



Incentive Disclosure Compensation Rule To Remain Unchanged

The Commission has accepted the recommendations of the Incentive Disclosure Implementation Advisory Committee, formed earlier this year to examine the current compensation disclosure requirements in dual agency transactions.

The Committee recommended that:

- the incentive disclosure rule remain unchanged;
- the North Carolina Association of REALTORS® recommend to the forms committee that it modify the Exclusive Right to Represent Buyer agreement to incorporate a disclosure of expected firm compensation in dual agency situations; and
- the Commission initiate an educational program to teach instructors, brokers-in-charge and licensees the buyer agent's disclosure requirements in dual agency transactions.

The current rule relating to agency compensation went into effect October
(See **Disclosure** page 5)

Malarney, Watts Reappointed

Commission members M. Rick Watts of Fayetteville and Jeffery J. Malarney of Manteo have been reappointed by Governor Beverly E. Perdue.

Watts, a Commission member since 2002, is a former Chairman. Malarney has been a Commission member since 2008. □

James K. Polk

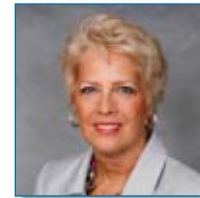
The Commission regrets the passing of James K. Polk of Charlotte, a member of the Commission from 1992 to 1995 and a former Chairman. □

Commission Reelects Marsha Jordan, Benjamin Cone to Second Terms

Marsha H. Jordan of Lincolnton has been reelected Chairman and Benjamin Cone, III of Charlotte, Vice Chairman, of the North Carolina Real Estate Commission for the 2010-2011 term beginning August 1, it was announced by Miriam J. Baer, Executive Director.

A graduate of the University of Virginia (MWC), Jordan entered the real estate business in 1986. She is owner of Apple Realty in Lincolnton, a Graduate of the REALTOR® Institute and holds the Certified Residential Broker, Certified Residential Specialist, and GREEN designations.

Appointed to the Commission in 1999, Jordan is past president of the North Carolina Real Estate Education Foundation and past president and 2001 REALTOR® of the Year of the Lincoln County Board of REALTORS®. Active in community affairs, she is a former director of the Lincolnton Chamber of

**Jordan****Cone**

Commerce, past president for Downtown Development, and past president of the Lincolnton Rotary Club.

Jordan and her husband, Max, a REALTOR® and contractor, reside in Lincolnton and have one son, Jason, a student at the University of North Carolina
(See **Commission** page 5)

Dual Agency: When Is It Appropriate?

By Glenn Wylie, Information Officer

In brief, dual agency is appropriate in a sales transaction only when it is agreed to – in writing - by fully informed sellers and buyers.

One of three types of agency representation (see box), dual agency arises when a firm is representing both the sellers and buyers in an in-house sale situation.

Practicing dual agency lawfully is challenging because the sellers and buyers must agree to be represented in an adversarial relationship by the same agent. A dual agent who must act with a combination of discretion and fairness that can be difficult to balance.

Although the laws and rules by which dual agency is practiced have not been reviewed to any significant extent by the courts, theoretically a dual agent

(See **Dual Agency** page 5)

Agency Refresher

Clients may choose:

- Exclusive Representation - both the broker and the firm represent only one client in the transaction, to the exclusion of all others;
- Dual Agency - the firm and its agents may represent both the buyer and seller in a transaction; and
- Designated Dual Agency - the firm represents both the seller and buyer via one agent designated exclusively as the seller's agent, and another agent designated exclusively as the buyer's agent, with each agent representing only the interests of their designated client.

REAL ESTATE BULLETIN

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

NORTH CAROLINA REAL ESTATE COMMISSION

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www.ncrec.gov

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Editor-In-Chief

Miriam J. Baer

Editor

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People

Curtis E. Aldendifer has assumed the position of Associate Legal Counsel in the Legal Services Division. He is a graduate of the University of Southern California with a BA in History and received a JD from Southwestern University School of Law.



D. Scott Schiller has assumed the position of Financial Fraud Investigator in the Legal Services Division. He is a graduate of UNC-Chapel Hill with a BS in Business Administration and is a CPA.



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.

Appearances

Miriam J. Baer, Executive Director, spoke to the High Point Regional Association of REALTORS® on agency disclosure and fair housing and the Fort Bragg/Pope Air Force Regional Land Use Commission quarterly meeting on the inclusion of military impacts on the Residential Property Disclosure Statement.

Patricia A. Moylan, Legal Education Officer, spoke to the Charlotte Regional REALTORS® Association on the HUD-1 form.

Jean Wolinski-Hobbs, Consumer Protection Officer, spoke at the Greenville Area Property Managers Association's "Security Deposit Seminar" on the Real Estate License Law and Commission rules governing security deposits.

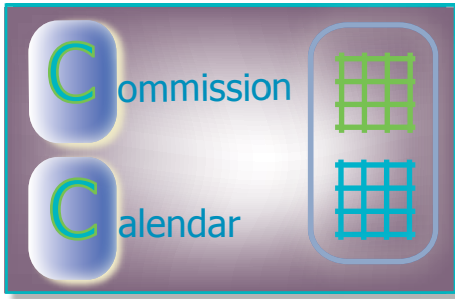
Peter B. Myers, Information Officer, spoke to the Albemarle Area Association of REALTORS® on the Real Estate License Law.

Commission 2010 Legal Services Interns



Sarah A. Rothecker of Clayton and Aaron B. Biek of Chapel Hill, both second-year law students at the University of North Carolina, were the recipients of the Commission's 2010 summer internships in the Legal Services Division.

Rothecker received the Allan R. Dameron Legal Intern award, given annually by the Commission in memory of and tribute to former Commission Chairman Dameron for his dedicated service in protecting the interests of North Carolina real estate consumers. □



November 9

December 8

January 12

February 9

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.



Constance Sithens of New Bern, Tony M. Brown of Charlotte, and Roy Terretta of Durham received plaques and REALTORS® Institute tuition refunds from the Commission. Joining with them were, l. to. r., Miriam J. Baer, Commission Executive Director, and Commission members Jerry A. Mannen, Jr., Chairman Marsha H. Jordan, Jeffrey J. Malarney, Melvin L. "Skip" Alston, S. R. "Buddy" Rudd, Jr., Everett "Vic" Knight, Vice Chairman Benjamin Cone, III, M. Rick Watts, and Alice L. Mosteller.

Commission Awards Scholarships to Brokers

Outstanding achievement in REALTORS® Institute courses earned three brokers scholarships from the Commission.

Constance Sithens of New Bern received the *Joe Schweidler Memorial Scholarship*, Roy Terretta of Durham the *Blanton Little Memorial Scholarship*, and Tony M. Brown the *Phillip T. Fisher Scholarship*.

Schweidler, Little and Fisher are former Executive Directors of the Commission.

The recipients were selected by the North Carolina Real Estate Educational Foundation. □

COURSE SCHEDULES

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

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	November 30, December 1	Holiday Inn East/Blue Ridge Parkway
Charlotte	November 22, 23	Hilton Charlotte Executive Park
Greensboro	December 14, 15	Clarion Hotel
Raleigh	November 3, 4 December 8, 9	McKimmon Conference Center
Wilmington	October 26, 27	Coastline Convention Center

Basic Trust Account Procedures Course

Raleigh	December 6 1 - 5 p.m.	McKimmon Conference Center
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Trust Account Procedures for Resort Property Managers

Wilmington	October 27 9 a.m. - 1 p.m.	Best Western Coastline Inn
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Check Commission Web site for January-February courses and to confirm dates, times.

NUMBERS

The statistics here generally reflect the activities of the Real Estate Commission during the period from May 1, 2009 to April 30, 2010.

Contact

- 200,656 telephone calls
- 1.5 million+ Web site "hits"

Publications

- 585,000+ publications distributed to brokers, consumers, applicants

Technology

- 8,554 student rosters electronically processed for CE courses and 859 for postlicensing courses

Licensing

- 466,081 license records changed
- 3,382 applications processed for licenses by examination
- 4,281+ license examinations administered
- 2,750 licenses issued by examination, 271 by reciprocity
- 879 firm licenses issued
- 334 expired, surrendered and suspended licenses reinstated
- 2,326 Certificates of License History issued
- 187 license applications reviewed for character issues
- 63 license applicant conferences conducted

Education

- 7 new private real estate school licenses issued and 48 renewed
- 18 real estate instructors approved and 49 renewed (for a total of 225 instructors)

- 56 new continuing education elective courses approved (for a total of 433 courses)
- 25 new continuing education sponsors approved (for a total of 236)
- 16 new continuing education *Update Course* instructors approved (for a total of 197)
- 40 *Broker-in-Charge Course* sessions conducted for 1,544 licensees

Audits/Investigations

- 128 field investigations completed
- 172 trust accounts examined
- 386 persons interviewed
- 6 trust account courses conducted for 147 students
- 1,352 students instructed for trust account portion of BIC course

Legal

- 954 case (complaint) files opened and 1,062 closed
- 15 licensees reprimanded
- 45 licenses suspended
- 45 licenses revoked
- 19 licenses surrendered
- 64 cases with conditional remedies □

Bedrooms at the Beach - Advertising Occupancy

By Peter Myers, Legal Information Officer

Every year the Commission receives complaints that brokers in the vacation rental business have represented that a cottage or cabin may be occupied by more people than the septic tank permit allows.

Of course, tenants complain when the waste lines back up or the septic system fails. Health officials become concerned when failures create unsanitary conditions and when property limitations allow no room for system expansion or repairs. Agents should be aware of the dangers of advertising occupancy levels for any property served by a septic system without first verifying the system's legal capacity.

Properties that are not served by municipal sewer systems are typically inspected by local health departments to assess the site's capacity for on-site sewage disposal (septic systems). An application is submitted for an improvement permit and the county issues a septic permit with a maximum number of bedrooms based on the site's capacity.

Occupancy levels are determined by the number of bedrooms allowed by the

septic permit, with a maximum of two people per legal bedroom. Therefore, the septic permit is the key to identifying the total number of bedrooms and the total number of people that a particular sewage system can serve.

Brokers should understand restrictions on land usage for properties with which he/she is dealing. Brokers who advertise such properties must be careful not to overstate the number of legal bedrooms or the maximum occupancy.

Advertisements which say things like "three bedrooms and foldout sofa," "sleeps ten," and "two queens, two doubles, and bunk twins" all make representations about occupancy. Brokers should take care that their advertising does not promote a violation of health codes by directly or indirectly representing that a rental unit may be occupied by more persons than the septic tank permit will allow. An overloaded system can fail and lead to groundwater contamination, costly repairs, and even condemnation.

If a broker's advertisement of a property served by a septic system includes

a maximum occupancy that exceeds the ability of the septic system as provided by the permit, the agent may have misrepresented the true condition of the property.

A broker should check the county records and disclose both the legal number of bedrooms and a maximum occupancy of no greater than the number determined by this method, regardless of the actual number of bedrooms or beds in the house.

Advertising a property as having more bedrooms than permitted, even with a disclosure that the septic permit states fewer bedrooms, may still be misleading and encourage illegal use of the property.

Sometimes the original septic permit for a property cannot be located. The health department can usually make a determination based on a new inspection.

Licensees should also keep in mind the maximum occupancy must not be overstated as long as the house is serviced by a septic system, even when conversion to public sewer has been scheduled, but not completed. □

Dual Agency

Continued from page 1

owes the full range of agency duties to both principals. This creates practical problems for the dual agent regarding such matters as disclosure of material facts (especially confidential information about a client) and advocating for clients.

Thus, a broker's ability to provide full representation of the client may be compromised to some extent. By entering into dual agency without the full understanding and consent of both clients, a broker may unfairly deprive those clients of the level of service they expect to receive. Additionally, brokers can potentially have more exposure to claims of conflicts of interest when practicing dual agency.

To alleviate the conflicting responsibilities of dual agency, the North Carolina Association of REALTORS® has developed agency contract forms which place limits on the disclosure by a dual agent of information relating to any party's motivation, possible agreement to price, terms or other conditions, or any information identified as confidential. The contract forms also include an acknowledgment by the client that the agent will not act as an advocate for or

exclusive representative of the client. Whether this form or another is used, all brokers are required by the Commission's rules to reduce their dual agency agreements to writing with the seller from the outset and with the buyer before one of the parties makes an offer.

Designated agency (a modified form of dual agency), is defined in rules adopted by the Real Estate Commission. It gives each client exclusive representation from an individual broker, while still allowing the firm to represent all of its clients. Remember, a broker-in-charge should never act as a designated agent in a situation where the other designated agent is a provisional broker under his or her supervision. The broker-in-charge loses his or her ability to supervise or assist a provisional broker in such a situation.

An agent who lists his or her own property, or property belonging to the firm, should refrain from acting as a dual agent when selling that property, as there are inherent conflicts of interest in offering one's own personal property for sale and then attempting to represent a buyer in the transaction as well.

What about the case of an unrepresented buyer or seller - can a broker work with him or her while solely representing another party? Yes, so long as

the broker reviews and has the unrepresented party sign the *Working With Real Estate Agents* brochure, disclosing in writing that the broker will represent only his or her client (buyer or seller) in the transaction. Remember, there is no requirement that both the buyer and seller have broker representation in a transaction. An agent can work with an unrepresented buyer or seller as a customer, and still fully represent his or her client.

What if a previously unrepresented buyer or seller tells the listing broker that he or she would now like representation in an ongoing transaction where the listing broker has already disclosed that he or she represents only the interests of the seller? The broker's client may object, considering the information that the client has previously given the broker about his personal situation and/or desire for exclusive representation. If the parties do not consent to Dual Agency at that point, the listing broker should refer the unrepresented party to an outside broker/firm for buyer representation.

All parties in the transaction deserve the best representation possible. Agents should remember to consider the interests of their clients first and determine which form of agency best suits their needs. □

Disclosure

Continued from page one

1, 2008. The primary change was to clarify disclosure requirements relating to third party payments.

In its final report, the Advisory Committee agreed that many licensees may be confused about their duty under the rule and its application in typical situations. Education through the *Real Estate Bulletin*, *Broker-in-Charge Annual Review*, and/or *Update Course* would provide practical scenarios and a review of specialized transactions to describe steps which can be taken to achieve compliance.

Members of the Advisory Committee were George R. Bell, Winston-Salem; Donell Croom, Greensboro; Garth K. Dunklin, Charlotte; Kelly C.

Hanley, Wilmington; J. Malcolm McFadyen, Fayetteville; Sheila G. Rudisil, Lincolnton; Monica A. Thibodeau, Duck; Walt Tipper, Raleigh; Grady F. Watkins, Jr., Holden Beach; and Harriet Worley, Raleigh.

Commission Chairman Marsha H. Jordan served in an ex officio capacity.

The Commission thanked the members for their participation in the Advisory Committee. □

Survey

North Carolina state government is redesigning www.nc.gov and would appreciate your input. Please use this link - <http://bit.ly/aHbHkC> - to participate in a survey. Survey closes: 5 p.m., November 5.

Commission

Continued from page 1

olina at Charlotte and a REALTOR®.

Cone, a member of the Commission since 2007, is Managing Director of Milestone Partners, LLC, in Charlotte. He has held management positions in the textile and commercial furniture industries.

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

Disclosing Criminal Convictions

By Joan Floyd,

Consumer Protection Officer

So you have a speeding ticket or impaired driving charge, an expired registration, or an assault charge. Commission rules require that you disclose certain types of convictions to the Commission, but which ones, how, and within what time period?

1. Before reporting, wait for final adjudication, which occurs following a plea of guilty or a finding of guilt by a judge or jury. Do not file a report before a judgment is entered against you to avoid a file being opened and a permanent record made of your report, which may be unnecessary if you are found not guilty or the matter is dismissed.

2. Non-moving violations, such as expired registrations, expired tags, etc., are not reportable offenses. Likewise, you are not required to report speeding convictions. All misdemeanor and felony convictions, however, must be reported. These include convictions for DWI or reckless driving, assault, larceny, etc. If you have questions about the reporting process, call the Commission's Legal Services Division.

3. Once you have entered a plea or otherwise have a criminal judgment against you, go to the Commission's Web site, www.ncrec.gov and, under "Forms," print the *Criminal Conviction / Disciplinary Action Reporting Form*. Please read the directions, which require you to provide a narrative in your own words explaining the incident and a CERTIFIED copy of the final order or judgment issued by the court. You have 60 days after conviction to file the form and supporting documentation with the Commission.

Once you have filed your report, the Legal Services Division will review it to determine if further action is necessary. You may be contacted to provide additional information. Just remember to respond quickly, fully and completely, so the matter can be handled in a timely manner. As with everything, full disclosure is always best. □

Schools and Instructors

Outstanding Examination Performance Records

July 1, 2009 - June 30, 2010

The performance of first-time real estate license examination candidates by approved schools and instructors is monitored by the North Carolina Real Estate Commission and regularly reported to schools and instructors. School and instructor examination performance records are reviewed annually by the Real Estate Commission to help assure that quality instruction is being provided in prelicensing courses by such schools and instructors. The most recent annual performance record for each school may be found on the Commission's Web site.

The overall examination performance for all first-time candidates on the real estate examination for the period July 1, 2009 through June 30, 2010 was 74%. The Commission would like to congratulate each of the following schools and instructors (with six or more students tested) for achieving an outstanding examination performance record of 80% or higher for the year ending June 30, 2010. The Commission recognizes that to have students perform at such a level on the license examination requires a combination of high quality instruction and high course completion standards.

■ Schools

■ Allen Tate School of Real Estate, *Charlotte/Raleigh*; ■ Asheville-Buncombe Community College, *Asheville*; ■ Brunswick Community College, *Supply/Leland*; ■ Cape Fear Community College, *Castle Hayne*; ■ Central Piedmont Community College, *Charlotte/Matthews/Huntersville*; ■ Cumbie and Trull School of Real Estate, *Asheville*; ■ Cumbie Institute of Real Estate, *Asheville*; ■ Durham Tech Community College, *Durham/Hillsborough*; ■ Free School of Real Estate, *Cornelius*; ■ Guilford Tech Community College, *Jamestown/High Point/Greensboro*; ■ Mingle School of Real Estate, *Charlotte/Cornelius*; ■ Sea Coast Real Estate Academy, *Wilmington*; ■ Superior School of Real Estate, *Charlotte/Concord/Cornelius/Huntersville*; ■ The Outer Banks School of Real Estate, *Harbinger*

■ Instructors

■ Oscar Agurs, *Charlotte*; ■ William D. Beck, Sr., *Bolivia*; ■ Pascall S. Camak, *Pine Knoll Shores*; ■ Deborah B. Carpenter, *Raleigh*; ■ Ray Cline, *Charlotte*; ■ Charles L. Dotson, *Matthews*; ■ Kandyce K. Ellis, *Chapel Hill*; ■ Joseph Roy Faron, *Merritt*; ■ Victoria B. Ferneyhough, *Raleigh*; ■ Frank E. Free, Sr., *Stanley*; ■ Ernest Gerald Fulghum, *Raleigh*; ■ William H. Gallagher II, *Charlotte*; ■ Janice C. Gullick, *Clayton*; ■ Violet Locke Harrington, *Durham*; ■ Carolyn C. Lambert, *Charlotte*; ■ Nancy Legg, *York, SC*; ■ Edward George Liptak, *Maggie Valley*; ■ Sandra Martin, *Salisbury*; ■ James Richard Mort, *Gastonia*; ■ Gloria Muir, *Greensboro*; ■ Glenda Bowen Newell, *Wilmington*; ■ Laurel A. Pettys, *Wilmington*; ■ Rashad I. Phillips, *Charlotte*; ■ Robert H. Potts, *Asheville*; ■ Dana S. Rhodes, *Charlotte*; ■ Tim R. Terry, *Charlotte*; ■ William J. Trull, Jr., *Asheville*; ■ Elizabeth Whitcraft, *Kill Devil Hills*; ■ Terry Mitchell Wilson, *Huntersville*; ■ Ben C. Wirtz, *Iron Station* □

ARELLO® Honors Phillip T. Fisher

Former Commission Executive Director Phillip T. Fisher has been honored by the Association of Real Estate License Law Officials (ARELLO®) with the Member Emeritus designation. He becomes one of an elite group of ARELLO®

Members Emeriti who have been recognized for their extraordinary time, commitment and service.

Fisher was President of ARELLO® in 1992. He retired April 1, 2010, after 34 years with the Commission.

Free Publications

Quantity

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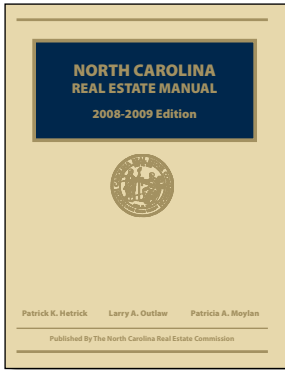
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2008-2009 Edition

NORTH CAROLINA REAL ESTATE MANUAL

The *North Carolina Real Estate Manual*, published by the Real Estate Commission, is a comprehensive reference addressing real estate law and brokerage practice, the North Carolina Real Estate License Law and Commission rules. It serves as the authorized textbook for the real estate broker postlicensing courses and is highly recommended for licensees, attorneys, instructors and anyone else engaged or interested in real estate law and brokerage practice.



HOW TO ORDER: ONLINE

Go to the Commission's Web site, www.ncrec.gov, select "Publications/Bulletin" and click on NC Real Estate Manual to link directly with the book distributor. Follow the instructions for ordering using your MasterCard or Visa credit card.

BY MAIL OR FAX

Mail or fax an order form with payment. For credit card payments, only MasterCard and Visa are accepted. For checks, please send only cashier's or certified check or money order, payable to: North Carolina Real Estate Manual. (The Manual sales price is \$34.95 plus sales tax and shipping.)

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2011-12 North Carolina Real Estate Manual Publication Date: December, 2010

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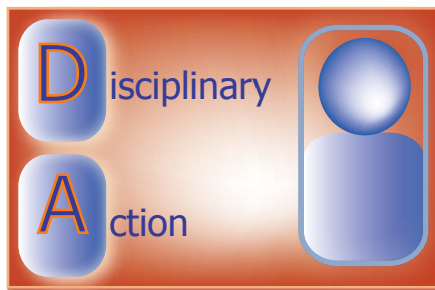
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Penalties for violations of the Real Estate Law and Commission rules vary depending upon the particular facts and circumstances present in each case. Due to space limitations in the Bulletin, a complete description of such facts cannot be reported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

ERIC C. ANDREWS (Pittsboro) – By Consent, the Commission suspended the broker license of Mr. Andrews for a period of one year effective June 1, 2010. The Commission then stayed the suspension for a probationary period to run contemporaneously with the probation imposed by the Superior Court in connection with Mr. Andrews' recent conviction of a criminal offense. The Commission found that Mr. Andrews pleaded guilty to and was convicted of the criminal offenses of assault by pointing a gun and assault on a female, was sentenced to 120 days of incarceration, suspended for a probationary period of three years.

ASHLEY REALTY, LLC (Stanfield) – By Consent, the Commission revoked the firm license of Ashley Realty effective June 1, 2010. The Commission found that Ashley Realty failed to provide monthly statements or 1099s to owners of properties it managed and failed to place monies held in trust for its clients into a trust account.

JACQUELIN B. BAREFOOT (Clayton) – By Consent, the Commission suspended the broker license of Ms. Barefoot for a period of three years effective September 1, 2009. The Commission found that Ms. Barefoot listed and sold a new construction home for a builder with full knowledge that the builder had agreed to accept less than the full price stated on the contract and closing statement and that the difference was being paid to an unlicensed third party who produced the investor/buyer. The Commission also found that Ms. Barefoot failed to prepare an accurate contract and failed to disclose this information on the HUD-1 closing statement or to the lender in the transaction.

CHRIS T. BELIN (Charlotte) – By consent, the Commission revoked the broker license of Mr. Belin effective June 10, 2010. The Commission found that Mr. Belin registered for a continuing education course and sent his unlicensed assistant to



appear at the course on his behalf with his pocket card; the assistant's attempt to take the course failed when the instructor discovered the assistant's true identity and the assistant was asked to leave the course. The Commission also found that Mr. Belin participated in a series of transactions in which the prices of properties were inflated and the difference was disbursed among participants in a manner so as to make it appear that the funds were used to pay expenses that did not in fact exist, and in which the closing statement did not reflect the true nature of the transactions.

LYNDA KAY FITZ JERRELL BOOKER (Kill Devil Hills) – The Commission accepted the voluntary surrender of the broker license of Ms. Booker for a period of one year effective September 8, 2010. The Commission dismissed without prejudice allegations that Ms. Booker vio-

lated provisions of the Real Estate License Law and Commission rules. Ms. Booker neither admitted nor denied misconduct.

BELINDA D. BRADLEY (Charlotte) – By Consent, the Commission suspended the broker license of Ms. Bradley for a period of one year effective October 1, 2009. The Commission found that Ms. Bradley in 2006 removed the provisional status of her broker license by certifying that she had at least four years of full-time, active real estate brokerage experience during the previous six years, which was incorrect as she had been on inactive status for 11 years prior to her certification. The Commission also found that Ms. Bradley activated her broker license in 2008 and certified that she had 10 years' real estate brokerage experience to obtain a broker-in-charge designation, when, in fact, she only had five months' experience during the previous 10-year period.

GLATHA E. BUCHANAN (Dillsboro) – By Consent, the Commission suspended the broker license of Ms. Buchanan for a period of two years effective July 1, 2010. Three months of the suspension were active with the remainder stayed for a probationary period of 21 months. The Commission found that Ms. Buchanan acting as broker-in-charge and qualifying broker for a real estate brokerage firm, failed, between 2006 and 2009, to account for or remit monies coming into its possession that belonged to others, commingled money of its principals with money held in trust for others, and failed to perform reconciliations, create trial balances or maintain its trust accounts in compliance with the Real Estate License Law and Commission rules. The Commission also found that the liabilities of the accounts
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DISCIPLINARY ACTION

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regularly exceeded the balance on hand, resulting in a shortage in the accounts.

AMANDA LEE CARPENTER (Wilmington) – The Commission accepted the voluntary surrender of the broker license of Ms. Carpenter for a period of three years effective August 1, 2010. The Commission dismissed without prejudice allegations that Ms. Carpenter violated provisions of the Real Estate License Law and Commission rules. Ms. Carpenter neither admitted nor denied misconduct.

ROSINA CICCONE (Mooresville) – By Consent, the Commission reprimanded Ms. Ciccone effective May 1, 2010. The Commission found that in 2009 Ms. Ciccone used two listed homes for improper purposes.

CHRISTINE N. CLARK (Mooresville) – By Consent, the Commission reprimanded Ms. Clark effective July 1, 2010. The Commission found that Ms. Clark did not discover and disclose a road widening project involving property she listed for sale; the seller knew about the project but failed to inform Ms. Clark or other participants in the transaction. The Commission also found that Ms. Clark's broker-in-charge discovered the project prior to closing, but due to a miscommunication within the firm, that information was not disclosed to the buyers' agent or buyers prior to closing. The Commission also found that a survey ordered by the buyers disclosed the project, although not its full potential extent.

COASTAL CONNECTIONS REALTY, INC. (Jacksonville) – By Consent, the Commission revoked the firm license of Coastal Connections Realty effective August 1, 2010. The Commission found that the owner and broker-in-charge of Coastal Connections Realty accepted earnest money deposits from clients and customers and instead of depositing them in a trust or escrow account, deposited them into a personal checking account and the firm's business operating account. The

Commission also found that the firm's owner did not safeguard the funds entrusted to it and used the money for personal purposes instead. The Commission further found that at the closings of the transactions in question, the firm's owner brought cashier's checks drawn on a personal account to the closing attorney or took a credit on the closing statement for the amount of deposit already converted

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.

by the owner to personal use. Finally, the Commission found that the firm's records for the funds of others in its care and custody were insufficient to create a clear audit trail.

SHIRLEY D. COLEMAN (Dillsboro) – The Commission accepted the permanent voluntary surrender of the broker license of Ms. Coleman effective June 10, 2010. The Commission dismissed without prejudice allegations that Ms. Coleman violated provisions of the Real Estate License Law and Commission rules. Ms. Coleman neither admitted nor denied misconduct.

STEVEN R. CRABTREE (Durham) – By Consent, the Commission revoked the broker license of Mr. Crabtree effective May 15, 2010. The Commission found that Mr. Crabtree, acting as broker-in-

charge of a sole proprietorship, purchased several coastal properties as investments between 2004 and 2007 and overstated his income on a loan application. The Commission noted that Mr. Crabtree, whose properties were foreclosed on by the lenders and who who declared bankruptcy, cooperated with the Commission's investigation.

DONALD A. DOLL, JR. (Sugar Grove) – The Commission reprimanded Mr. Doll effective June 8, 2010. The Commission found that Mr. Doll constructed an addition to his personal residence in 2002 and subsequently sold the residence in 2007 without disclosing to the buyers that the construction had never passed final inspection and that he had never obtained a certificate of occupancy.

DALLAS J. DUKE, JR. (Wake Forest) – By Consent, the Commission revoked the broker license of Mr. Duke effective May 13, 2010. The Commission found that Mr. Duke, as broker-in-charge of a real estate brokerage firm, was entrusted with \$100,000 from a buyer-client as earnest money for the purchase of a property and failed to maintain the money in a trust account, failed to safeguard the money or to promptly account for and remit the money to his buyer-client, and converted the money to his own use.

ELK REALTY, LLC - (Hampstead) - The Commission accepted the voluntary surrender of the firm license of Elk Realty for a period of five years effective May 27, 2010. The Commission dismissed without prejudice allegations that Elk Realty had violated provisions of the Real Estate License Law and Commission rules. Elk Realty neither admitted nor denied misconduct.

KRISTIN P. FAIRCLOTH (Castle Hayne) – By Consent, the Commission suspended the broker license of Ms. Faircloth for a period of one year effective August 20, 2010. The Commission then stayed the suspension for a probationary period of one year. The Commission found that Ms. Faircloth received a security de-
(See **Disciplinary Action**, page 11)

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posit for a property she owned and failed to deposit the money in a trust account as required by statute. The Commission also found that Ms. Faircloth refunded the security deposit by money order after the tenant filed a complaint with the Commission. Finally, the Commission found that Ms. Faircloth failed to disclose several misdemeanor convictions for worthless checks in 2006, 2007, and 2009.

FIRST CHOICE OF JACKSON, LLC (Dillsboro) – By Consent, the Commission revoked the firm license of First Choice of Jackson effective July 1, 2010. The Commission found that First Choice, between 2006 and 2009, failed to account for or remit monies coming into its possession that belonged to others, commingled money of its principals with money held in trust for others, and failed to perform reconciliations, create trial balances or maintain its trust accounts in compliance with the Real Estate License Law and Commission rules. The Commission also found that the liabilities of the accounts regularly exceeded the balance on hand, resulting in a shortage in the accounts.

FIVE STAR REALTY, INC. (Fayetteville) – By Consent, the Commission suspended the firm license of Five Star Realty for a period of two years effective June 15, 2010. The Commission then stayed the suspension for a probationary period of two years through June 14, 2012 on certain conditions. The Commission found that Five Star Realty failed to maintain its trust account books and records in compliance with the Real Estate License Law and Commission rules. The Commission noted that Five Star Realty has since purchased and installed a computer program to keep its trust account records and employed a CPA to assist it and that its records are now in compliance.

CHRISTOPHER J. FRANTZ (Kernersville) – By Consent, the Commission suspended the broker license of Mr. Frantz for a period of two years effective June 15, 2010. The Commission then stayed the

suspension for a probationary period of two years. The Commission found that in 2009 Mr. Frantz pled guilty in the United States District Court, Middle District of North Carolina, case 1:08CR278-1, to 1 count of violating Title 31, USC, Sections 5324(a) and (d)(1). Respondent was placed on probation and ordered to pay a fine and perform community service. The conduct resulting in the conviction oc-

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.

curred in 2004 prior to Respondent being licensed by the Commission. Respondent reported the conviction to the Commission in a timely manner.

BRIAN KEITH GEORGE (Greensboro) – By Consent, the Commission suspended the broker license of Mr. George for a period of one year effective March 1, 2010. The Commission found that Mr. George operated a real estate firm without obtaining a license for it and permitted an agent associated with another firm to submit an offer to purchase contract naming Mr. George and his firm as the buyers' agents. The Commission also found that Mr. George failed to respond to Letters of Inquiry directed to him at his address of record.

DAVID B. GLADNEY (Fayetteville) – By Consent, the Commission suspended the broker license of Mr. Gladney for a period of two years effective June 15, 2010. The Commission then stayed the suspension for a probationary period of two years through June 14, 2012 on certain conditions. The Commission found that Mr.

Gladney, acting as broker-in-charge of a real estate brokerage firm, failed to maintain his trust account books and records in compliance with the Real Estate License Law and Commission rules. The Commission noted that Mr. Gladney has since purchased and installed a computer program to keep his trust account records and employed a CPA to assist him and that his records are now in compliance.

RONALD L. GOLDBERG (Whispering Pines) – By Consent, the Commission reprimanded Mr. Goldberg effective September 1, 2020. The Commission found that Mr. Goldberg, acting as a buyer agent, failed to disclose to the buyers in the transaction that the home being purchased was located in the RPZ zone of the Moore County Airport.

RENÉ HIRAN GONZALEZ (Charlotte) – By Consent, the Commission suspended the broker license of Mr. Gonzalez for a period of one year effective February 1, 2010. Five months of the suspension were active with the remainder stayed for a probationary period of one year. The Commission found that Mr. Gonzalez, as a provisional broker, fabricated a letter from a lender for a buyer client indicating that his client had been prequalified for a mortgage loan when, in fact, his client had not been prequalified for a loan and Mr. Gonzalez was not authorized to create the letter. The Commission also found that in another transaction, Mr. Gonzales fabricated another lender's prequalification letter although he did not have the lender's authority to create the letter.

BRAD L. GREENBERG – The Commission accepted the voluntary surrender of the broker license of Mr. Greenberg for a period of five years effective May 1, 2010. The Commission dismissed without prejudice allegations that Mr. Greenberg had violated provisions of the Real Estate License Law and Commission rules. Mr. Greenberg neither admitted nor denied misconduct.

GWENDOLYN VANDUZER GRISOM (Garner) – By Consent, the Commission (See **Disciplinary Action**, page 12)

DISCIPLINARY ACTION

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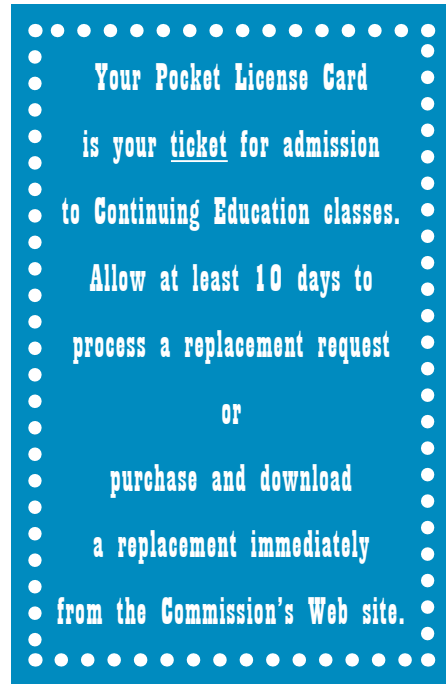
mission reprimanded Ms. Grissom effective June 15, 2010. The Commission found that Ms. Grissom listed and advertised a property she owned as being suitable for a church and, acting as a dual agent, assured the buyer that the property could be used as a church, when, after closing, the buyers learned that zoning regulations would not permit a church on the subject property. Ms. Grissom has since resolved the matter with the buyer.

LESLIE DANIELLE HARRISON (Charlotte) – By Consent, the Commission suspended the broker license of Ms. Harrison for a period of five years effective August 31, 2010. Two years of the suspension are active with the remainder stayed for a probationary period extending through August 31, 2015. The Commission found that Ms. Harrison, also appointed by the North Carolina Secretary of State's office as a notary public, notarized the signature of a seller on a deed, certifying that the seller personally appeared before Ms. Harrison and acknowledged the execution of the deed, when in fact the seller did not and Ms. Harrison's notarization was false. The Commission also found that Ms. Harrison presented the deed with the false notarization to the county register of deeds for filing in order to transfer title to the property.

SARAH WRIGHT HICKS (Wrightsville Beach) – By Consent, the Commission reprimanded Ms. Hicks effective July 1, 2010. The Commission found that Ms. Hicks timely reported her December 16, 2009 conviction for *Felony Possession with Intent to Sell/Deliver Schedule II Controlled Substances*, for which she received a 6-to-8-month suspended sentence, was placed on 30 months supervised probation, and was ordered to pay court costs and a fine of \$300. The Commission noted that Ms. Hicks' only other conviction was in 2005 for *Improper Equipment*.

HIGH SOUTH REALTY LLC (Jefferson) – By Consent, the Commission revoked the firm license of High South Real-

ty effective September 8, 2010. The Commission found that High South Realty, engaged in the business of rental property management, failed prior to September 2008 to comply with the Real Estate License Law and Commission rules governing trust accounts by failing to maintain long and short-term rental accounts as designated trust accounts, failing to maintain a journal, failing to maintain ledger



sheets, and failing to prepare and maintain trial balances. The Commission also found that High South Realty subsequent to September 2008 opened designated trust accounts for long and short-term rentals, but continued in its failure to maintain hard copies of ledger sheet trial balances, ledger sheet to bank reconciliations, and monthly balance sheets. The Commission finally found that as of August 31, 2009, the long-term rental trust account showed an overage of \$2,266.18 and the short-term rental account showed an overage of \$1,183.68.

STEVEN D. HUFF (Indian Trail) – By Consent, the Commission reprimanded Mr. Huff effective June 1, 2010. The Commission found that Mr. Huff in 2002, prior to licensing as a broker in 2005 and as one of the members of Charlotte Home Solutions LLC, marketed a lease/purchase plan in which sellers would

deed their homes into a land trust. Potential purchasers paid Mr. Huff's firm a substantial non-refundable Option to Purchase fee that they would lose if they could not qualify for financing and purchase the home. None of the monies on the option contract was treated as a rental deposit under the provisions of the Tenant Security Deposit Act. The firm, Charlotte Home Solutions, failed to keep up with the mortgage payments, taxes and HOA dues for a number of properties and, after Mr. Huff left the firm, delinquent payments resulted, in some instances, in foreclosures, injuring the credit of the sellers. Tenant/purchasers were also injured by forfeited option fees, lost options and forced evictions due to foreclosures.

LINDA G. HUGHES (Maiden) – The Commission accepted the voluntary surrender of the broker license of Ms. Hughes for a period of five years effective August 17, 2010. The Commission dismissed without prejudice allegations that Ms. Hughes violated provisions of the Real Estate Law and Commission rules. Ms. Hughes neither admitted nor denied misconduct.

PANSY FOY JONES (Jacksonville) – By Consent, the Commission revoked the broker license of Ms. Jones effective August 1, 2010. The Commission found that Ms. Jones, as a broker-in-charge of her own real estate brokerage firm, accepted earnest money deposits from clients and customers and, instead of depositing them in a trust or escrow account, deposited them into a personal checking account and the firm's business operating account. The Commission also found that Ms. Jones did not safeguard the funds entrusted to her and used them for personal purposes instead. The Commission further found that at the closings of the transactions in question, Ms. Jones brought cashier's checks drawn on a personal account to the closing attorney or took a credit on the closing statement for the amount of deposit already converted by Ms. Jones to her personal use. The Commission finally found that Ms. Jones' records for the funds

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of others in her care and custody were insufficient to create a clear audit trail.

CAROLYN HAWKE KERBY (Hamstead) - The Commission accepted the voluntary surrender of the broker license of Ms. Kerby for a period of five years effective May 14, 2010. The Commission dismissed without prejudice allegations that Ms. Kerby had violated provisions of the Real Estate License Law and Commission rules. Ms. Kerby neither admitted nor denied misconduct.

CYNTHIA L. KUSCHE (Oak Ridge) - By Consent, the Commission suspended the broker license of Ms. Kusche for a period of one year effective July 1, 2010. The Commission then stayed the suspension for a probationary period of one year. The Commission found that Ms. Kusche, as qualifying broker and broker-in-charge of a real estate brokerage firm serving as dual agent for a lease/purchase transaction, used a standard form Offer to Purchase and Contract and directed a broker associate to use the standard Buyer Possession Before Closing Agreement which specifically states "Do not use for occupancy for more than 7 days" for the proposed 18-month tenancy. The Commission also found that Ms. Kusche's broker inserted ambiguous terms into the Buyer Possession Agreement and the buyer/tenants only paid a portion of the earnest money, never paid any rent, and were subsequently evicted.

ASHLEY N. LAMBERT (Greensboro) - By Consent, the Commission suspended the broker license of Ms. Lambert for a period of one year effective March 1, 2010. Four months of the suspension were active with the remainder stayed for a probationary period extending to the end of the term. The Commission found that Ms. Lambert, a provisional broker associated with a real estate brokerage firm, presented an offer to purchase property listed by another firm on behalf of buyers who were not clients or customers of Ms. Lambert's firm and whose buyers' agents were identified in the offer as another agent and

firm. The Commission also found that Ms. Lambert was not employed or supervised by the other agent or firm, did not inform her broker-in-charge about the transaction, and did not deliver the earnest money check to her broker-in-charge. The Commission further found that the other agent operated the other real estate firm without obtaining a license for it and that the other agent.

SHANNON WOODS LEE (Charlotte) - The Commission accepted the permanent voluntary surrender of the broker license of Ms. Lee effective June 10, 2010. The Commission dismissed without prejudice allegations that Ms. Lee violated provisions of the Real Estate License Law and Commission rules. Ms. Lee neither admitted nor denied misconduct.

MICHELLE VIVECA MALLARD (Charlotte) - The Commission accepted the permanent voluntary surrender of the broker license of Ms. Mallard effective September 8, 2010. The Commission dismissed without prejudice allegations that Ms. Mallard violated provisions of the Real Estate License Law and Commission rules. Ms. Mallard neither admitted nor denied misconduct.

RICHARD D. MARSHALL (Oak Island) - By Consent, the Commission suspended the broker license of Mr. Marshall for a period of two years effective June 10, 2010. The Commission then stayed the suspension for a probationary period of two years. The Commission found that Mr. Marshall, acting as broker-in-charge from January 23, 1999 until October 30 2002 of a firm engaged in the rental property management business, failed to oversee the firm's trust account and to reconcile the trust account records, resulting in the commingling of undisbursed management fees in the trust account. The Commission also found that Mr. Marshall's trust account records were not maintained in such a way as to create a clear audit trail.

BRENDA L. MILLIGAN (Taylorsville) - The Commission accepted the voluntary surrender of the broker license of Ms. Milligan for a period of two years ef-

fective September 1, 2010. The Commission dismissed without prejudice allegations that Ms. Milligan violated provisions of the Real Estate Law and Commission rules. Ms. Milligan neither admitted nor denied misconduct.

MILLIGAN REAL ESTATE, INC. (Taylorsville) - The Commission accepted the voluntary surrender of the firm license of Milligan Real Estate for a period of two years effective September 1, 2010. The Commission dismissed without prejudice allegations that Milligan Real Estate violated provisions of the Real Estate Law and Commission rules. Milligan Real Estate neither admitted nor denied misconduct.

NC LANDS LLC (Wake Forest) - By Consent, the Commission revoked the firm license of NC Lands effective May 13, 2010. The Commission found that NC Lands, a real estate brokerage firm, was entrusted with \$100,000 from a buyer-client as earnest money for the purchase of a property and failed to maintain the money in a trust account, failed to safeguard the money or to promptly account for and remit the money to its buyer-client, and converted the money to its own use.

LINDA B. NESTOR (Raleigh) - By Consent, the Commission reprimanded Ms. Nestor effective October 1, 2010. The Commission found that Ms. Nestor listed and sold a property using a contract that required a \$2500 repair allowance to be paid to the buyers. The repair allowance was not disclosed on the HUD-1 closing statement and was paid outside closing. There was a misunderstanding as to whether the allowance was supposed to cover the repairs performed or repairs to be made by the buyers after closing. Respondent and the sellers have resolved their issues.

TRACY DISHMAN PEARSON (Deep Gap) - By Consent, the Commission revoked the broker license of Ms. Pearson effective June 10, 2010. The Commission found that Ms. Pearson, acting as a bookkeeper for a real estate brokerage firm and with access to the firm's bank account (See **Disciplinary Action**, page 14)

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counts including the trust accounts created to hold client monies, removed without authority monies belonging to the firm, its principals, and its clients and converted them to her own use, taking more than \$20,000 from the firm's trust accounts.

NANCY V. PETERSON (Mill Springs) – The Commission accepted the voluntary surrender of the broker license of Ms. Peterson for a period of five years effective July 19, 2010. The Commission dismissed without prejudice allegations that Ms. Peterson violated the Real Estate License Law and Commission rules. Ms. Peter neither admitted nor denied misconduct.

JOANNA L. PHILLIPS (Charlotte) – The Commission accepted the surrender of the broker license of Ms. Phillips for a period of two years effective September 8, 2010. The Commission dismissed without prejudice allegations that Ms. Phillips violated provisions of the Real Estate License Law and Commission rules. Ms. Phillips neither admitted nor denied misconduct.

DEWEY E. RACKLEY (Wilmington) – By Consent, the Commission revoked the broker license of Mr. Rackley effective July 19, 2010. The Commission found that Mr. Rackley, acting as broker-in-charge of a real estate brokerage firm engaged in the property management business and responsible for proper oversight of the firm's trust accounts and trust account records, failed to deposit and maintain money belonging to others in a trust account. The Commission also found that Mr. Rackley converted trust money to his own use and failed to respond to Letters of Inquiry from the Commission.

SETH LEWIS ROBBINS (Oak Island) – By Consent, the Commission reprimanded Mr. Robbins effective June 10, 2010. The Commission found that Mr. Robbins, acting as broker-in-charge from August 11, 2005 to November 30, 2006 of a firm engaged in the rental property management business, failed to oversee

the firm's trust account and to reconcile the trust account records. The Commission also found that Mr. Robbins' trust account records were not maintained in such a way as to create a clear audit trail.

STEPHANIE GAYNOR ROLLINS (Coats) – By Consent, the Commission revoked the broker license of Ms. Rollins effective May 31, 2010. The Commission found that Ms. Rollins, acting as qualifying broker and broker-in-charge of a real estate brokerage firm, sold three duplexes she owned for a total of \$275,000 by entering into false contracts with the buyer indicating the price for the properties was \$117,000 per duplex. The Commission also found that Ms. Rollins signed false HUD-1 statements at closing in that each statement indicated a purchase price of \$117,000 per unit when in fact the total price of all three units was \$275,000. The Commission further found that Ms. Rollins paid the buyer the difference in the inflated price and the true price outside of closing and paid some of the buyer's closing costs without disclosing this on the HUD-1 statement. Ms. Rollins neither admits nor denies but agrees to the entry of certain facts and legal conclusions.

JACK N. ROYAL (Oak Island) – By Consent, the Commission suspended the broker license of Mr. Royal for a period of one year effective June 10, 2010. The Commission then stayed the suspension for a probationary period of one year. The Commission found that Mr. Royal, acting as broker-in-charge from October 30, 2002 until August 11, 2005 of a firm engaged in the rental property management business, failed to oversee the firm's trust account and to reconcile the trust account records, resulting in an overage of \$68,000 and the commingling of undisbursed management fees in the trust account. The Commission also found that Mr. Royal's trust account records were not maintained in such a way as to create a clear audit trail.

MARK R. SILVERTHORNE (Wilson) – By Consent, the Commission suspended the broker license of Mr. Silverthorne for a period of one year effective July 1, 2010. The Commission then stayed

the suspension on certain conditions for a probationary period of two years. The Commission found that Mr. Silverthorne, acting as the owner and broker-in-charge of a real estate brokerage firm, failed to properly account for the funds of others, and failed to properly maintain trust account records in such a manner as to identify the ownership of all funds belonging to others and to create a clear audit trail. Mr. Silverthorne has since brought his trust account records into compliance. No consumers were harmed as a result.

SILVERTHORNE PROPERTIES, INC. (Wilson) – By Consent, the Commission suspended the firm license of Silverthorne Properties for a period of one year effective July 1, 2010. The Commission then stayed the suspension on certain conditions for a probationary period of two years. The Commission found that Silverthorne Properties failed to properly account for the funds of others, and failed to properly maintain trust account records in such a manner as to identify the ownership of all funds belonging to others and to create a clear audit trail. Silverthorne Properties has since brought its trust account records into compliance. No consumers were harmed as a result.

TORANIQUE C. SIMON (Raleigh) – By Consent, the Commission suspended the broker license of Ms. Simon for a period of two years effective September 1, 2009. The Commission found that Ms. Simon continued to conduct brokerage services as broker-in-charge of her sole proprietorship despite signing an Independent Contractor Agreement with another licensed firm which specified that Ms. Simon was not authorized to conduct any brokerage services through her sole proprietorship while affiliated with the licensed firm. The Commission also found that in June 2007, Ms. Simon, through her sole proprietorship, received a \$500 earnest money deposit, but failed to deposit it into her trust account. The Commission further found that in July 2007 Ms. Simon was removed as broker-in-charge of her sole proprietorship for failure to take the required annual review course and that, after the June 2007
(See **Disciplinary Action**, page 15)

DISCIPLINARY ACTION

(Continued from page 14)

transaction was terminated, Ms. Simon kept the earnest money deposit as her fee without any authorization from the parties. The Commission finally found that, after Ms. Simon was no longer broker-in-charge, she presented another unaccepted offer to purchase to the seller again listing her sole proprietorship as buyer's agent.

JASON R. SMITH (Stanfield) – By Consent, the Commission revoked the broker license of Mr. Smith effective June 1, 2010. The Commission found that Mr. Smith, as broker-in-charge of a real estate brokerage firm, failed to provide monthly statements or 1099s to owners of properties he managed and failed to place monies he held in trust for his clients into a trust account.

THOMAS J. STATON (Charlotte) – By Consent, the Commission suspended the broker license of Mr. Staton for a period of one year effective April 1, 2010. Three months of the suspension were active with the remainder stayed for a probationary period through April 1, 2012. The Commission found that Mr. Staton managed a property for an owner and failed to collect the full amount of the tenant security deposit from the tenant he placed in the property, failed to account to the tenant for her security deposit, and failed to account to the property owner for receipts and disbursements related to the property. The Commission also found that Mr. Staton failed to maintain or retain a journal, ledger sheets, deposit tickets, or a bank reconciliation, and engaged in deficit spending. The Commission noted that the property owner did receive all monies owed to him by Mr. Staton.

KIMBERLY MARIE SWIATEK (Oak Ridge) – By Consent, the Commission suspended the broker license of Ms. Swiatek for a period of six months effective July 1, 2010. The Commission then stayed the suspension for a probationary period of six months. The Commission found that Ms. Swiatek, as dual agent for a lease/purchase transaction, used a stan-

dard form Offer to Purchase and Contract and the standard Buyer Possession Before Closing Agreement which specifically states "Do not use for occupancy for more than 7 days" for the proposed 18-month tenancy. The Commission also found that Ms. Swiatek included ambiguous language in the agreements as to the buyer/tenants' obligation to pay rent during the first four months of occupancy. The Commission finally found that the buyer/tenants only paid a portion of the earnest money, never paid any rent, and were subsequently evicted.

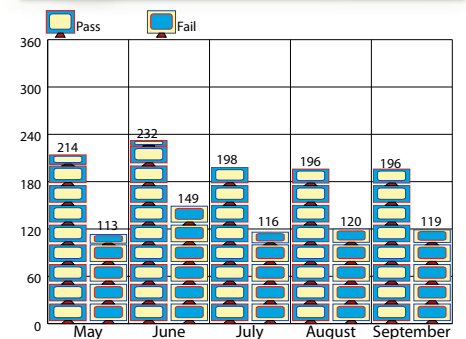
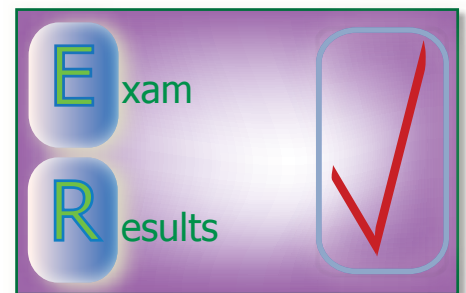
CRYSTAL MICHELLE TAYLOR (Maple Hill) - The Commission accepted the permanent voluntary surrender of the broker license of Ms. Taylor effective August 16, 2010. The Commission dismissed without prejudice allegations that Ms. Taylor violated provisions of the Real Estate Law and Commission rules. Ms. Taylor neither admitted nor denied misconduct.

TEAM KUSCHE, INC. T/A RE/MAX PROFESSIONALS (Oak Ridge) - By Consent, the Commission reprimanded Team Kusche effective July 1, 2010. The Commission found that Team Kusche, through its qualifying broker and broker-in-charge, served as dual agent for a lease/purchase transaction, used a standard form Offer to Purchase and Contract and directed a broker associate to use the standard Buyer Possession Before Closing Agreement which specifically states "Do not use for occupancy for more than 7 days" for the proposed 18-month tenancy. The Commission also found that Team Kusche's broker inserted ambiguous terms into the Buyer Possession Agreement and the buyer/tenants only paid a portion of the earnest money, never paid any rent, and were subsequently evicted.

DONALD E. VANDERBURG (Monroe) – By Consent, the Commission revoked the broker license of Mr. Vanderburg effective June 10, 2010. The Commission found that Mr. Vanderburg, who was associated with Re/Max Elite Associates, was informed by his broker-in-charge on July 29, 2008 that the firm's Re/Max

franchise agreement had been terminated and that the firm would continue to operate under the name Elite Associates until all pending transactions closed. On July 31, 2008, Mr. Vanderburg recorded a sole proprietorship under the name Re/Max Elite Properties, even though he did not have a Re/Max franchise, and opened a bank account with the same name. The Commission also found that Mr. Vanderburg during August 2008 deposited into the Re/Max Elite Properties account two commissions made payable to Re/Max Elite and intended for (Re/Max) Elite Associates, Inc., and then wrote checks to himself in roughly the amount of the commissions. The Commission further found that Mr. Vanderburg told the receptionist at Elite Associates, Inc., that the first transaction had fallen through and asked her to remove the listing for the second two days before closing, when the statement was false. Finally, the Commission found that Mr. Vanderburg's affiliation with Re/Max Elite Associates was terminated effective August 21, 2008 and that during September 2008, Mr. Vanderburg deposited a referral fee made payable to Re/Max Elite Associates into the Re/Max Elite Properties account and wrote himself a check in the same amount.

(See **Disciplinary Action**, page 16)



Safety Tip

*Use special office forms.
Office Form #2*

Agent Personal Information Form

If there was an accident or an agent did not check in when they were scheduled to, you or the police would need this information quickly. We recommend placing the Agent Personal Information Forms collectively in a separate folder that anyone can access. The information should be updated at least once a year. You may want to schedule an annual review of the information during Real Estate Safety Week.

Reprinted from the North Carolina Real Estate Agent Safety Guide.

North Carolina Real
Estate Commission
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DISCIPLINARY ACTION

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GEORGE K. WARE (Winston-Salem) – By Consent, the Commission suspended the broker license of Mr. Ware for a period of one year effective July 1, 2010. The Commission then stayed the suspension for a probationary term of one year. The Commission found that Mr. Ware acted as a buyer agent for buyers of a property without entering into a written buyer agency agreement. The Commission also found that three months later, Mr. Ware represented subsequent purchasers of the same property as a buyer agent without a written buyer agency agreement. The Commission finally found that Mr. Ware has provided brokerage services without a written buyer agency agreement on at least two additional occasions and had previously been warned by the Commission not to provide brokerage services without a written buyer agency agreement.

FREDERICK JOSEPH WENZ III (Wilmington) – By Consent, the Commission suspended the broker license of Mr. Wenz for a period of 18 months effective July 1, 2010. One month of the suspension was active with the remainder stayed for a probationary period of 17 months. The Commission found that

Mr. Wenz served as a listing agent for a property with a list price of \$990,000, presented his seller-client with an offer for \$1.1 million from an individual purporting to have Power of Attorney from Mr. Wenz' buyer-client, and drafted several documents as part of the contract including a disclaimer and articles of agreement between the buyer and the seller.

ELIZABETH J. (TALMADGE) WIEDERHOLD (Asheville) – By consent, the Commission reprimanded Ms. Wiederhold effective October 1, 2010. The Commission found that Ms. Wiederhold served as listing agent for a renovated property for an investor-seller client and failed to measure the square footage of the property and instead relied on the incorrect square footage listing from the investor's original purchase of the property.

KAREN F. WILLIAMS (Tryon) – By Consent, the Commission reprimanded

Ms. Williams effective June 10, 2010. The Commission found that Ms. Williams, in October 2009, was convicted of *Misdemeanor Simple Possession of a Schedule VI Controlled Substance* and *Misdemeanor Possession of Drug Paraphernalia* in Polk County, given a suspended sentence and 12 months unsupervised probation, and ordered to pay court costs and a fine.

PATRICIA A. WILSON (Spruce Pine) – By Consent, the Commission suspended the broker license of Ms. Wilson for a period of three years effective June 1, 2010. Three months of the suspension were active with the remainder stayed for a probationary period thru May 31, 2013. The Commission found that Ms. Wilson, acting as broker-in-charge of a real estate brokerage firm and as a licensed appraiser, appraised undeveloped lots in a proposed subdivision and determined the market value based upon the lots having ingress and egress, being capable of supporting a dwelling, and having provision for a water supply and waste removal, when none of these conditions had been met. The Commission further found that Ms. Wilson surrendered her right to renew her appraiser license.

