



Commission Proposes Rule Amendments

The Real Estate Commission is proposing to amend its rules. If amended, the changes would become effective April 1, 2004, except for the proposed amendment regarding license renewal. Following is a summary of the amendments:

Property Management

Require that property owner association management agreements be reduced to writing and clarify that persons who engage in property management may have automatically renewable agreements, even if they did not procure the tenant.

Broker-in-Charge

Exempt from the Broker-in-Charge course any nonresident BIC who does not operate an office in North Carolina and clarify the BIC exemption for subchapter S firm licenses.

License Renewal

Change the license renewal fee to \$45 (effective January 1, 2005).

License Reinstatement

Revise to conform to statutory changes and set forth other requirements for reinstatement of a suspended license. (Visit the Commission website for further details).

Business Entities

Revise the current rule to streamline the firm license application process.

(See Rules, page 4)

Proffitt Reappointed

Gov. Michael F. Easley has reappointed Wanda J. Proffitt to the Real Estate Commission for a three-year term expiring July 31, 2006.

First appointed to the Commission in 1994, Mrs. Proffitt is president of Carolina Mountain Realty in Burnsville.

Dameron Reelected Chairman; Jordan, Watts to Vice Chairs

Allan R. Dameron of Holden Beach has been reelected Chairman and Marsha H. Jordan of Lincolnton and Matthew J. (Rick) Watts of Fayetteville were elected Vice Chairpersons of the North Carolina Real Estate Commission for the 2003-2004 term beginning August 1, it was announced by Phillip T. Fisher, Executive Director.

This is the first time since 1977 that the Commission has reelected its Chairman to a second consecutive term, Fisher said.



Dameron

Dameron, appointed to the Commission in 1999, is Broker Associate with Alan Holden Realty/RE/Max at Holden Beach where he has been affiliated since 1984.

A former Dean of the REALTORS® Institute, he is Past President of the North Carolina Real Estate Education Foundation and of the Brunswick County Board of REALTORS®, which named him REALTOR® of the Year in both 1991 and 2001. He is a past member with 15 years of service and five-time Chairperson of the Holden Beach Board of Adjustment.



Jordan

The North Carolina Association of REALTORS® has honored Dameron with election to its Hall of Fame.

A native of Elkin, he is a graduate of Guilford College in Greensboro with a degree in Administrative Science. He and his wife, Lydia, reside in Holden Beach.

Marsha H. Jordan

A graduate of the University of Virginia, Jordan entered the real estate business in 1986. She is owner of Apple Realty in Lincolnton, a Gradu-

(See Commission, page 3)



Watts

Commission Recognizes Members With Extended Service Records

Nine members of the Real Estate Commission, since its inception in 1957, have achieved the distinction of service for at least nine years, announced Phillip T. Fisher, Executive Director. The Commission will honor these members and any others in the future whose time in office exceeds nine years with a plaque in the Commission office.

The members are: A. P. "Red" Carlton (15 years, 6 months); J. Bart Hall (15 years, 4 months); Brantley T. Poole (13 years, 7 months); Kenneth R. "Cap" Smith (13 years); J. Edward Poole (12 years, 5 months); Gilbert L. Boger (9 years); and Raymond A. "Buddy" Bass, Jr. (10 years, 1 month), Wanda J. Proffitt (9 years, 3 months), and Mona S. Hill (9 years, 3 months), who currently serve.

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

1313 Navaho Drive
P. O. Box 17100
Raleigh, North Carolina 27619-7100
Phone (919) 875-3700

Michael F. Easley, Governor

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Marsha H. Jordan, Vice Chairman	Lincolnton
M. Rick Watts, Vice Chairman	Fayetteville
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Sang J. Hamilton, Sr.	Winton
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Editor-In-Chief
Phillip T. Fisher

Editor
Robert L. Forshaw



People

Susan M. Tysor has assumed the position of Records Specialist in the Administration Division. She is responsible for maintaining license records, completing renewals and assisting newly licensed brokers. Before joining the Commission, she was associated with PBE Corporation in Richmond, VA. She is active in the Wake County public schools.



Jo Cicci has assumed the position of part-time Legal Secretary in Legal Services. Prior to joining the Commission, Ms. Cicci worked as an Administrative Assistant with Glaxo-SmithKline. She is an active volunteer at a women's shelter in downtown Raleigh, as well as a teacher in the Children's Ministry at her church.



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.

Appearances

Miriam J. Baer, Assistant Director of Legal Services, spoke to the Greenville Property Managers Association and the Greensboro Regional REALTORS® Association Commercial and Industrial Division.

Blackwell M. Brogden, Jr., Chief Deputy Legal Counsel, spoke to the Alleghany County Association of REALTORS®, to the Mountain Lakes Board of REALTORS® and to the Hendersonville Board of REALTORS®.

Peter C. Evans, Information Officer, spoke to the Albemarle Area Association of REALTORS® on the real estate aspects of mobile home sales and unlicensed activity.

Carolyn A. Haase, Information Officer, spoke to the Lumberton Board of REALTORS® on broker price opinions.



Little, Schweidler Memorial Scholarships' Winners

Donna Peele of Hatteras and Kirk Olivier of Cornelius are the winners of two Real Estate Commission scholarships for outstanding scholastic achievement at the REALTORS® Institute. Peele received the Blanton Little Memorial Scholarship Award from Commission member Sang J. Hamilton, Sr. Olivier received the Joe Schweidler Memorial Scholarship Award from Commission member William C. Lackey, Jr. Both Little and Schweidler were former Executive Directors of the Commission.



Commission

(Continued from page 1)

ate of the REALTORS® Institute and a Certified Residential Specialist.

Jordan is a director of the North Carolina Real Estate Education Foundation and a former president of the Lincolnton Board of REALTORS® and Dean of the REALTORS® Institute. Active in community affairs, she has served on the board of directors of the Lincolnton Chamber of Commerce and as president for Downtown Development, and is a member of the Lincolnton Rotary Club.

Jordan has been a member of the Commission since 1999.

Matthew J. (Rick) Watts

Watts is Broker Associate and Senior Sales Executive with Coldwell Banker United Realty in Fayetteville. He was appointed to the Commission in 2002.

Watts entered the real estate business in 1992 after retiring from a 30-year career with the U. S. Army where he achieved the rank of Command Retention Sergeant Major for the XVIII Airborne Corps.

In ten years with Coldwell Banker, Watts has been a member of the President's Elite and the President's Circle each for five years.

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

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

November 13

December 10

January 14

February 11

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.

2003/2004 REGISTRATION FORM

BASIC TRUST ACCOUNT PROCEDURES COURSE MONTHLY - RALEIGH

CONTINUING EDUCATION ELECTIVE CREDIT: FOUR HOURS

TIME: 1:00—5:00 P.M.

LOCATION: MCKIMMON CENTER AT NCSU

TUITION: \$45.00

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

The fastest way to register is online at www.ncrec.state.nc.us.

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.

- ☐ November 4 ☐ December 2 ☐ January 6
☐ February 2 ☐ March 3 ☐ April*
☐ May 11 ☐ June 1 ☐ July 6

Name _____

Address _____

City _____ State _____ Zip _____

Phone () _____

☐ Broker ☐ Salesperson ☐ Bookkeeper

(Lic # _____)

*No class in April due to Trust Account Caravan. See schedule Page 10.

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

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

Student Housing Just When Is Three A Crowd?

By Blackwell M. Brogden, Jr., Chief Deputy Legal Counsel

Many buyers in university or college towns are looking for residential properties that will house a large number of students—six, eight or even more. They may be buying for their college-bound children and friends and/or for investment purposes.

The Commission has observed an increase in complaints from such home purchasers who find that their intended use—housing several college students—violates the local jurisdictions' "single family use" definition by packing too many unrelated persons into the property, and from irate neighbors who complain about parking and noise where large older homes have been changed from a single residence to the rental of individual rooms to unrelated tenants.

Remember, local ordinances and/or private covenants often restrict the

number of unrelated occupants in a residential property. These restrictions typically apply regardless of the size of the property and even where other potential limits on occupancy (e.g., septic permits) would otherwise allow their use.

Not every local government has adopted **ordinances** defining "single family" use. Where they have, the number of unrelated persons that can live together can range from a low of no more than two to as many as four. It is also possible that **restrictive covenants** in a residential subdivision may impose a limit where there is no ordinance, or may impose a restriction more limiting than the local ordinance.

Real estate agents should be aware that if they participate in unlawfully converting a home to multiple rental units or simply renting it as a single unit to more persons than permitted by law

or covenant, they can be found in violation of the Real Estate License Law. This includes encouraging or aiding in the illegal use (or just remaining silent about it) or negligently failing to investigate the lawful use or advising the parties to make their own independent investigation.

The Commission has for many years advised its licensees that, when marketing or leasing real property, they must make a careful inquiry to determine their permitted uses so as to avoid advertising or using the property in a manner that violates state law, local regulation or applicable restrictive covenants.

Rules

(Continued from page 1)

License Exams

Eliminate the paper and pencil exam. Allow license applicants 180 days to take the test, clarify procedures for failing candidates to re-file through the computer testing service and stipulate a waiting period of 10 days to retake the test.

Pre-Licensing and Continuing Education

Require broker license applicants who apply after the first renewal of their salesperson license to complete the current continuing education Update course and one elective course during the license period in which the application is filed.

Prohibit continuing education course instruction from May 20 to June 30 and revise the course reporting requirements.

Allow digital video recordings (DVDs) and other media to be used

in lieu of VHS videotape for instructor applicants.

Authorize Commission to deny or withdraw approval of a course or sponsor upon finding that the sponsor has made false statements or presented incomplete information in its application for approval.

Require the presence of one instructor or sponsor staff person for each 50 students in a continuing education class.

Comments Welcome

The Commission welcomes your comments regarding the proposed rule changes. Please send them to the Commission's offices in care of rule-making coordinator Pamela Millward, 1313 Navaho Drive Raleigh, NC 27609. If you prefer, you may voice your opinions at the rulemaking hearing scheduled for November 13, 2003 at 9 a.m. at the Commission office.



COLLEGE BOARD
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POA PAYMENT RECORD SHEET FOR EACH PROPERTY OR INTEREST					
NAME				ACCOUNT NO.	
ADDRESS				SHEET NO.	
DATE	ITEMS		DUE	PAID	BALANCE
1/1/0X	January assessment		\$25.00		\$25.00
1/6/0X	Jane Doe January assessment	0x-1		\$25.00	\$0.00


DATE


REMITTER


PURPOSE


AMOUNT


BALANCE DUE

5

License Law Changes: Commercial Brokerage, Pencil & Paper Exams, Corporate Applicants

By Miriam J. Baer, Assistant Director, Legal Services

At its recently concluded session, the General Assembly enacted and Governor Easley signed legislation making certain changes to the Real Estate License Law affecting commercial brokerage, licensing examinations, and out-of-state corporate applicants.

Limited Commercial Licenses

Perhaps the most significant change in the law allows the Commission to issue limited broker or salesperson licenses to commercial real estate practitioners

licensed in other states. There are limitations on this license:

- The commercial licensee must affiliate with a North Carolina broker while practicing in this state; and
- The commercial licensee cannot engage in residential transactions in North Carolina.

The effect of the change is to permit a commercial licensee who is licensed in good standing in another state to apply for a limited license in North Carolina. Upon

licensure and affiliation with a North Carolina licensee, the out-of-state commercial broker may enter this state to participate in commercial transactions.

This change was initiated by commercial brokers who believe that a stream-lined mechanism for licensing non-resident commercial licensee will result in economic benefit to the state by encouraging commercial enterprises to look to North Carolina as a place to locate their businesses. It was supported by the North Carolina Association of REALTORS®.

The Commission will next undertake rule-making to set out the
(See License Law, page 7)

FREE PUBLICATIONS

Quantity
Requested

Questions and Answers on:

Fair Housing

Tenant Security Deposits

Condos and Townhouses

Residential Subdivisions and Planned Communities

Purchasing Coastal Real Estate in North Carolina

Renting Residential Real Estate

Trato Con Agentes de Bienes Raíces
(Working With Real Estate Agents)

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

Vivienda Justa
(Fair Housing)

El Depósito de Seguridad del Inquilino
(Tenant Security Deposits)

Alquiler de Inmuebles para Viviendo
(Renting Residential Real Estate)

Real Estate Licensing in North Carolina
(Contains license application)

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CITY/STATE/ZIP _____

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License Law

(Continued from page 6)

mechanics for how such licenses will be issued and regulated.

Licensing Examination

The law changes also allow the Commission to retire the existing option to take a paper and pencil licensing examination in favor of the computerized examination. Demand for the paper and pencil exam is low, and dropping steadily. Of the approximately 700 people tested each month, only about 20 request the paper and pencil option. Paper and pencil examinations would still be available to persons with special needs and disabilities.

Out-of-State Corporate Applicants

Finally, a new provision in the law eliminates certain archaic requirements relating to a corporation's Consent to Service of Process. It replaces them with the simple requirement that the Consent to Service be signed by a corporate officer and provides that such signature shall be sufficient to bind the corporation.

The Commission believes these changes will benefit licensees, applicants and consumers.

Limited Commercial Licenses

The Commission hopes to begin accepting limited commercial license applications from qualified brokers and salespersons in other states by July, 2004.

To implement the program, the Commission must first adopt rules and establish administrative procedures requiring months to complete.

PURCHASE PUBLICATIONS

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

NAME _____

ADDRESS _____

CITY/STATE/ZIP _____

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In May, the National Association of REALTORS® (NAR) adopted a new policy governing Virtual Office Websites (VOWs) operated by MLS participants. VOWs have been described as vehicles for conducting online brokerage in a way that's similar to how a brokerage firm interacts with its clients and customers in a "bricks-and-mortar" office. Upon "registration" with a VOW, a consumer can search the MLS listing database for properties of interest to them. (*Virtual Office Website Frequently Asked Questions*, www.realtor.org, 6/11/2003.)

Broker-Consumer Relationships and Consumer Registration

The NAR VOW Policy has a number of features affected by the Real Estate License Law and Commission rules. For example, under the policy, the MLS participant (a licensed broker or salesperson) must first establish a lawful "broker-consumer relationship," satisfying all agency, non-agency, and other disclosure obligations. And the participant must execute any required agreements. *VOW Policy § II(1)*. The consumer has the opportunity to search the MLS data, subject to the participant's oversight, only after the consumer "registers" with the VOW by providing his or her name and an email address and making a verified agreement to the VOW "terms of use." *VOW Policy § I(1), II(2)*.

With regard to these provisions, remember that Commission rules require licensees to provide a prospective buyer or seller with a copy of the Commission's *Working with Real Estate Agents* brochure at first substantial contact, review it with him or her, and determine whether the licensee will act as the agent of the buyer or seller in the transaction.

Merely, obtaining a consumer's name and email address is not enough to trigger a "substantial contact." First substantial contact occurs when the consumer is invited to provide, or does provide a licensed broker or salesperson with information about the consumer's particular property needs, personal information, financial circumstances,

family matters or the like. It may also occur when the licensee by his or her own words or conduct leads the consumer to believe that the licensee will act as the consumer's agent. A licensee who requests this kind of information should post the *Working with Real Estate Agents* brochure on the VOW, require the consumer to acknowledge that he or she has read and understood its terms and verify that the consumer has done so.

According to the NAR VOW Policy, consumers who merely "register" at a VOW are not entering into an agency agreement with the operator and are not financially obligated to the operator — such agreements must be created separate from the registration process, must be "prominently labeled and may not be accepted solely by mouse click." *VOW Policy § II(2)*. Agency agreements should be entered into separately, and in a form and manner that assures that the consumer understands and agrees to whatever he or she is signing. Once the buyer has been registered and his or her review of the *Working with Real Estate Agents* brochure verified, under the Commission's agency agreements rule, buyer agents can continue to work with buyers through a VOW without a written buyer agency agreement until the time the buyer is ready to make an offer.

Brokers and Salesperson Associates Operating VOWs

Under the NAR VOW Policy, the VOW can be operated by broker and salesperson associates affiliated with MLS participants, if permitted by state law and the participant's MLS, but only with the MLS participant's supervision. *VOW Policy § II(4)(b)*. This is a matter between a broker and the firm. Salespersons who operate VOWs, however, must be supervised by the broker-in-charge, and must assure that the name of their broker or their firm appears on the VOW. The broker-in-charge is responsible for the proper conduct of all the firm's advertising, including listings displayed on the VOW. [See "VOWs as Advertising" below.]

Permission to Display Required

The NAR VOW Policy presumes that a listing broker entering data into the MLS will permit all other MLS participants to display the active listing data on their own VOWs, unless such a presumption is prohibited by state law or regulation. Here in North Carolina, express permission will be required. Thus, before a licensee displays another agent's listings on his or her VOW, the licensee must have the permission of the listing agent and the listing agent must have permission from the seller. With regard to the seller's permission, this is usually obtained as a part of the standard REALTOR *Exclusive Right to Sell Listing Agreement*. With regard to the permission of the listing broker, this may be obtained through membership in the MLS and should be addressed in MLS policy.

In addition, under the NAR VOW Policy, a broker who does not want his or her listings displayed by other MLS participants may "opt out" by directing that the listings can't be searched or displayed on: (1) the VOWs of all other participants in the MLS ("blanket opt-out"), or (2) the VOWs of selected other participants determined independently by the listing broker ("selective opt-out"). *VOW Policy § I(3)*. Licensees should exercise caution, particularly when exercising the selective opt-out option, that they do not unlawfully discriminate against members

(See VOW, page 9)

VOW

(Continued from page 8)

of protected classes. Too, clients should be advised of the extent of any opt-out, as it may affect the marketability of the seller's property and the array of choices available to a buyer.

Similarly, under the *NAR VOW Policy*, a seller can opt out by directing his or her listing broker to withhold the listing or property address from the Internet. Alternatively, a seller can permit his or her agent to display the seller's listings on the agent's website or VOW and not on other sites. *VOW Policy § II(4)(a)*. The seller's directives in this regard must be honored.

VOWs as "Advertising"

A component of the service provided by a VOW is the dissemination and promotion of its own listings and those of other MLS participants in the hope of achieving a sale (or lease). Although NAR has a contrary view, the use of a VOW necessarily involves advertising.

Additionally, a listing on a VOW cannot be surrounded by the advertisements of anyone except the VOW operator, who may include his or her name, address, phone number and company logo, and any other information required by state law. *VOW Policy § IV(1)(b)*. In North Carolina, every advertisement must clearly indicate that it is the advertisement of a broker or brokerage firm and shall not be confined to publication of only a post office box number, telephone number, or street address. Similarly, licensees should take care to assure that their VOWs do not imply that the listings of others are those of the VOW operator.

Conclusion

The *NAR VOW Policy* represents a new step in the use of information technology to the service of the real estate marketplace. A number of issues may arise as MLSs implement NAR directives and licensees begin using VOWs on a wide-spread basis. These will be addressed by the Commission as they arise. In general, however, the Commission will continue to direct its energy and resources as it always has - to curtail the old evils of misrepresentation, theft and incompetence.

The statistics here reflect the activities of the Real Estate Commission during the period from May 1, 2002 to April 30, 2003.

Contact

- 200,000 telephone calls
- 250,000 website "hits" (a 150% increase)

Publications

- 777,000 publications distributed to licensees, consumers and applicants

Technology

Made more effective use of technology by:

- Introducing online publication ordering (50%-plus ordered via website each month)
- More than doubling online license renewals

Employment

- 181 applications for employment received
- 34 applicants interviewed
- 8 positions filled

Licensing

- 168,000 license record changes
- 9,274 applications processed for licenses by examination
- 8,466 license examinations administered (a 28% increase and 97% by computer)
- 4,716 licenses by examination issued (an 18% increase)
- 2,748 broker licenses issued without examination
- 325 licenses issued by reciprocity (a 27% increase)
- 711 firm licenses issued
- 199 expired, surrendered and suspended licenses reinstated
- 82 license applicant conferences conducted

- 10 new and 41 renewed private real estate school licenses

Education

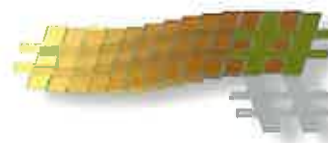
- 16 approvals and 89 renewed approvals issued to instructors
- 43 new continuing education elective courses approved (for a total of 315 courses)
- 13 new continuing education sponsors approved (for a total of 186)
- 7 new continuing education *Update Course* instructors approved (for a total of 103)
- 45 *Broker-in-Charge Course* sessions conducted for 2,620 licensees

Audits/Investigations

- 82 case investigations completed
- 170 trust accounts examined (a 70% increase)
- 314 persons interviewed
- 27 trust account courses conducted for 853 students
- 45 "spot inspections" performed on 94 different trust accounts

Legal

- 883 case (complaint) files opened and 905 closed (an increase of 50 cases closed)
- 19 licensees reprimanded
- 30 licenses suspended
- 30 licenses revoked
- 15 licenses surrendered
- 65 cases utilized conditional remedies
- 4 Recovery Fund hearings conducted
- 17 license application hearings held



2004 Trust Account Caravan Registration Form

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

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

- ☐ March 16, 2004 9 a.m. - 1 p.m. Basic Trust Account Procedures
☐ March 17, 2004 9 a.m. - 1 p.m. Trust Account Procedures for Resort Property Managers

Greenville *Greenville Hilton, 207 SW Greenville Blvd*

- ☐ March 22, 2004 1 p.m. - 5 p.m. Basic Trust Account Procedures

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

- ☐ March 29, 2004 1 p.m. - 5 p.m. Basic Trust Account Procedures
☐ March 30, 2004 9 a.m. - 1 p.m. Basic Trust Account Procedures

Huntersville *Country Inn & Suites Lake Norman, 16617 Statesville Road*

- ☐ April 1, 2004 9 a.m. - 1 p.m. Basic Trust Account Procedures
☐ April 2, 2004 9 a.m. - 1 p.m. Basic Trust Account Procedures

Fayetteville *Four Points Fayetteville, 1965 Cedar Creek Road*

- ☐ April 6, 2004 9 a.m. - 1 p.m. Basic Trust Account Procedures

Wilmington *Coast Line Convention Center, 501 Nutt Street*

- ☐ April 19, 2004 1 p.m. - 5 p.m. Basic Trust Account Procedures
☐ April 20, 2004 9 a.m. - 1 p.m. Basic Trust Account Procedures
☐ April 21, 2004 9 a.m. - 1 p.m. Trust Account Procedures for Resort Property Managers

Asheville *Holiday Inn East - Blue Ridge Parkway, 1450 Tunnel Road*

- ☐ April 27, 2004 9 a.m. - 1 p.m. Basic Trust Account Procedures
☐ April 28, 2004 9 a.m. - 1 p.m. Basic Trust Account Procedures
☐ April 29, 2004 9 a.m. - 1 p.m. Trust Account Procedures for Resort Property Managers

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

- ☐ May 5, 2004 9 a.m. - 1 p.m. Basic Account Procedures
☐ May 6, 2004 9 a.m. - 1 p.m. Trust Account Procedures for Resort Property Managers

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

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Raleigh, NC 27619-7100

Save Time!
Register online. Just have your Visa or MasterCard information and license number available.

Improve Your Trust Accounting Skills At the Commission's Spring Caravan

The *Spring 2004 Trust Account Caravan* offers 16 opportunities at seven locations around the state to learn how to manage and maintain your trust accounts so that they comply with Commission rules.

There will be twelve "Basic Trust Account Procedures" courses and four "Trust Account Procedures for Resort Property Managers" courses offered.

"Some skills are better learned in class," advises Gary R. Caddell, Senior Auditor/Investigator, Training Officer. "If you have doubts about being able to properly handle trust accounts, you should take one of these courses. It will save you time and labor in the future. And you'll be especially glad if and when your books are chosen for a spot inspection by the Commission."

Registration Online Is Faster

Register online (it's faster) for a class, or use the registration form in this issue of the *Bulletin*. (See page 10 opposite)

Classes will be offered in the following locations: Asheville, Boone, Fayetteville, Greensboro, Greenville, Huntersville, Kill Devil Hills, and Wilmington. Please remember that class size is limited. To ensure your spot in the 2004 Caravan, be sure to register early.

The "Basic Trust Account Procedures" course provides instruction in the preparation of trust account records and the reconciliation process. Related topics, including the proper handling of owner/broker trust funds and the Tenant Security Deposit Act, are also covered. This course is highly recommended for brokers-in-charge and trust account bookkeepers, but anyone may attend.

Take Basic Course First

The "Trust Account Procedures for Resort Property Managers" course covers issues specific to resort property management, such as the Vacation Rental Act and sales taxes. This course is offered only during the *Spring Caravan*. Because this course focuses on issues specific to resort property management, the Commission strongly recommends that you attend the Basic course prior to taking the Resort Property Managers course.

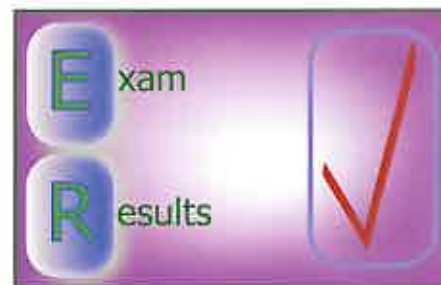
Both courses were developed and are taught by members of the Commission's Audits & Investigations Division. The courses are updated on a regular basis to include recent rule changes, so if you haven't attended these courses in several years, you should consider attending again. Each course counts as four hours of elective continuing education credit.

The Commission's Trust Account Caravan in 2003 reached a total of 498 course attendees. "Attendance is expected to increase next year," Caddell said.

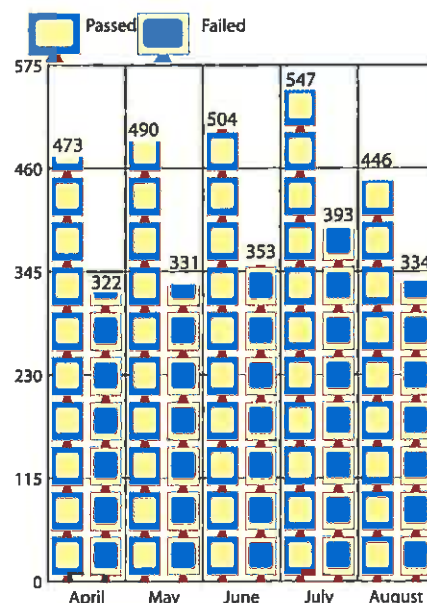
Japan Trade Representative Consults With Commission

Kazuo Sato, a representative of the Japan Fair Trade Commission, consulted with Commission staff members recently on North Carolina's licensing and regulatory program.

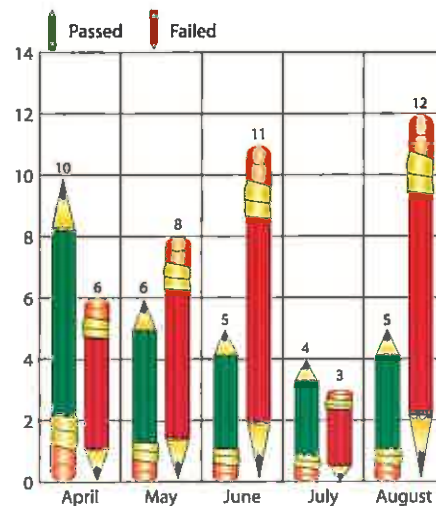
In the last two years, the Commission has also advised representatives from Chile, Egypt and Ukraine.



By Computer



By Paper and Pencil





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.

MAX D. BALLINGER, JR. (Greensboro) — By Consent, the Commission revoked the broker license of Max D. Ballinger, Jr. effective July 31, 2003. The Commission found that Mr. Ballinger, acting as the broker-in-charge of a real estate firm, failed to present for Commission inspection records required by Commission rule.

BALLINGER PROPERTIES, INC. (Greensboro) — By Consent, the Commission revoked the firm license of Ballinger Properties, Inc. effective July 31, 2003. The Commission found that the firm failed to present for Commission inspection records required by Commission rule.

KIMBERLY L. BARLOW (Wake Forest) — By Consent, the Commission suspended the broker license of Ms. Barlow for a period of one year effective July 1, 2003. The Commission then stayed the suspension for a probationary period of 22 months upon certain conditions. The Commission found that Ms. Barlow failed to disclose to at least one consumer a referral fee arrangement with a listing agent for investment properties to whom she referred the consumer. The Commission also found that Ms. Barlow entered into a purchase contract that recited that it involved secondary financing when she had been told that the financing would be canceled without payment at or after closing. The Commission noted that none of these transactions closed.

WILLIAM M. BARNES (Corolla) — By Consent, the Commission suspended the broker license of Mr. Barnes for a period of one year effective October 1, 2003. The Commission then stayed the suspension for a probationary period of three years upon certain conditions. The Commission found that Mr. Barnes was convicted of entering an airport area

while in possession of firearms in violation of federal security requirements, a misdemeanor. The Commission noted that Mr. Barnes disclosed the conviction within 60 days of judgment as required by Commission rules.

BODIE ISLAND BEACH CLUB, INC. (Nags Head) — The Commission accepted the permanent voluntary surrender of the time share registration certificate of Bodie Island Beach Club effective July 1, 2003. The Commission dismissed without prejudice allegations that Bodie Island Beach Club violated provisions of the Real Estate License Law and Commission rules. Bodie Island Beach Club neither admitted nor denied misconduct.

BODIE ISLAND REALTY, INC. (Nags Head) — By Consent, the Commission suspended the firm license of Bodie Island Realty for five years effective July 1, 2003. The Commission then stayed the suspension for a probationary period of five years upon certain conditions. The Commission found that Bodie Island Realty, while acting to sell and rent time shares for others and manage homeowner association funds, failed to maintain its records and trust accounts as required by the Real Estate License Law and Commission rules. Bodie Island Realty neither admitted nor denied but did not contest the findings.

C.F. LITTLE CONSTRUCTION, INC. (Concord) — By Consent, the Commission reprimanded CF Little Construction, Inc., effective July 1, 2003. The Commission found that the firm, as a listing agent of a subdivision, contracted to sell lots in one section prior to its final approval by the county. The Commission also found that the firm failed to provide agency disclosure to buyers as required by Commission rules.

LINDA M. CLARK (Fayetteville) — By Consent, the Commission reprimanded Ms. Clark effective May 1, 2003. The Commission found that Ms. Clark, as a salesperson and the selling agent for an in-house listing, was aware of the omission on the closing statement of a repair payment from sellers to buyers. The Commission found that Ms. Clark failed to deliver to the seller and buyer a complete closing statement of receipts and disbursements as required by the Real Estate License Law. The Commission noted that Ms. Clark did not intentionally cause or permit its omission from the accounting of all receipts and disbursements related to the closing.

BRAINARD L. CUMMINS (Dillsboro) — By Consent, the Commission revoked the broker license of Mr. Cummins effective July 1, 2003. The Commission found that Mr. Cummins, as a broker-in-charge, failed to properly document deposit tickets, canceled checks, or ledgers and failed to produce monthly reconciliations, and adequate property or owner ledgers for Commission inspection. The Commission further ordered that Mr. Cummins may apply for reinstatement of his salesperson license which will be granted on certain conditions.

CHARLES F. DAWKINS (Fayetteville) — By Consent, the Commission reprimanded Mr. Dawkins effective July 1, 2003. The Commission found that Mr. Dawkins, a broker, listed and sold a property and failed to disclose to the lender and closing attorney the receipt of a check from the sellers as a repair credit for the buyers and that he failed to provide the parties with an accurate accounting of all receipts and disbursements in connection with the closing.

(See Disciplinary, page 13)

Disciplinary

(Continued from page 12)

SHIRLEY D. DELONG (High Point)

– By Consent, the Commission suspended the broker license of Ms. DeLong for a period of six months effective October 1, 2003. The Commission then stayed the suspension effective October 1, 2003 under certain conditions. The Commission found that Ms. DeLong, acting as a listing and buyer agent, failed to provide written agency disclosures and failed to obtain a written buyer agency agreement. The Commission also found that Ms. DeLong represented the buyers' home as being under contract when the offer had not been reduced to writing and failed to remove their home from the Multiple Listing Service when they attempted to cancel their listing agreement after discovering the property they intended to purchase was already under contract.

DELONG & ASSOCIATES, LTD.

(High Point) – By Consent, the Commission suspended the firm license of DeLong & Associates for a period of six months effective October 1, 2003. The Commission then stayed the suspension effective October 1, 2003 under certain conditions. The Commission found that DeLong & Associates, acting as a listing and buyer agent, failed to provide written agency disclosures and failed to obtain a written buyer agency agreement. The Commission also found that DeLong & Associates represented the buyers' home as being under contract when the offer had not been reduced to writing and failed to remove their home from the Multiple Listing Service when they attempted to cancel their listing agreement after discovering the property they intended to purchase was already under contract.

BARBARA A. DENNING (Goldsboro)

– By Consent, the Commission suspended the salesperson license of Ms. Denning for a period of one year effective July 1, 2003. The Commission then stayed the suspension for a probationary period of one year. The Commission found that Ms. Denning, as a bookkeeper, failed to keep complete and accurate records of trust monies as required by Commission rules.

SUSAN K. FARFOUR (Goldsboro)

– By Consent, the Commission suspended the broker license of Ms. Farfour for a period of one year effective June 1, 2003. The Commission then stayed the suspension for a probationary period of one year. The Commission found that Ms. Farfour failed to keep complete and accurate records of trust account funds as required by Commission rules.

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.

LESLIE FERRELL (Lancaster, SC)

– By Consent, the Commission suspended the broker license of Ms. Ferrell for a period of one year effective July 1, 2003. The Commission then stayed the suspension for a probationary period of one year. The Commission found that Ms. Ferrell failed to disclose on her applications for both a real estate salesperson and broker license that she had three criminal convictions for issuing worthless checks and a fourth charge pending. The Commission noted that Ms. Ferrell was unaware of the pending charge, which had not been served, and paid all funds due.

MICHAEL G. GARRETT (Henderson)

– By Consent, the Commission reprimanded Mr. Garrett effective May 14, 2003. The Commission found that Mr. Garrett, a broker and a notary public for

the State of North Carolina, negligently performed a notarization in Virginia that appeared to have taken place in North Carolina and that his North Carolina notary public commission was revoked by the Secretary of State.

GARLAND B. GARRETT, JR.

(Wilmington) – By Consent, the Commission suspended the salesperson license of Mr. Garrett for a period of two years effective October 1, 2003. The suspension shall be active until July 1, 2004, or until such time after March 1, 2004 as Mr. Garrett has been released from his placement in a community correction center. The remaining suspension will then be stayed for a probationary period of two years. The Commission found that Mr. Garrett was convicted in U.S. District Court of offenses relating to unlawful gaming.

GARLAND B. GARRETT, III

(Wilmington) – By Consent, the Commission suspended the salesperson license of Mr. Garrett for a period of two years effective September 1, 2003. The Commission then stayed the suspension for a probationary period of two years. The Commission found that Mr. Garrett was convicted in U.S. District Court of an offense relating to unlawful gaming.

ANGELA B. HALL (Burlington) –

By Consent, the Commission suspended for a period of 60 days the broker license of Ms. Hall effective July 1, 2003. The Commission then stayed the suspension under certain conditions for a probationary period of 12 months effective May 1, 2003. The Commission found that Ms. Hall learned that the developer of a lot had placed fill material on the property, that a house built on the lot would require a special foundation and that the lot owner would let the buyer exchange it for another. The Commission found that Ms. Hall did not disclose this information to the buyer in a timely fashion.

DANNY S. HOOD (Goldsboro)

– By Consent, the Commission suspended the broker license of Mr. Hood for a period of two years effective July 1, 2003. The Commission then stayed the suspension for a probationary period of

(See Disciplinary, page 14)

Disciplinary

(Continued from page 13)

two years. The Commission found that Mr. Hood as a rental agent failed to keep complete and accurate records of trust monies as required by Commission rules. The Commission noted that no clients suffered loss and that the trust account records are now in compliance.

LINDA M. JACKSON (Morrisville) – By Consent, the Commission revoked the broker license of Ms. Jackson effective September 16, 2003. The Commission found that Ms. Jackson conducted brokerage services through a corporation that was not licensed by the Commission, paid various sums of money to buyers and others and received fees outside closing that were not disclosed on either the closing statements or to lenders in the transactions, failed to deposit funds collected on behalf of others into a trust account, listed properties for sale without a written listing agreement with the owners and falsely indicated that she or one of her business entities was the owner of the properties.

WILLIAM R. KENNEDY (Salisbury) – By Consent, the Commission suspended the broker license of Mr. Kennedy for a period of two years effective December 15, 2002. The Commission then stayed the suspension for a probationary period of three years on certain conditions. The Commission found that Mr. Kennedy failed to maintain his trust account records in the form and manner required by Commission rules.

JAMES B. LAND (New Bern) – The Commission accepted the voluntary surrender of the broker license of Mr. Land for a period of one year effective July 1, 2003. The Commission dismissed without prejudice allegations that Mr. Land violated provisions of the Real Estate License Law and Commission rules. Mr. Land neither admitted nor denied misconduct.

PATSY H. LITTLE (Concord) – By Consent, the Commission reprimanded Ms. Little effective July 1, 2003. The Commission found that Ms. Little, as a listing agent and developer of a subdivision, contracted to sell some lots in

one section prior to its final approval by the county and failed to provide agency disclosure to buyers as required by the Commission. The Commission also found that Ms. Little failed to adequately supervise a salesperson by not requiring the salesperson to provide agency disclosure and failing to instruct the salesperson to wait until final county approval had been granted before selling lots.

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 to confirm their accuracy.

ROBERT B. LOGAN (Goldsboro) – By Consent, the Commission suspended the broker license of Mr. Logan for a period of two years effective June 1, 2003. The Commission then stayed the suspension for a probationary period extending through June 30, 2005 upon certain conditions. The Commission found that Mr. Logan, as principal broker and broker-in-charge of a real estate firm, did not maintain the books and records for the trust account in full compliance with Commission requirements. The Commission noted that the firm has since brought its bookkeeping system into full compliance and that no harm had come to consumers.

GLENN E. MAGILL, JR. (Nags Head) – By Consent, the Commission revoked the broker license of Mr. Magill effective July 1, 2003. The Commission further ordered that Mr. Magill may

apply for reinstatement of his salesperson license which may be granted under certain conditions. The Commission found that Mr. Magill, while serving as a time share registrar and project broker for a registered time share project, failed to implement adequate record systems as required by Commission rules, failed to properly record lien-free time share instruments as required by law, and did not properly maintain records of the funds received from others. Mr. Magill neither admitted nor denied, but does not contest, the Commission's findings.

SANDRA A. MAGILL (Kitty Hawk) – By Consent, the Commission suspended the salesperson license of Ms. Magill for a period of two years effective July 30, 2003. The Commission then stayed the suspension for a probationary period of two years effective July 30, 2003. The Commission found that while Ms. Magill was in charge of trust accounts relating to time share sales for a real estate brokerage firm, she failed to document the purpose of several checks written to disburse funds from escrow accounts. Ms. Magill neither admitted nor denied, but does not contest, the Commission's findings.

DENNIS D. MCGRAW (Durham) – By Consent, the Commission suspended the broker license of Mr. McGraw for a period of one year effective July 1, 2003. The Commission then reduced the suspension to an active period of 60 days effective July 1, 2003 and a probationary period of 12 months. The Commission found that Mr. McGraw, while engaged in rental property management, failed to properly maintain accurate and complete trust account records and was unable to identify the ownership of all the monies in his trust accounts at a time when the accounts did not contain sufficient funds to cover expenditures.

MCGRAW PROPERTY SERVICES, INC. (Durham) – By Consent, the Commission suspended the firm license of McGraw Property Services for a period of one year effective September 1, 2002. The Commission found that McGraw Property Services, while engaged in rental property management

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Disciplinary

(Continued from page 14)

ment, failed to properly maintain accurate and complete records of deposits to trust accounts, did not maintain ledgers in the manner required by Commission rules and were unable to identify the ownership of all of the monies in their trust accounts at a time when the accounts did not contain sufficient funds belonging to clients to cover expenditures.

BONNIE H. MEELER (Roxboro) – By Consent, the Commission reprimanded Ms. Meeler effective July 1, 2003. The Commission found that Ms. Meeler operated a real estate firm without a broker-in-charge, failed to maintain a proper journal for the firm's rent receipts trust account and complete ledgers for her earnest money and security deposit accounts. The Commission noted that the accounts were in balance and no client and customer funds were at risk.

AMADA V. MORRIS (Raleigh) – By Consent, the Commission suspended the broker license of Mr. Morris for a period of 30 days effective July 1, 2003. The Commission then stayed the suspension for a probationary period of 12 months effective August 1, 2003. The Commission found that Mr. Morris, as a broker-in-charge, failed to properly maintain adequate trust account records of properties he managed for others as required by Commission rules.

NEAL & RANDLE REAL ESTATE, LLC (Raleigh) – By Consent, the Commission revoked the firm license of Neal & Randle Real Estate effective May 1, 2003. The Commission found that Neal & Randle failed at its branch office to properly designate and reconcile a trust account and to maintain ledgers.

DENNIS L. PEELE (Goldsboro) – By Consent, the Commission suspended the broker license of Mr. Peele for a period of two years effective July 1, 2003. The Commission then stayed the suspension for a probationary period of three years. The Commission found that Mr. Peele, as broker-in-charge of a real estate firm, did not maintain trust account records in

compliance with Commission rules. The Commission noted that Mr. Peele has since taken the Commission's Basic Trust Account course and brought the trust account records into compliance.

MOTOKO K. PHILPOTT (Jacksonville) – The Commission ordered the suspension of the salesperson license of Ms. Philpott for a period of 60 months effective June 1, 2003. One year of

Trust Account Compliance Audits Year Ended 6/30/03

Sales Trust Account

- 35% of companies audited did not have satisfactory bank reconciliations
- 65% of companies audited did not have satisfactory ledger reconciliations

Rental Trust Account

- 39% of companies audited did not have satisfactory bank reconciliations
- 57% of companies audited did not have satisfactory ledger reconciliations

the suspension is to be active, with the remainder stayed for a probationary period of 48 months effective June 1, 2004. The Commission found that Ms. Philpott possessed and delivered marijuana, and maintained a vehicle, dwelling and real estate office which were used for keeping or selling marijuana. The Commission further found that Ms. Philpott misrepresented material facts to the Commission in connection with the possession and delivery of marijuana.

CONNIE E. PINER (Durham) – By Consent, the Commission reprimanded Ms. Piner effective June 19, 2003. The Commission found that Ms. Piner, as a salesperson and acting as the owner of a real estate brokerage firm, failed to maintain under her possession and control the records of the firm for three years after the firm ceased to do business.

V. DAN PINER (Durham) – By Consent, the Commission reprimanded Mr. Piner effective June 19, 2003. The Commission found that Mr. Piner, as a salesperson and acting as the owner of a real estate brokerage firm, failed to maintain under his possession and control the records of the firm for three years after the firm ceased to do business.

JULIE M. RANDLE (Cary) – By Consent, the Commission revoked the broker license of Ms. Randle effective May 1, 2003. After November 1, 2003, Ms. Randle may apply for reinstatement of her salesperson license which will be granted under certain conditions. The Commission found that Ms. Randle, as a broker and rental agent for an individual, failed to deposit funds collected from tenants into a trust account and to properly account for the funds. The Commission also found that Ms. Randle, as broker-in-charge of a real estate firm, failed to properly designate and reconcile a trust account and to maintain ledgers.

ROGER W. RAY (Mebane) – The Commission accepted the permanent voluntary surrender of the broker license of Mr. Ray effective May 15, 2003. The Commission dismissed without prejudice allegations that Mr. Ray violated provisions of the Real Estate License Law and Commission rules. Mr. Ray neither admitted nor denied misconduct.

DANIEL L. SEAY (Franklin) – By Consent, the Commission reprimanded Mr. Seay effective June 18, 2003. The Commission found that Mr. Seay had been disciplined by the North Carolina General Contractors Licensing Board in a transaction unrelated to the real estate brokerage business.

DAVID A. SIMONINI (Charlotte) – By Consent, the Commission accepted the voluntary surrender of the broker license of Mr. Simonini for a period of two years effective October 1, 2003. The Commission dismissed without prejudice allegations that Mr. Simonini violated provisions of the Real Estate License Law and Commission rules. Mr. Simonini neither admitted nor denied misconduct.

(See Disciplinary, page 16)

Disciplinary

(Continued from page 15)

RICHARD W. SNIPES (Greensboro) – By Consent, the Commission suspended the salesperson license of Mr. Snipes for a period of three years effective August 1, 2003. Six months of the suspension are to be active with the remainder stayed for a probationary term of three years. The Commission found that Mr. Snipes obtained a key to a home offered for rental by falsely representing that he would show the property to a prospective tenant and then moved into and unlawfully occupied the property until forced to vacate.

YUMA STORCH (Weddington) – The Commission accepted the permanent voluntary surrender of the broker license of Mr. Storch effective July 29, 2003. The Commission dismissed without prejudice allegations that Mr. Storch violated provisions of the Real Estate License Law and Commission rules. Mr. Storch neither admitted nor denied misconduct.

DAVID J. SZEMPRUCH (Arden) – The Commission ordered both the revocation of the broker license and the withdrawal of approval as a real estate pre-license instructor of Mr. Szempruch effective September 15, 2003. The Commission found that Mr. Szempruch failed to disclose on his pre-license instructor renewal application that he had been disciplined by the Florida Supreme Court in connection with his license to practice law and the Florida Department of Business and Professional Regulation in connection with his real estate broker license.

CRYSTAL A. THOMAS (Benson) – The Commission accepted the permanent voluntary surrender of the broker license of Ms. Thomas effective July 31, 2003. The Commission dismissed without prejudice allegations that Ms. Thomas violated provisions of the Real Estate License Law and Commission rules. Ms. Thomas neither admitted nor denied misconduct.

CONSTANCE A. VAN CUREN (Charlotte) – By Consent, the Commission reprimanded Ms. Van Curen

effective July 30, 2003 and granted reinstatement of Ms. Van Curen's salesperson license. The Commission found that Ms. Van Curen failed to disclose a DWI conviction within the required 60 days while previously licensed, but did make full disclosure in connection with her reinstatement application.

HARRY P. WADE (Burlington) – By Consent, the Commission reinstated Mr. Wade's salesperson license effective July 30, 2003. The Commission then suspended it but stayed the suspension for a probationary period of two years. The Commission found that Mr. Wade had been convicted three times for driving while impaired.

WAYNE REALTY & INSURANCE CO. (Goldsboro) – By Consent, the Commission suspended the firm license of Wayne Realty for two years effective July 1, 2003. The Commission then stayed the suspension for a probationary period of two years. The Commission found that Wayne Realty did not maintain their trust account books and records in full compliance with Commission rules. The Commission noted that the firm has brought its bookkeeping system into full compliance and that no harm had come to consumers.

WILLIAM R. KENNEDY REALTY, INC. (Salisbury) – By Consent, the Commission suspended the firm license of William R. Kennedy Realty, Inc., for a period of two years effective December 15, 2002. The Commission then stayed the suspension for a probationary period of three years on certain conditions. The Commission found that the firm failed to maintain its trust account records in the form and manner required by Commission rules.



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