



Course Topics For 2011-2012

A real estate broker's permissible role in a short sale transaction and the newly revised addenda to the standard residential Offer to Purchase and Contract form will be major topics of the *2011-2012 Real Estate Update Course*.

Other topics will address when it is acceptable for a real estate broker to provide a broker price opinion and not risk violating North Carolina appraiser license laws, pertinent issues in residential property management, changes in the North Carolina Real Estate License Law that impact licensees, resources relating to green building, and the requirements to maintain a current, active license.

Given the increasing frequency of short sale transactions, brokers should develop a firm understanding of the (See **Update**, page 5)

Online License Renewal Begins May 15; Take Time Now to Renew!

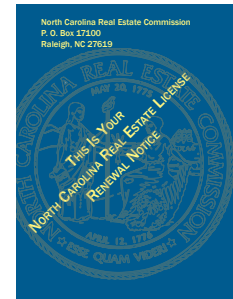
It's time to renew your real estate license. The Commission's Web site, www.ncrec.gov, begins accepting online renewals - the fastest, most convenient way to renew - on Sunday, May 15.

The annual fee remains at \$40, one of the lowest in the nation. You may charge your renewal with MasterCard, Visa or Discover.

On the Web site, go to Renew/Reinstate and enter your license number and PIN (personal identification number). Your PIN - unless you have changed it - will be the last four digits of your Social Security number, which you have already provided the Commission.

A confirmation will display upon acceptance of your renewal and you may print and retain it for your records.

While on the Web site, update your email, fax and residence addresses, if needed, and check your continuing education and postlicensing credit in-



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formation to be certain they are correct. (Allow 15 days after completing CE for credits to be posted; the CE credits displayed on the label of this *Real Estate Bulletin* are those posted as of April 29.)

If you choose to wait, remember, your renewal must be *received* by us on (See **Renew**, page 3)

The Top Ten Complaints and How to Avoid Them

By Curtis Aldendifer, Associate Legal Counsel

Each year, the Real Estate Commission receives as many as 1,000 – 1,200 complaints against brokers from consumers, and in some cases, other brokers. Most are resolved without disciplinary action. Some go to hearing before the Commission, which may result in sanctions ranging from a reprimand to a license suspension or revocation.

The top ten complaints follow with suggestions as to how to avoid mistakes that may lead to disciplinary action.

1 Disclosure of Material Facts

Material facts fall into three general categories: facts about the property (leaky roof, cracked foundation, termite infestation, water intrusion, the presence of mold, etc.); facts relating to the property, such as zoning changes or the

construction of a major roadway nearby; and facts that relate to a principal's ability to perform under the contract, such as a pending bank foreclosure or short sale situation.

Typical complaints of misrepresentation involve advertising a property for rent or sale with a greater number of bedrooms than is permitted by the property's septic permit, or advertising

a larger living area for the property than was constructed pursuant to permit. Complaints sometimes involve hidden defects (cracked foundation or water intrusion resulting in mold) that were revealed by an inspection performed by a previous buyer.

To avoid complaints of misrepresentation or non-disclosure of material facts, you need to do your homework. Don't rely on information obtained from others – verify it through reliable sources. Also, check the accuracy of advertisements in print, on the MLS, or at a Web site.

A broker's duty to disclose material facts extends to his or her client, and to all parties involved in the transaction (including the lender in a short sale situation).

(See **Complaints**, page 6)

Elmer C. Jenkins

The Commission regrets the passing of Elmer C. Jenkins of Blowing Rock. He served on the Commission from 1987 to 1991 and was a former Vice Chairman and Chairman.

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.

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People

Janet B. Thoren, Assistant Director, Legal Counsel, Legal Services, has been reappointed Special Assistant United States Attorney for the Western District of North Carolina.

Appearances

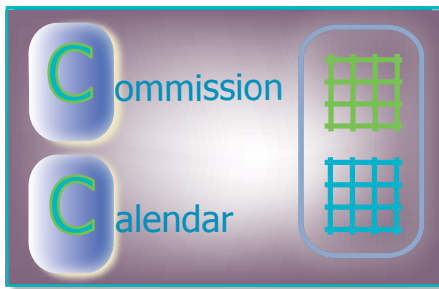
To request a speaker from the Commission, please submit the "Request for Program Presenter" form available on the Commission's Web site, www.ncrec.gov.

Miriam J. Baer, Executive Director, spoke to the Durham Regional Association of Realtors® on changes to the Offer to Purchase and Contract form and legislative and compliance issues.



165 Years of Experience

Commission staff members with a total of 165 years of experience were honored recently with awards for service. Shown (l. to r.) with Commission Vice Chairman B. C. Cone, III, (left, front), are Charlene D. Moody, Chief Deputy Legal Counsel, five years; Pamela R. Rorie, Continuing Education Officer, 15 years; Jean A. Wolinski-Hobbs, Consumer Protection Officer, five years; Paula L. Ricard, Financial Officer, 20 years; Daniel K. Creech, Information Specialist, five years; Robert L. Forshaw, Publications Officer, 10 years; (l. to r., back) Elizabeth W. Penney, Information Officer, five years; Susan M. Tysor, Executive Assistant, 15 years; Frances N. Johnson, Senior Administrative Specialist, 25 years; Sammye G. Isenhour, Legal Assistant, 20 years; and Susanne H. Viens, Administrative Specialist, 15 years.



June 8
 July 1
 Asheville
 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.

Renew

(Continued from page 1)

or before Thursday, June 30 (EDT). Miss that deadline and your license will expire effective July 1 and you must pay a \$55 fee to reinstate it before December 31. After that date, a new application, background report, and fee are required. You may also be required to complete additional education or pass

the license examination at the time of reinstatement.

The annual continuing education requirement is eight hours, four of which are the mandatory, annual *Update Course*. The deadline for completing CE is June 10, after which no classes are available until after June 30. Incomplete CE affects the status of your license - changing it from "active" to "inactive" on July 1.

Brokers-in-charge are reminded of

the annual BICAR requirement.

Once your license is "inactive", you cannot engage in brokerage activity until you take all required CE and submit the necessary paperwork.

So, be sure to take your CE and renew your license on time!

COURSE SCHEDULES

This schedule provides locations, dates, and times for the courses indicated through December, 2011. Register online at the Commission's Web site, www.ncrec.gov.

Broker-in-Charge Course

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

Asheville	August 10, 11 November 29, 30	Holiday Inn East/Blue Ridge Parkway
Banner Elk	October 18, 19	Best Western Mountain Lodge
Charlotte	July 19, 20 August 15, 16 October 4, 5 November 21, 22	Hilton Garden Inn, Concord
Greensboro	September 12, 13 December 12, 13	Clarion Hotel
Kill Devil Hills	September 19, 20	Ramada Plaza Resort
Raleigh	July 11, 12 August 22, 23 October 6, 7 November 8, 9 December 5, 6	McKimmon Conference Center
Wilmington	July 25, 26 October 24-25	Coastline Convention Center

Basic Trust Account Procedures Course

Charlotte	August 16, 9 a.m. - 1 p.m.	Hilton Garden Inn, Concord
Raleigh	September 6, 1 - 5 p.m. December 8, 1 - 5 p.m.	McKimmon Conference Center

Check Commission Web site to confirm dates, times.

With the decline in the economy over the last several years, the “short sale” transaction has increased in popularity. Licensees are listing a larger number of “short sale” properties and buyer-clients are seeking supposed bargains.

Basic Short Sale Issues

By Charlene D. Moody, Deputy Legal Counsel

financial circumstances to confirm that his or her resources are truly insufficient to cover the loan amount. Additionally, all debt and costs must be ascertained in order to determine the feasibility of a short sale. These debts include the amount of the delinquent loan, any home equity or other loans recorded against the property, past due HOA fees, and unpaid property taxes. The costs of the sale include any agreed closing costs (if allowed by the lender), escrow fees, and brokerage commissions. If a seller has more than one lien against the property, a short sale may require the approval of other lenders.

Brokers and buyers must remember that a seller is always free to sell their property for less than the remaining amount due on the seller's mortgage loan as long as the seller is able to come to closing with the difference in order to extinguish the mortgage lien. In general, that is known as a “short sale”, but it does not require approval or participation by the seller's lender. For purposes of this article, a “short sale” transaction occurs when the seller's lender agrees to extinguish the lien for less than the amount due, allowing the seller to sell the property free and clear of the mortgage lien but without paying off the full balance due on the loan. There are several issues of which licensees should be aware in order to avoid short sale pitfalls.

1

THE LENDER MAY RELEASE THE LIEN BUT STILL HOLD THE SELLER LIABLE FOR THE REMAINING AMOUNT DUE ON THE LOAN (THE “DEFICIENCY”). Sellers in short sales must be made aware that they may be on the hook for any deficiency and just because a bank will allow the sale of the home does not mean that they will be left without owing the debt. A lender may accept the short sale amount and release the lien but refuse to consider it a full and final settlement of the debt. Brokers working with sellers should make certain the seller determines whether or not the lender will hold them liable for the deficiency before the short sale is completed. Conversely, if the lender agrees to forgive the remaining debt, the seller may face tax consequences because this debt forgiveness may be treated as income for tax purposes. Finally, a short sale transaction may affect the seller's credit score and ability to purchase another home for a period of time. Licensees should

encourage sellers to discuss these issues in detail with their attorney and tax advisor before deciding to do a short sale. An attorney may be able to assist an owner in pursuing options other than a short sale (such as a loan workout, refinance, deed-in-lieu of foreclosure, bankruptcy, or loan modification).

2

AT WHAT POINT DOES A CONTRACT IN A SHORT SALE BECOME A BINDING CONTRACT? The North Carolina Association of REALTORS® has created a short sale addendum for both the standard form listing agreement and offer to purchase and contract. When these forms are used, lender approval is simply an additional contingency to the contract. At the point that both the buyer and seller have signed the contract and the seller's acceptance has been communicated to the buyer, the parties are in a binding contract subject to the contingency of the lender's approval of the short sale. Brokers representing sellers in a short sale situation where the standard form is NOT being used should advise their seller clients to have an attorney review the contract before they sign and be sure the seller can be released if the lender does not approve the short sale.

3

LENDER APPROVAL IS REQUIRED AND CAN BE COMPLICATED. Each lender may have different document and eligibility criteria to determine whether a short sale transaction will be allowed. Generally, a lender will require proof that the borrower is incapable of paying off the loan and that the lender will fare better through a short sale than through the foreclosure process. Sometimes, being upside down on the loan (owing more on the loan than current fair market value) is enough, but the lender may still choose to evaluate the seller's

4

BROKERS SHOULD TRY TO IDENTIFY POTENTIAL SHORT SALE SITUATIONS PRIOR TO TAKING THE LISTING TO AVOID SURPRISES ONCE THE PROPERTY GOES UNDER CONTRACT. Listing brokers must remember that it is a material fact that a seller cannot complete a transaction without doing a short sale and this must be disclosed to a buyer prior to contract even if the information may harm the seller's bargaining position. Similarly, if the listing broker learns a short sale is required after the contract is signed, or if the property goes into foreclosure while under contract, the listing broker has a duty to inform the buyer. Brokers should also remind sellers and buyers that short sales are uncertain. A lender is not obligated to approve a short sale transaction and may choose not to involve the seller or his listing broker in the decision-making process.

5

SELLERS AND LISTING BROKERS SHOULD BE ON THE LOOKOUT FOR SCAMS INVOLVING SHORT SALES. These may include the buyer retaining a third party to negotiate a short sale, requesting that the seller execute a power of attorney for another party or not contact the lender themselves, large upfront fees, and guaran-

(See **Short Sale Issues**, page 5)

Short Sale Issues

(Continued from page 5)

tees to stop foreclosure. “Flopping” is a newly coined word for certain scams involving short sales. “Flopping” occurs when a seller or buyer (and/or his broker) convinces a lender to accept a short sale transaction while concealing from the lender the fact that another offer at a higher price is already lined up. The buyer then quickly resells the property for a profit. New regulations have been created to prevent flopping, including 90 day bans on resales.

6

LENDERS WHO AGREE TO A SHORT SALE TYPICALLY TRY TO HAVE A SAY IN THE AMOUNT OF BROKERAGE COMMISSION PAID AND MAY NOT ALWAYS BE WILLING TO APPROVE A SHORT SALE IF BROKERS TAKE THEIR USUAL FEE. Listing brokers should be careful to accurately represent the commission they will pay to cooperating brokers and disclose that the amount of compensation may be adjusted based on the lender’s requirements for approval of the short sale.

Update

(Continued from page 1)

limitations on services they may provide to sellers and buyers to avoid the unauthorized practice of law. Issues relating to short sales are discussed in this issue of the *Bulletin* on page 4. A general discussion of the topic appeared in the May 2009 issue of the *Bulletin* and may be quickly accessed from the Commission Web site search page by typing in “short sales” in the Google search field.

While the current year’s *Update Course* addresses the January 2011 Standard Form 2-T, Offer to Purchase and Contract, the 2011-2012 *Update Course* will discuss key addenda including the Back-Up Contract, and the Contingent Sale, Short Sale, and possibly Additional Provisions addenda, as well as the Due Diligence Request and Agreement.

Discussion of residential property management issues will cover summary

7

BUYER BROKERS SHOULD ADVISE BUYER-CLIENTS ABOUT THE PROCESS AND CONSEQUENCES OF A SHORT SALE. A buyer broker should remember that just because the asking price of the property is below the payoff amount of the loan, there is no guarantee that the property is worth even the asking price. Brokers should take special care in assessing value in declining markets. In addition, a lender may not consider a short sale until a contract has been signed by buyer and seller. Once the parties submit a contract, the lender may take a long time to make a decision and may reserve the right to change the terms at the last minute. Moreover, a seller in a short sale transaction may not be financially able to make any repairs so the transaction is likely to be “as-is”. The listing broker is allowed to continue marketing the property and may receive other offers which must be communicated to the seller and the seller’s lender. Remember that the lender has a financial interest in the property and is being asked to take less than the amount owed. The lender therefore has

ejection actions and issues relating to it and other recent changes in landlord-tenant law.

The 2011-2012 *Update Course* will be available as of July 1, to allow any inactive licensee wants to reactivate their license to first complete necessary education.

Brokers who practice primarily in the commercial arena are reminded that there is a commercial version of the mandatory Update Course usually available by September of each license year. **All brokers, without exception, must have either the Real Estate Update Course or the “Real Estate Update-Commercial” Course as one of their two required continuing education courses every year in order to have a license on active status the following July 1.**

the right to full disclosure of all offers. If another offer is more attractive in price or terms, the lender may not approve the first contract and require the seller to accept the later offer. Buyers must be patient, willing to wait, and understand that they could lose the property at any time before closing.

In summary, short sales involve significant risk to both sellers and buyers. Sellers may face many financial issues before, during and after the closing. The buyer must understand that not all short sale are bargains, short sales are generally not short transactions, and just because the parties have signed a contract does not mean that the buyer will get the house. Brokers should be well versed on these types of transactions before engaging in a short sale and should fully disclose all potential issues to their clients.



2011-2012 BICAR COURSE

The Commission has asked sponsors not to schedule the 2011-2012 BICAR Course prior to August 2011 as no broker will need the class immediately. Any broker, who loses BIC status or eligibility as of July 1, should:

1) Do whatever is necessary to go back to active status on Commission records; 2) Re-declare as a BIC by sending Form 2.04; 3) Wait to receive a letter from the Commission telling the broker what special BIC education is needed within 120 days of re-declaring as a BIC.

Do not take any special BIC education until after you have officially re-declared as BIC by sending Form 2.04 to the Commission.

Complaints

(Continued from page 1)

2 Mismanagement of Trust Accounts

The broker-in-charge is responsible for the proper handling of funds belonging to others, including the management of the trust account and trust account records. Although the broker-in-charge may delegate trust accounting duties, he or she remains ultimately responsible.

A broker-in-charge is responsible for maintaining a monthly trust account journal with a running balance, property ledgers for each sale transaction or lease, account reconciliations with bank statements and journal on a monthly basis, and a copy of the reconciliation worksheet with the trust account records. In many instances, where trust account violations have occurred, the investigation reveals that the broker-in-charge was not properly supervising those charged with bookkeeping duties, and was not regularly (preferably monthly) reviewing the trust account records.

Records must be retained for three years after all funds held in trust have been disbursed to the proper parties or until the conclusion of the transaction, whichever occurs later.

3 Disputed Deposits

A. Earnest Money Deposits - Commission rules require that, in the event of a dispute between a buyer and seller or landlord and tenant regarding the return or forfeiture of any deposit held by a broker, other than a tenant security deposit, the broker must hold the deposit in a trust account until a written release from the parties authorizes its disposition or until a court orders disbursement. The rule applies even where it appears clear to the broker that one party has no valid claim to the deposit. In lieu of retaining the disputed funds, a broker may deposit the funds with the Clerk of the Court at least 90 days after notifying the parties claiming ownership of the funds. Thereafter, it will be up to the parties to file a special proceeding with the Clerk of the Court to determine ownership of the funds. This procedure is described in the Offer to Purchase

and Contract (Standard Form 2-T, rev. 1/2011) and enables brokers to educate their clients regarding handling of disputed deposits, and be less likely to face a complaint about the funds' return.

B. Tenant Security Deposits - Disputes concerning the disposition of a tenant security deposit are governed by the Tenant Security Deposit Act ("TSDA"), G.S. § 42-50 et.seq. When a dispute arises between a tenant and landlord, a property manager should follow the lawful directions of his or her client (the landlord) and disburse the security deposit accordingly.

The property manager is required to refund the balance not retained by the landlord to the tenant no later than 30 days following termination of the tenancy, together with an itemized list of damages charged against the security deposit. If the extent of the landlord's claim against the security deposit cannot be determined within 30 days following termination of the tenancy, the property manager must provide an interim accounting within 30 days, followed by a final accounting and refund of the balance within 60 days of the termination of the tenancy. Thereafter, a tenant must take the landlord to court to resolve the matter.

4 Charges Against Tenant Security Deposits

The TSDA sets forth the maximum amount that may be imposed as a tenant security deposit, depending upon the duration of the tenancy, and further limits the items that may be covered. The deposit may not exceed an amount equal to two weeks' rent if a tenancy is week to week, one and one half months' rent if a tenancy is month to month, and two months' rent for terms greater than month to month.

Items covered by the deposit include non-payment of rent, water and sewer service charges, damage to the premises, nonfulfillment of the rental period, unpaid bills that become a lien against the leased premises due to the tenant's occupancy, costs of re-renting the premises following a breach by the tenant, removal and storage of property after an eviction and related court costs. No other deduc-

tions are allowed.

Two common complaints against property managers involve charges for items such as cleaning carpets and appliances, and for re-renting the premises following a tenant's breach. The TSDA permits charges against the security deposit for property damage, but not for "ordinary wear and tear." Lease provisions imposing certain cleaning requirements on the tenant prior to vacating may not be enforced by charging the TSD and could require enforcement through a civil court proceeding. Much of the confusion related to improper charges for property damage can be eliminated by the proper use of property condition checklists.

5 Short Sales

A short sale transaction constitutes a material fact that must be disclosed to potential buyers. For a detailed discussion, see the article on short sales in this issue of the Bulletin.

6 Drafting Legal Documents

The Real Estate License Law prohibits brokers from drafting contracts, contract provisions, or any other legal documents, or from performing any other service constituting the practice of law as defined by G.S. § 84-2.1. While a broker may assist a client in filling out the standard forms approved by the N.C. Bar Association and N.C. Association of REALTORS®, the broker must nevertheless avoid inserting complex contingencies into an Offer to Purchase and Contract or addendum. If a transaction requires more than can be inserted into the blanks of a standard form, a broker should refer the client to an attorney. Under no circumstances should a broker attempt to alter or combine approved forms that are not written to be used together. For example, don't combine an Offer to Purchase and Contract form with a standard residential lease form in an attempt to create a lease-purchase contract. In addition to engaging in the unauthorized practice of law, the broker will likely run afoul of recent legislation imposing strict requirements and restrictions on lease-purchase option agreements. Parties in lease-purchase transactions must be referred to private attorneys for document

(See **Complaints**, page 7)

Complaints

(Continued from page 6)

preparation and guidance.

7 Disputes Regarding Contract Acceptance

Negotiations leading to a contract can be fast-paced, to the extent that brokers find themselves communicating offers and counter-offers, as well as acceptances, orally. An example of such a situation occurs when an oral counter-offer is communicated to the buyers, who orally agree to the new terms. The acceptance is orally relayed to the sellers, who now mistakenly think they have a valid contract.

The Statute of Frauds requires that all contracts for the sale of land or for lease agreements exceeding three years be in writing and signed by the parties to be enforceable. In order for a valid contract to exist, all negotiated terms must be in writing and signed by the parties. Any changes must also be in writing and initialed by the parties.

A broker can best keep his or her clients informed of all communications material to negotiations between the parties by ensuring that offers, counter-offers, and acceptances are in writing and contain all necessary signatures. Oral agreements for the sale of real property are not binding.

8 Conflict of Interest

The Real Estate License Law prohibits brokers in a transaction from acting for more than one party without the knowledge of all parties for whom the broker acts. The most common complaints deal with dual agency, seller sub-agency, and special relationships between the parties.

With dual agency, an inherent conflict of interest exists because the broker is representing both the buyer and seller who have different and competing interests. To avoid a complaint of this type, Commission rules require that a broker provide a prospective client with the Working With Real Estate Agents brochure, and thoroughly review the types of agency and the broker's duties associated with each. The broker and prospective client must then agree as to whether

the broker will work as a seller's agent, a buyer's agent, a seller's subagent, or a dual agent. To serve as a dual agent, the broker must first obtain written consent from all parties to the transaction.

Where a broker is working with a buyer who declines an agency relationship, the broker must disclose that he or she is working as the seller's subagent, and caution the buyer against revealing any confidential information. The seller's subagent can neither advise the buyer nor advocate on his or her behalf.

Brokers should also beware of conflict of interest issues that may arise in connection with the sale of the broker's own property. Although the broker is the seller, a prospective buyer may assume that the broker is representing the buyer's interests. This is especially true where the buyer had previously entered into an exclusive agency relationship with the broker prior to being shown the broker's listed property. Brokers are strongly discouraged from showing properties they own to buyers they represent. If necessary, it is better to terminate the agency relationship, refer the buyer to another broker, and collect a referral fee, rather than risk a conflict of interest complaint.

9 Lack of Communication

A large number of complaints cite the broker's failure to communicate with his or her client. In sales transactions, sellers whose homes have remained on the market for prolonged periods express frustration at not being better informed regarding the broker's marketing strategies. Buyers note the lack of communication from their brokers concerning such matters as the outcome of property inspections or the progress in short sales of the lender approval process. Landlords complain about not being kept informed regarding marketing efforts to secure new tenants or property maintenance issues. But, by far the most frequent complaints we receive from brokers and consumers alike deal with the failure of other brokers to return phone calls or e-mails.

As a fiduciary, it is essential that you establish a method and frequency of communication that is responsive to your client's needs and preferences. As a broker, you should return telephone

calls, e-mails, and other electronic communications promptly. If you are unable to respond promptly, due to a vacation or trip out of town, make sure that you have a back-up person to handle your calls in your absence and that you notify your broker-in-charge and your clients. Also, be sure to create an appropriate voice-mail message or automatic e-mail response to alert others trying to reach you.

10 Loan Fraud

Allegations of loan fraud often result from a broker trying to assist a buyer who is having difficulty qualifying for a loan in the amount needed to purchase a property. To help the deal close, the broker lends the buyer money for closing costs without notifying the lender. Alternatively, the seller may be asked to lend or "give" the buyer some money without telling the lender, since the lender has refused to allow any seller financing. Sometimes, the mortgage broker may ask the parties to pass money to the buyer as a "gift" outside of closing.

The rule of thumb is that any money which passes between the parties and third parties or even their brokers during the course of the transaction must be disclosed on the settlement statement (even "extras" paid for by the buyer to the builder over-and-above the contract price). The reason is that such payments may affect the loan-to-debt ratio used by the lender to determine creditworthiness. If you fail to disclose information to the lender, you may be committing loan fraud, which is a federal offense.

If in doubt as to whether a transaction is being handled correctly, contact an attorney or the Real Estate Commission.

Bell, Chandler, Dunklin Win Awards At 2011 Educators Conference

By Pamela R. Rorie, Continuing Education Officer

An eager crowd of 218 real estate instructors and school officials from across the state attended the Commission-sponsored 2011 Real Estate Educators Conference in Raleigh, March 7-8, 2011.

Larry Outlaw, Director of Education and Licensing, opened the conference with a summary of the significant revisions to the 2011-2012 North Carolina Real Estate Manual. Mr. Outlaw also presented the updated syllabi for the three postlicense courses and gave a progress report on the real estate license examination program.

Following Mr. Outlaw was a lively agency disclosure discussion and role play using the *Working With Real Estate Agents* brochure presented by Thomas Mahlum, DREI, with assistance from Kandyce Ellis, Travis Everette, and Sam Pyrtle.

Another highlight of the morning's program was a joint presentation on the new Offer to Purchase and Contract by Miriam Baer, the Commission's Executive Director, Tricia Moylan, Legal Education Officer, and George Bell, DREI and member of the Joint Forms Committee. The trio discussed the history and rationale for the contract changes, pinpointed potential problem areas regarding the use of the new form, and gave attendees the opportunity to ask questions about teaching its use to licensees.

During the first day's luncheon, the North Carolina Real Estate Educators Association (NCREEA) held its spring meeting under the direction of President Jo-Ann C. Lavecchia. Following the business meeting, the traditional awards presentation was officiated by Immediate Past President Tim Terry. The Association

presented its "Program of the Year" award to George Bell for his continuing education elective course, The NCAR Residential Forms, and its "Educator of the Year" award to co-honorees Cindy Chandler and Garth Dunklin.



Commission Chairman Marsha Jordan (left) with award winners Cindy Chandler and Garth Dunklin, and George Bell.

Also during the luncheon, Commission Chairperson Marsha Jordan presented the Commission's Billie J. Mercer Excellence in Education Award to NCREEA's Educators of the Year, Cindy Chandler and Garth Dunklin. 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 names of all award winners are engraved on the Mercer Award cup that is displayed in the Commission's lobby. Commission members Everett "Vic" Knight and Alice Mosteller also attended the award presentation.



Executive Director Miriam Baer

Later in the day, Lisa McQuillen, Education and Licensing Officer, informed the group about the new online broker license application process. Ms. McQuillen also reminded instructors and private school directors about license renewals, and recognized prelicensing schools and instructors whose students had exhibited outstanding performance on the license examination.

Afterwards, Kristi Matthews of Advanced Energy presented *Green and Energy Efficient Homes - What You Need to Know*, which informed attendees of requirements for a home to be designated "green." The first day's program concluded with Pamela Vesper, Auditor/Investigator, who presented suggestions for the electronic handling of trust accounts.

On the second day, Karen Hamilton of the North Carolina Americans with Disabilities Act Network discussed ADA requirements when real estate prelicense students and/or exam candidates request special accommodations. Next, Continuing Education Officer Pamela Rorie discussed proposed topics for the 2011-2012 Update and BICAR courses, gave a status report on current continuing education projects, and reminded instructors and CE sponsors of upcoming renewal deadlines.

The conference concluded with the highly anticipated "Miscellaneous Legal Issues and Open Forum" session presided over by Commission Legal Counsel Tom Miller, who outlined proposed legislative changes and then took questions on a variety of topics including broker price opinions and short sales.

The Commission thanks North Carolina's real estate educators for their continued interest and support, and congratulates Cindy Chandler, Garth Dunklin, and George Bell for their achievements.

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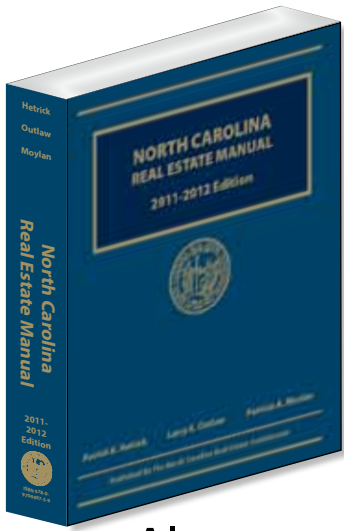
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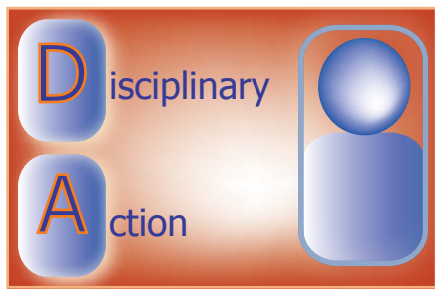
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Penalties for violations of the Real Estate Law and Commission rules vary depending upon the particular facts and circumstances present in each case. Due to space limitations in the Bulletin, a complete description of such facts cannot be reported in the following Disciplinary Action summaries.

CARROLL C. ANDERSON (Wadesboro) – By Consent, the Commission suspended the broker license of Ms. Anderson for a period of six months effective April 1, 2011. The Commission then stayed the suspension for a probationary period of six months. The Commission found that Ms. Anderson, while her license was under an active suspension effective November 15, 2007 and permitted only to work as an unlicensed assistant in the office where she had been broker-in-charge, spoke with several buyers and at least one potential seller-client about their transactions, leading the parties to believe that Ms. Anderson was actively licensed and acting as a broker.

LOIS W. BLACK (Wadesboro) – By Consent, the Commission suspended the broker license of Ms. Black for a period of 30 months effective September 1, 2010. Six months of the suspension were active with the remainder stayed for a probationary period of 24 months. The Commission found that Ms. Black, acting as dual agent for a property listed at \$44,900 in October 2004, increased the price to \$50,000 in March 2005; that property went under contract with a buyer for \$50,000, and closed at \$54,000; and that Ms. Black did not have a written renewal or agreement to support the price increases. The Commission also found that Ms. Black provided buyers in two transactions with funds for closing costs without disclosing this to the lender and was repaid after the sales by the sellers. Finally, the Commission found that a seller in a transaction agreed to accept \$4,500 in settlement of \$18,000 owed in seller financing with Ms. Black's firm collecting the payments and that the buyers were subsequently held liable for a demand of over \$16,000 when Ms. Black's ledger stated the amount owed was \$1,540.

JENNIFER JAYNE BRIGHT (Mooresville) – By Consent, the Commission suspended the broker license of Ms. Bright for a period of six months effective April 1, 2011. The Commission then stayed the suspension for a probationary period of six months through October 1, 2011. The Commission found that Ms. Bright in 2006 sold her own property and subsequently



served as listing agent when the purchaser sought to resell the home 10 months later at a \$45,000 increase in price; that Ms. Bright included in her file disclosure and waiver statements which were in dispute with other representations in a contract to purchase and which the buyers had no memory of signing. The Commission also found that Ms. Bright denied being a dual agent and claimed to represent only the seller despite written agreement to the contrary in the file.

CHIRICO HUBER PROPERTIES LLC (Charlotte) – By Consent, the Commission suspended the firm license of Chirico Huber Properties for a period of two years effective March 15, 2011. One year of the suspension is active with the remainder stayed for a probationary period

of one year. The Commission found that a broker-owner of Chirico Huber Properties converted approximately \$100,000 in earnest money deposits and other funds in the firm's trust account to cover operating expenses. The Commission noted that the funds were replaced.

CLEAR WATER MARKETING LLC (New Bern) – The Commission accepted the permanent voluntary surrender of the firm license of Clear Water Marketing effective March 11, 2011. The Commission dismissed without prejudice allegations that Clear Water Marketing violated provisions of the Real Estate Law and Commission rules. Clear Water Marketing neither admitted nor denied misconduct.

CHARLES N. COKER (Raleigh) – By Consent, the Commission suspended the broker license of Mr. Coker for a period of three months effective March 1, 2011. The Commission then stayed the suspension for a probationary period of six months. The Commission found that Mr. Coker, acting through a company which developed and sold condominium units, misrepresented to potential purchasers the number of condominiums that would be sold to investor-purchasers and homeowner-purchasers. The Commission found that a number of purchasers bought condominiums believing that only four or five units would be sold to investor-purchasers and that Mr. Coker negotiated and sold 14 units to a single purchaser who intended to lease the units to tenant occupants.

KEVIN G. CONNER (Kitty Hawk) – The Commission revoked the broker license of Mr. Conner effective November 12, 2010. The Commission found that Mr.

(See **Disciplinary**, page 12)

Disciplinary Action

(Continued from page 11)

Conner failed to hold in a trust account and to account for security deposits totaling approximately \$3,400 he received from a travel network firm. The Commission also found that Mr. Conner failed to properly maintain and produce the trust account records for a real estate brokerage firm, failed to disburse trust funds to the true owners of property in a timely manner; and failed to safeguard the funds of others when he left the office of a construction and real estate firm and abandoned the account and its records. The Commission also found that Mr. Conner operated a real estate brokerage firm when he knew the firm did not possess an active real estate brokerage license, collected property management fees and disbursed them to an account in the name of a real estate brokerage firm and advertised the firm's services on the internet during the time when the firm's broker license was suspended.

CONNER RESORTS, INC. (Kitty Hawk) – By Consent, the Commission revoked the firm license of Conner Resorts effective June 24, 2010. The Commission found that Conner Resorts continued to conduct real estate brokerage after its license was suspended in 2006. The Commission also found that Conner Resorts failed to maintain its trust account records in compliance with the License Law and Commission rules and failed to account for the monies it held in trust for others.

LOY J. DELLINGER (Denver) – By Consent, the Commission suspended the broker license of Mr. Dellinger for a period of two years effective January 1, 2011. One month of the suspension was active with the remainder stayed for a probationary period of one year. The Commission found that Mr. Dellinger pled guilty in Superior Court to the class 1 misdemeanor of obstruction of justice as the result of assisting a friend in obtaining a North Carolina driver license when the friend was not entitled to the same.

TABITHA E. ESTEP (Jonesborough, Tennessee) – By Consent, the Commission revoked the broker license of Ms. Estep effective March 10, 2011. The Commission found that Ms. Estep, while serving in 2009 as a volunteer treasurer for the Avery County Fair and Avery County Little League, used check cards from both organizations to make unauthorized purchases, and pled guilty to and was convicted of two counts of felony embezzlement in Avery County.

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.

The Commission also found that Ms. Estep, while serving in 2009 as Finance Officer for the Town of Beech Mountain, used a credit card issued to Beech Mountain to make unauthorized charges totaling in excess of \$1,200 for her personal use. The Commission further found that Ms. Estep, in 2009, while serving as broker-in-charge of a homeowners' association, established an account in the association's name and made unauthorized charges on the account for her personal use. Finally, the Commission found that Ms. Estep's Tennessee real estate license was revoked in May 2010 due to her failure to report her embezzlement convictions and that she failed to report the revocation to the Commission.

TERESA MARIA GRAVES GAYLE (McLeansville) – The Commission revoked the broker license of Ms. Gayle effective

February 21, 2011. The Commission found that Ms. Gayle, acting as property manager for a landlord-client, collected rental payments totaling \$4,600 from tenants and failed to remit the funds to her landlord-client. The Commission also found that her landlord-client eventually lost the subject property to foreclosure when she could not make her mortgage payments and filed suit and won a judgment against Ms. Gayle. Finally, the Commission found that Ms. Gayle failed to respond to Letters of Inquiry from the Commission and to provide trust account records.

STEPHANIE L. GOSEN (Monroe) – The Commission suspended the broker license of Ms. Gosen for a period of one year effective January 25, 2011. The Commission found that Ms. Gosen, acting as a buyer's agent, failed to remit or account for an earnest money deposit received from the buyer when contracting to purchase a property. The Commission also found that Ms. Gosen failed to properly maintain records in the transaction, failed to make records available for inspection by the Commission, and failed to provide full and accurate disclosure of all information requested by the Commission within the prescribed time period.

PETER J. GREIJN (Raleigh) – By Consent, the Commission suspended the broker license of Mr. Greijn for a period of three years effective March 1, 2011. The Commission then stayed the suspension for a probationary period of five years on certain conditions. The Commission found that Mr. Greijn, broker-in-charge of a real estate brokerage firm, bid at foreclosure sales between 2002 and 2004 and then paid potential upset bidders not to file upset bids in violation of North Carolina law. The Commission noted that Mr. Greijn has paid restitution in the amount of approximately \$42,000 as required by the court in a civil matter related to those sales.

MATTHEW F. HALL (Kitty Hawk) – By Consent, the Commission revoked the broker license of Mr. Hall effective June 24, 2010. The Commission found that, as the qualifying broker and president of a
(See **Disciplinary**, page 13)

Disciplinary Action

(Continued from page 12)

construction and real estate firm, Mr. Hall converted approximately \$20,000 held in a trust account to his own use to pay a creditor of the firm. The Commission also found that Mr. Hall entered into a contract to purchase a property from a buyer and the evidence tends to show that Mr. Hall promised the buyer that he would make a \$10,000 earnest money deposit on the contract and that the deposit would be held in his firm's trust account; the check Mr. Hall deposited into his own trust account was returned for insufficient funds and Mr. Hall failed to disclose the dishonored check to the seller and failed to make the deposit as promised.

BILLIE C. HOFFMAN (Mooresville) – The Commission revoked the broker license of Ms. Hoffman effective May 1, 2010. The Commission found that a complainant alleged Ms. Hoffman failed to account for a \$1,000 tenant security deposit paid in connection with a lease of commercial property and that Ms. Hoffman failed to respond to Commission inquiries about the complaint. The Commission also found that Ms. Hoffman failed to provide the Commission with trust or escrow account records relating to the transaction.

JOHN L. HUBER (Charlotte) – By Consent, the Commission revoked the broker license of Mr. Huber effective March 15, 2011. The Commission found that Mr. Huber converted approximately \$100,000 in earnest money deposits and other funds in his firm's trust account to cover operating expenses. The Commission noted that Mr. Huber replaced the funds.

THOMAS B. HUMINIK (Charlotte) – By Consent, the Commission suspended the broker license of Mr. Huminik for a period of six months effective December 1, 2010. Three months of the suspension were active with the remainder stayed for a probationary period of nine months. The Commission found that Mr. Huminik gave a broker associate a copy of a lender's pre-qualification letter from a previous transaction and told him to change the information on it to create a letter needed to support a

buyer's offer in an unrelated transaction. The Commission found that Mr. Huminik was expressly authorized by the mortgage lender to create pre-qualification letters, but only when the lender had authorized pre-qualification. The Commission also found that Mr. Huminik failed to properly disclose a Driving While Impaired conviction from 1997.

Receive Credit Where and When Credit is Due!

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

You can avoid this problem by going online to the Commission Web site, www.ncrec.gov, to verify your CE credits.

JAMES M. WIIHIA KAMAU (Raleigh) – The Commission accepted the permanent voluntary surrender of the broker license of Mr. Kamau effective March 11, 2011. The Commission dismissed without prejudice allegations that Mr. Kamau violated provisions of the Real Estate License Law and Commission rules. Mr. Kamau neither admitted nor denied misconduct.

SHARON M. LANEY (Carolina Beach) – By Consent, the Commission suspended the broker license of Ms. Laney for a period of six months effective March 1, 2011. The Commission then stayed the suspension for a period of two years on certain conditions. The Commission found that Ms. Laney, as broker-in-charge of a branch office of a real estate brokerage firm which acted as rental agent for the owners of vacation and long-term rental properties, failed to perform monthly reconciliations of the security deposit and rental trust accounts for a period of 120 days. The Commission noted that bookkeeping for the business of the firm was divided between the branch office and home office.

LANEY REAL ESTATE CO. (Wilmington) – By Consent, the Commission suspended the firm license of Laney Real Estate Co. effective April 15, 2011. The Commission then stayed the suspension for a probationary period of five years through April 14, 2016 on certain conditions. The Commission found that on two separate occasions in 2006, George Laney, a qualifying broker who managed and controlled the business, wrote checks on his real estate brokerage firm's trust account for his personal real estate transactions without making contemporaneous deposits. These transactions created temporary shortfalls in the trust account that were not cured for several weeks. The Commission also found in 2007 that Mr. Laney caused more than \$23,000 in abandoned client monies from his firm's trust accounts to be disbursed without authority from former clients to his firm's corporate account. Finally, the Commission found that Mr. Laney and others in his firm, acting as rental agents for the owners of vacation and long term rental properties, failed in 2010 in one of the firm's offices to perform monthly reconciliations of the security deposit and rental trust accounts for a period of 120 days. The Commission noted that Mr. Laney agreed to refund the trust account and to follow the correct procedures for disbursing abandoned funds.

SETH ANTHONY LAWS (Wilmington) – The Commission revoked the broker license of Mr. Laws effective June 1, 2010. The Commission found that Mr. Laws negotiated a written referral agreement for a transaction while associated with one firm and after leaving that firm, entered into a written buyer agency agreement for the transaction, agreeing with his new broker-in-charge that the commission would be paid to his former firm. The Commission further found that Mr. Laws led the closing attorney to believe that no sales commission was to be paid to either firm and should be paid as a credit to the buyer but instead instructed his buyer-client to pay him the full \$48,000 commission outside of closing.

JAMES M. LEWIS, SR. (West Paducah, Kentucky) – The Commission revoked the broker license of Mr. Lewis effective November 1, 2010. (See **Disciplinary**, page 14)

Disciplinary Action

(Continued from page 13)

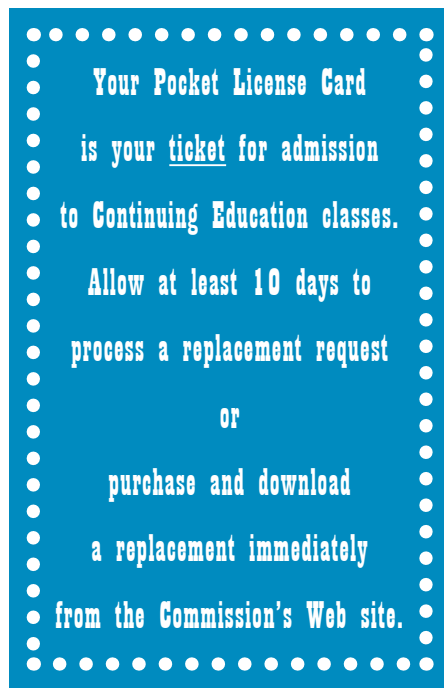
November 12, 2010. The Commission found that Mr. Lewis permitted a real estate licensee and licensed firm to operate, from the office of his company, an unlicensed property management business and to charge and collect property management fees from consumers at a time when the licenses of the licensee and the firm were both suspended.

HOWARD P. LOGUE (Sanford) – By Consent, the Commission suspended the broker license of Mr. Logue for a period of one year effective December 15, 2010. One month of the suspension was active with the remainder stayed for a probationary period of two years. The Commission found that Mr. Logue maintained a trust account for earnest money deposits and other monies belonging to his brokerage clients and customers, but failed to keep accurate records. The Commission found that Mr. Logue's trust account records did not balance with the statements provided by his bank, that he did not regularly reconcile his records to those provided by the bank, and that his records failed to make a clear audit trail. The Commission also found that Mr. Logue's trust account records were significantly out of balance and that he failed to safeguard the funds of others entrusted to his care.

TRUDY PARKER MASON (Trinity) – By Consent, the Commission revoked the broker license of Ms. Mason effective April 15, 2011. The Commission found that Ms. Mason, acting as bookkeeper for a real estate brokerage firm which acted as broker and rental agent for owners of rental properties, converted money belonging to clients and tenants to her own use. The Commission also found that Ms. Mason failed to safeguard and account for the funds of others in her custody and that Ms. Mason pleaded guilty to and was convicted of the offense of embezzlement in 2010.

DAVID W. MCKINNEY (Greensboro) – By Consent, the Commission revoked the broker license of Mr. McKinney effective February 15, 2011. The Commission found that Mr. McKinney, acting as broker-in-charge of a firm which provided

property management services for owners of rental properties, failed to maintain client- and tenant-owned money in a trust account, failed to promptly account for and remit trust monies in his possession, failed to keep complete and accurate records of trust money, and failed to make records available for the Commission's inspection.



The Commission also found that Mr. McKinney's and the firm's liability for the funds of others exceeded the money on deposit in the firm's trust accounts by at least \$40,000.

MCKINNEY MANAGEMENT SERVICES, INC. (Greensboro) – By Consent, the Commission revoked the broker license of McKinney Management Services, Inc., effective February 15, 2011. The Commission found that McKinney Management Services, a firm which provided property management services for owners of rental properties, failed to maintain client- and tenant-owned money in a trust account, failed to promptly account for and remit trust monies in the firm's possession, failed to keep complete and accurate records of trust money, and failed to make records available for the Commission's inspection. The Commission also found that McKinney Management Services' liability for the funds of others exceeded the money on deposit in the firm's trust accounts by at least \$40,000.

OAK ISLAND ACCOMMODATIONS, INC. (Oak Island) – By Consent, the Commission suspended the firm license of Oak Island Accommodations for a period of one year effective February 15, 2011. The Commission then stayed the suspension for a probationary period of two years on certain conditions. The Commission found that Oak Island Accommodations, a rental property management firm responsible for handling and accounting of the funds of others, failed to oversee its trust account and to reconcile the trust account records, resulting in significant discrepancies in the reconciled balance, journal balance, and property trial balance. The Commission also found that Oak Island Accommodations' trust account records were not maintained in such a way as to create a clear audit trail.

OUTER BANKS CONSTRUCTION & REAL ESTATE, INC. T/A OBC REAL ESTATE (Kitty Hawk) – By Consent, the Commission revoked the firm license of Outer Banks Construction & Real Estate effective June 24, 2010. The Commission found that Outer Banks Construction & Real Estate continued to conduct real estate brokerage after its license was suspended in 2006. The Commission also found that Outer Banks Construction & Real Estate failed to maintain its trust account records in compliance with the License Law and Commission rules and failed to account for the monies it held in trust for others.

DANILO PARRA, AKA DANILO PARRA BERMUDEZ, AKA FERNANDO PARRA BERMUDEZ (Reidsville) – The Commission permanently revoked the broker license of Mr. Bermudez effective January 31, 2011. The Commission found that Mr. Bermudez applied to become a real estate broker in May 2005 and provided personal information on his application including a name, Fernando Parra Bermudez, Social Security number, and date of birth, all of which were false, and that his true name was and is Danilo Parra Bermudez. The Commission found that Mr. Bermudez failed to disclose to the Commission on his license application certain convictions in 1987 of criminal offenses in the State

(See **Disciplinary**, page 15)

Disciplinary Action

(Continued from page 14)

of New York. The Commission also found that Mr. Bermudez was convicted in Rockingham County on or about November 27, 2006, after being licensed by the Commission and under the name of Danilo Parra Bermudez, of Driving While Impaired and failed to report the conviction to the Commission as required by Commission rules. The Commission further found that the name of Fernando Parra Bermudez and other identifying information on Mr. Bermudez' driver's license were false and that this information was provided in July 2006 to become affiliated with a real estate brokerage firm. The Commission found that Mr. Bermudez, as the result of an altercation on or about March 1, 2007 with the firm's broker-in-charge, was convicted under the name Danilo Parra on or about May 23, 2007 of assault in Rockingham County.

JEFFERY A. PASSOT (New Bern) – The Commission accepted the permanent voluntary surrender of the broker license of Mr. Passot effective March 11, 2011. The Commission dismissed without prejudice allegations that Mr. Passot violated provisions of the Real Estate Law and Commission rules. Mr. Passot neither admitted nor denied misconduct.

CYNTHIA J. PENNY (Raleigh) - By Consent, the Commission suspended the broker license of Ms. Penny for a period of three months effective March 1, 2011. The Commission then stayed the suspension for a probationary period of six months. The Commission found that Ms. Penny, engaged by a company which developed and sold condominium units, misrepresented to potential purchasers the number of condominiums that would be sold to investor-purchasers and homeowner-purchasers. The Commission found that a number of purchasers bought condominiums believing that only four or five units would be sold to investor-purchasers and that Ms. Penny was aware that another broker with the company had negotiated and sold 14 units to a single purchaser who intended to lease the units to tenant occupants.

LEWIS L. PENNY (Raleigh) - By Consent, the Commission suspended the broker license of Mr. Penny for a period of three months effective March 1, 2011. The Commission then stayed the suspension for a probationary period of six months. The Commission found that Mr. Penny, engaged by a company which developed and sold condominium units, misrepresented to potential purchasers the number of condominiums that would be sold to investor-purchasers and homeowner-purchasers. The Commission found that a number of purchasers bought condominiums believing that only four or five units would be sold to investor-purchasers and that Mr. Penny was aware that another broker with the company had negotiated and sold 14 units to a single purchaser who intended to lease the units to tenant occupants.

TONY PHAM (Charlotte) – The Commission ordered the revocation of the broker license of Mr. Pham effective March 16, 2011. The Commission found that Mr. Pham, who procured a tenant for the owner of a rental property, prepared a lease agreement which violated North Carolina statutes by including in the agreement a provision requiring the tenant to pay an excessive late rent fee of 10 percent of the lease amount. The Commission also found that Mr. Pham failed to respond to Commission Letters of Inquiry resulting from the tenant's complaint within 14 calendar days.

DOUG POLLARD, INC. (Wrightsville Beach) - By Consent, the Commission suspended the firm license of Doug Pollard, Inc., for a period of two years effective April 1, 2011. The Commission then stayed the suspension for a probationary period of two years. The Commission found that in September 2004, Doug Pollard, Inc., acting as agent and broker for the owner of nine properties, became aware that several of its seller-client's properties were involved in foreclosure proceedings including one at a particular address. The Commission also found that Doug Pollard, Inc., in October 2004, learned that its seller client had sold one of the properties and was refusing to pay Doug Pollard, Inc., a commission. The Commission found that immediately following that closing, Doug Pollard, Inc.,

notified its seller-client in writing that it would not provide any further services. The Commission further found that Doug Pollard, Inc. during the time of representation of the seller-client, did not disclose to the seller-client the names of other parties who it also represented who purchased properties at foreclosure sales. The Commission finally found that a company controlled by Doug Pollard, Inc., bid successfully at the foreclosure sale of the seller-client's property at a particular address and then assigned its rights to one of the firm's buyer-clients.

JAMES D. POLLARD (Wrightsville Beach) – By Consent, the Commission suspended the broker license of Mr. Pollard for a period of two years effective April 1, 2011. The Commission then stayed the suspension for a probationary period of two years. The Commission found that in September 2004, Mr. Pollard and his firm, acting as agent and broker for the owner of nine properties, became aware that several of their seller-client's properties were involved in foreclosure proceedings including one at a particular address. The Commission also found that Mr. Pollard in October 2004 learned that their seller-client had sold one of the properties and was refusing to pay Mr. Pollard a commission. The Commission found that immediately following that closing, Mr. Pollard and his firm notified their seller-client in writing that they would not provide any further services. The Commission further found that Mr. Pollard, during the time of representation of the seller-client, did not disclose to the seller-client the names of other parties who Mr. Pollard and his firm also represented who purchased properties at foreclosure sales. The Commission finally found that the company controlled by Mr. Pollard and his firm bid successfully at the foreclosure sale of the seller-client's property at a particular address and then assigned its rights to one of the firm's buyer-clients.

REFERRAL REALTY GROUP, INC. – (Raleigh) By Consent, the Commission suspended the firm license of Referral Realty Group for a period of three years effective March 1, 2011. The Commission then stayed the suspension for a probationary period of two years. The Commission found that immediately following that closing, Referral Realty Group, Inc., notified its seller-client in writing that it would not provide any further services. The Commission further found that Referral Realty Group, Inc., during the time of representation of the seller-client, did not disclose to the seller-client the names of other parties who Referral Realty Group, Inc. also represented who purchased properties at foreclosure sales. The Commission finally found that the company controlled by Referral Realty Group, Inc. bid successfully at the foreclosure sale of the seller-client's property at a particular address and then assigned its rights to one of the firm's buyer-clients. (See **Disciplinary**, page 16)

Disciplinary Action

(Continued from page 15)

period of five years on certain conditions. The Commission found that Referral Realty Group, a real estate brokerage firm, engaged in two transactions between 2003 and 2005 in which it represented sellers and failed to disclose that it had business relationships with the buyers and had a financial interest in the outcome of their transactions.

THEODORE SALAME III (Bakersville) – By Consent, the Commission reprimanded Mr. Salame effective February 1, 2011. The Commission found that Mr. Salame, acting as a buyer's agent in a transaction, was aware that payments by the seller to the buyer totaling \$616 could not be credited on the HUD-1 closing statement because of the type of loan. Mr. Salame also knew that the seller paid the buyer the \$616 after closing, resulting in an inaccurately documented HUD-1 closing statement.

MICHAEL D. SHELTON (Stanley) – The Commission accepted the voluntary surrender of the broker license of Mr. Shelton for a period of one year effective May 1, 2011. The Commission dismissed without prejudice allegations that Mr. Shelton violated provisions of the Real Estate License Law and Commission rules. Mr. Shelton denied misconduct.

TRIANGLE REALTY CORPORATION OF LOUISBURG (Louisburg) – The Commission accepted the voluntary surrender of the broker license of Triangle Realty Corporation for a period of three years effective March 20, 2011. The Commission dismissed without prejudice allegations that Triangle Realty Corporation violated provisions of the Real Estate Law and Commission rules. Triangle Realty Corporation neither admitted nor denied misconduct.

JOSHUA C. VINCENT (Blowing Rock) – By Consent, the Commission reprimanded Mr. Vincent effective February 1, 2011. The Commission found that Mr. Vincent, acting as broker-in-charge of a real estate brokerage firm, failed to properly supervise a bookkeeper who had access to the

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firm's bank and trust accounts and removed monies belonging to the firm, its principals and its clients and converted them to personal use. The Commission also found that Mr. Vincent failed to properly maintain the firm's trust accounts and account records. The Commission noted that Mr. Vincent restored the more than \$20,000 removed from the firm's trust accounts.

JENNIFER H. WILLIFORD (Goldsboro) – The Commission accepted the voluntary surrender of the broker license of Ms. Williford for a period of three years effective April 19, 2011. The Commission dismissed without prejudice allegations that Ms. Williford violated provisions of the Real Estate License Law and Commission rules. Ms. Williford neither admitted nor denied misconduct.

FREDERICK O. YATES (Fayetteville) – By Consent, the Commission suspended the broker license of Mr. Yates for a period of two years effective December 1, 2010. Three months of the suspension were active with the remainder stayed for a probationary period of 21 months. The Commission found that Mr. Yates acted as a buyer's agent in a transaction which failed to close; that,

in connection with the contract, the buyer wrote three checks: one for an earnest money deposit written to the listing agent and two with blank payee lines for Mr. Yates to designate the property payee; and that Mr. Yates subsequently made both checks payable to himself and endorsed them without depositing the funds in his firm's trust account. The Commission noted that Mr. Yates refunded the buyer all monies including the original \$500 deposit, which was released to the seller upon termination of the contract, and that Mr. Yates has ceased performing credit repair services for buyer-clients.

Clarification

In the March, 2011 issue of the North Carolina Real Estate Bulletin it was reported that broker Pamela Berry approved the unauthorized disbursement of more than \$23,000 from the trust account of the real estate company where she was associated. In fact, the money was disbursed from the firm's trust account to its operating account during 2007 at the direction of a broker-owner of the firm. Following an audit by the Commission, the money was restored to the trust account.