. Harper, 15 years; Auditors/Investigators Brian R. Allan and William F. Dowd, Jr., Information Officer Peter C. Evans, and Administration Assistant Billy J. Poole, all five years; (seated, l. to r.) Assistant Legal Counsel Pamela V. Millward and Legal Education Officer Patricia A. Moylan, five years; Legal Secretary Johnsie V. Jeffreys, 15 years; and Accounting Technician Peggy Chow, five years.

## Renewal

*(Continued from page 1)*

you will receive 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. With the confirmation notice, there is no doubt that your renewal has been received by the Commission before the deadline of midnight, June 30.

If reinstatement of a license is required, you should take action as follows:

--Licenses expired for more than six months (i.e., after December 31) require reinstatement through 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.

--Licenses expired for less than six months (i.e., before December 31) require reinstatement only with the payment of a \$55 fee.

## Online Renewal Tips

Use Visa or MasterCard only. Know your card's billing address.

- 1 On or after May 13, click on the "Renew/Reinstate" bar along the left side at the Commission's website.
- 2 Enter your license number 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 Continuing Education credits and update your data records).
- 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). Be certain the information shown for your address is the same as the billing address for your credit card. If not, change it on this screen.
- 6 "Please wait..." appears as the charge is processed and a final screen confirms your license renewal. Please print this confirmation as a receipt.



## Internal Controls Safeguard Trust Account Assets

By Emmet R. Wood, Director, Audits and Investigations

Does your company have adequate internal controls to safeguard your trust account monies? What are internal controls? This is the first part of a series of Auditor's Corner articles on internal controls. These articles will be based on actual cases investigated by the Audits & Investigation Division of the Real Estate Commission and include examples of real estate companies that had deficiencies in their trust account system of internal controls.

(Part 1  
of a  
series)

Internal control means different things to different people. Pertaining to real estate trust accounts, internal controls are the policies and procedures designed to safeguard the assets of the trust account and provide reasonable assurance of the reliability of the trust account books and records. Their main objective should be to maintain compliance with the Real Estate License Law, Commission Rules and Trust Account Guidelines. Below is an example of a real estate company that had a trust account defalcation mainly because of poor internal controls.

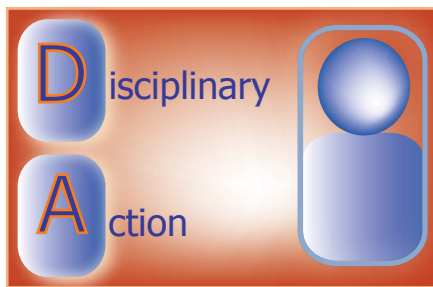
*In a real estate sales company with lots of closings, the bookkeeper would get one or more of the four different owners of the firm, to sign blank trust account checks in advance of the closings. The bookkeeper used some of the signed checks to pay personal bills but recorded on the handwritten check stubs that they were written to an attorney for closing.*

*When the bank statements came in the mail, they were given to the bookkeeper to reconcile. After opening them, the bookkeeper would remove the checks written for the personal expenditures, prepare the bank reconciliation and provide it to the broker-in-charge for review. The embezzlement was not discovered until a trust account check bounced. Who had to repay the monies embezzled? The owners of the real estate company.*

A good system of internal controls may have prevented the embezzlement. One simple internal control would have been for someone other than the bookkeeper to have received the trust account bank statements and reconcile them to the trust account check stubs.

If your company does not have the luxury of more than one bookkeeper, the bank statements could be directed to the broker-in-charge to open and examine them. Another obvious internal control deficiency was signing blank trust account checks. Can you find other internal control deficiencies?

Place yourself in the position of those employees within your company who have access to trust account funds, analyze how they might take them, and design your company's system of internal controls to minimize the opportunity for embezzlement. You may wish to consult a CPA to help you design your system.



**JAY B. ANGEL d/b/a ANGEL REALTY ASSOCIATES** (Hendersonville)

– By Consent, the Commission revoked the broker license of Mr. Angel effective May 1, 2005. The Commission found that Mr. Angel, as broker-in-charge and sole proprietor of a real estate firm, failed to maintain his trust account records in compliance with the Real Estate License Law and Commission rules including failing to reconcile his trust account on a monthly basis, deposit funds in a timely manner and maintain either ledgers for each transaction or a personal funds ledger. The Commission also found that Mr. Angel used trust funds to pay office rent with a resultant shortage in the trust account of \$1,235.24, failed to use written listing agreements for his seller clients in certain transactions, and failed to use dual agency agreements when required.

**GEORGE R. BERRY** (Franklin) – The Commission accepted the voluntary surrender of the salesperson license of Mr. Berry for one year effective March 30, 2005. The Commission dismissed without prejudice allegations that Mr. Berry had violated provisions of the Real Estate License Law and Commission rules. Mr. Berry neither admitted nor denied misconduct.

**DORA ANN BLASCHIK** (Dillsboro) – By Consent, the Commission reprimanded Ms. Blaschik effective February 24, 2005. The Commission found that Ms. Blaschik failed to report to the Commission a fine imposed upon her as a licensed auctioneer by the North Carolina Auctioneer Board.

**VERA G. BESCHER** (Corolla) – The Commission revoked the broker license of Ms. Bescher effective March 8, 2005. The Commission found that Ms. Bescher, as principal and broker-in-charge of a real estate firm that managed residential rental properties for owners, made

*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.*

false promises regarding the dispositions of monies entrusted to her by an owner, failed to account for and remit monies coming into her possession belonging

### 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.

to landlord clients and tenants, failed to deposit and maintain client and tenant monies in a trust account, commingled money belonging to others with her own money, and failed to maintain a trust account and records as broker-in-charge.

**NORMAN Y. CHAMBLISS, III** (Rocky Mount) – By Consent, the Commission suspended the broker license of Mr. Chambliss for a period of two years effective March 1, 2005. Six months of the suspension are to be active with the remainder stayed for a probationary period of 18 months. The Commission found that Mr. Chambliss on October 19, 2004 in the U.S. District Court for the Eastern District of North Carolina, pleaded guilty to and was convicted of the criminal offenses of obstruction of justice

and aiding and abetting the commission of a crime, for which he was sentenced to two years' supervised probation, fined \$20,000 and restricted by the court in his right to move about and associate with other persons.

**ELIZABETH M. GREEN** (Charlotte) – By Consent, the Commission suspended the salesperson license of Ms. Green for a period of one year effective May 1, 2005. One month is to be active with the remainder stayed for a probationary period of one year. The Commission found that Ms. Green engaged in soliciting and conducting business on behalf of another firm before leaving her supervising broker to work for the other firm.

**SHARON E. HOGAN** (Chapel Hill) – By Consent, the Commission suspended the broker license of Ms. Hogan for a period of six months effective March 1, 2005. One month of the suspension was active with the remainder stayed for a probationary period of one year. The Commission found that Ms. Hogan failed to disclose a pending misdemeanor driving while impaired charge on her February, 2001 salesperson application and her June, 2001 broker application. The Commission also found that Ms. Hogan was convicted of the offense in October, 2001, but did not report her conviction to the Commission until March, 2004.

**MICHAEL A. HUDSPETH** (Statesville) – By Consent, the Commission revoked the salesperson license of Mr. Hudspeth effective April 14, 2005. The Commission found that Mr. Hudspeth, between 2000 and 2004 and by and through Hudspeth, Inc., an unlicensed corporation, performed real estate brokerage services for a fee without being licensed by the Commission in that he had allowed his license to remain on inactive status

*See Disciplinary, page 15*

## Disciplinary

(Continued from page 14)

since 1993.

**ROYAL M. JONES** (Highlands) – The Commission suspended the broker license of Mr. Jones for a period of one year effective December 22, 2004. The Commission found that Mr. Jones, a broker-in-charge of a real estate firm and a licensed appraiser in North Carolina and Georgia, failed to disclose that disciplinary action had been taken against him by the Georgia Real Estate Appraisers Board revoking his license in 2001 and that the North Carolina Appraisal Board suspended his license and ability to instruct preclicensing or continuing education courses for a period of one year in 2001. The Commission also found that Mr. Jones failed to disclose the discipline by the North Carolina Appraisal Board on his applications to the Commission for renewal of his license to operate a private real estate school and for the renewal of his approval as a continuing education instructor.

**MICHAEL D. KAIZAR** (Wilmington) – By Consent, the Commission revoked the broker license of Mr. Kaizar effective February 10, 2005. The Commission found that Mr. Kaizar engaged in real estate brokerage activities, including rental property management, at a time when his broker license was expired. The Commission also found that Mr. Kaizar collected funds on behalf of his clients and failed to adequately account for and remit those funds, failed to keep adequate records of the funds to be held in trust for others and could not produce all required trust account records upon request.

**MARVIN A. KENNEDY** (Greensboro) – By Consent, the Commission suspended the broker license of Mr. Kennedy for a period of three years effective March 1, 2005. The Commission found that Mr. Kennedy, as broker-in-charge of a licensed real estate firm engaged in vacation rental management, failed to implement a trust account record keeping system in the manner required by Commission rules.

**DUANE A. MARSHALL** (Wendell) – By Consent, the Commission revoked the salesperson license of Mr. Marshall

effective March 1, 2005. The Commission found that Mr. Marshall, in the U.S. District Court for the Eastern District of North Carolina, pleaded guilty to and was convicted of the criminal offense of unauthorized use of an access device. The Commission also found that Mr. Marshall failed to report his conviction to the Commission in a timely manner.

### 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.

**CHARLENE M. MCILNAY** (Blowing Rock) – By Consent, the Commission suspended the broker license of Ms. McIlnay for a period of six months effective March 1, 2005. The Commission then stayed the suspension for a probationary period of one year. The Commission found that Ms. McIlnay failed to maintain her rental trust account in compliance with the Real Estate License Law and Commission rules. The Commission noted that Ms. McIlnay's sales trust account was in compliance and that she has since sold the rental business to another licensed broker.

**BENJAMIN D. MCCUBBINS, III** (Cornelius) – By Consent, the Commission suspended the broker license of Mr. McCubbins for a period of six months effective November 1, 2005. Three months of the suspension are to be active with the remainder stayed for a probationary pe-

riod of one year. The Commission found that Mr. McCubbins, who also holds a real estate appraisal certification from the North Carolina Appraisal Board, was reprimanded by the Board for renewing his license with a check that was subsequently dishonored. The Commission also found that Mr. McCubbins was negligent in the preparation of a particular appraisal and in oversight of another appraisal.

**JOSEPH J. MERTES** (Cornelius) – The Commission accepted the voluntary surrender of the broker license of Mr. Mertes for a period of one year effective March 24, 2005. The Commission dismissed without prejudice allegations that Mr. Mertes had violated provisions of the Real Estate License Law and Commission rules. Mr. Mertes neither admitted nor denied misconduct.

**NORTH BEACH REALTY, INC.** (Corolla) – The Commission revoked the firm license of North Beach Realty effective March 8, 2005. The Commission found that North Beach Realty, a real estate firm that managed residential rental properties for owners, made false promises regarding the dispositions of monies entrusted to it by an owner, failed to account for and remit monies coming into its possession belonging to landlord clients and tenants, failed to deposit and maintain client and tenant monies in a trust account and commingled money belonging to others with its own money.

**ONE SOUTH LUMINA HOMEOWNERS ASSOCIATION** (Wrightsville Beach) – The Commission accepted the voluntary surrender of the firm license of One South Lumina Homeowners Association for a period of one year effective March 1, 2005. The Commission dismissed without prejudice allegations that One South Lumina Homeowners Association violated provisions of the Real Estate License Law and Commission rules. One South Lumina Homeowners Association neither admitted nor denied misconduct.

**BEVERLY A. RIDINGS** (Fletcher) – By Consent, the Commission suspended the salesperson license of Ms. Ridings for a period of six months effective March

See **Disciplinary**, page 16

## Disciplinary

(Continued from page 15)

14, 2005. One month of the suspension was active with the remainder stayed for a probationary period of five months. The Commission found that Ms. Ridings failed to report to the Commission a conviction in April 2000 for Driving While Impaired, but did report the conviction in April 2003 after learning of the reporting requirement in a continuing education class. The Commission also found that Ms. Ridings was convicted of Driving While Impaired in January 2004 and reported the second conviction in April 2004.

**RUTH KEITH REALTY, INC.** (Creedmoor) – By Consent, the Commission suspended the firm license of Ruth Keith Realty for a period of three years effective March 1, 2005. The Commission then stayed the suspension for a probationary period of three years. The Commission found that Ruth Keith Realty, through its broker-in-charge and a salesperson under his supervision, participated in selling a residential property by falsifying the closing statement to show a larger sales price than actually paid by means of a false second mortgage from the seller.

**ALICE M. SOLES** (Carolina Beach) – By Consent, the Commission suspended the broker license of Ms. Soles for a period of one year effective April 14, 2005. The Commission then stayed the suspension for a probationary period of 18 months. The Commission found that Ms. Soles, as broker-in-charge of a real estate firm, failed to conduct monthly reconciliations of the firm's rental escrow accounts, thus allowing another licensee to mishandle trust funds. The Commission noted that Ms. Soles funded the resulting shortage in the escrow account.

**ARMINA D. SWITTENBERG** (Thomasville) – By Consent, the Commission accepted the permanent voluntary surrender of the broker license of Ms. Swittenberg effective March 23, 2005. The Commission dismissed without prejudice allegations that Ms. Swittenberg had violated provisions of the Real Estate License Law and Commission rules. Ms. Swittenberg neither admitted nor denied

misconduct.

**MARGARET H. TURNER** (Wilmington) – By Consent, the Commission suspended the salesperson license of Ms. Turner for a period of six months effective March 1, 2005. The Commission then stayed the suspension for a probationary period of one year. The Commission found that Ms. Turner failed to disclose a pending misdemeanor driving while impaired charge on her December 2001 application for licensure.

**JACK R. WATTS** (Fayetteville) – By Consent, the Commission reprimanded Mr. Watts effective March 1, 2005. The

ed the salesperson license of Mr. Weaver for a period of three years effective March 1, 2005. Six months of the suspension are to be active with the remainder stayed for a probationary period of 30 months. The Commission found that Mr. Weaver, acting as a listing agent in a transaction, participated in selling a residential property by means of a false closing statement and other documents to show a larger sales price than actually paid by means of a false second mortgage from the seller.

**HERMAN H. WEAVER, JR.** (Creedmoor) – By Consent, the Commission revoked the broker license of Mr. Weaver effective March 1, 2005. The Commission found that Mr. Weaver, while acting as broker-in-charge of a real estate firm, participated in causing a closing statement in a residential sales transaction to falsely show a second deed of trust to the seller when he knew that the parties had no intent that any such debt ever be paid or constitute part of the purchase price. Effective April 1, 2005, Mr. Weaver's salesperson license may be reinstated upon certain conditions.

**Renewing online is faster and easier!**  
See Online Renewal Tips, page 12.

Commission found that Mr. Watts, as a broker affiliated with a real estate firm, listed several lots in a subdivision for his seller client and advertised one within the subdivision as "horses in back yard" when restrictive covenants prohibited horses from being kept in the subdivision. Facilities to board horses were available adjacent to the subdivision.

**BRIAN H. WEAVER** (Creedmoor) – By Consent, the Commission suspend-

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