



Amendments Proposed To Commission Rules

Following is a summary of the proposed rule amendments the Commission approved for publication in the North Carolina Register at its December 2017 meeting. The text for the proposed rule amendments under consideration may be found on the Commission's website under 'License Law and Rule Changes.' Members of the public may submit oral or written comments on any proposed rule(s) by contacting Melissa Vuotto, Rulemaking Coordinator. If approved, the proposed rules will have an effective date of July 1, 2018.

SECTION A .0100 GENERAL BROKERAGE

21 NCAC 58A .0105 Advertising - To amend the rule in paragraph (a)(1) to clarify that a broker must include the name of the broker and the firm or sole proprietorship with which the broker is affiliated.

21 NCAC 58A .0106 Delivery of Instruments - To amend the rule in paragraph (a) to require every broker to deliver a copy of any written instrument to their customer or client within 3 days of the document's execution.

21 NCAC 58A .0108 Retention of Records - To amend the rule to include a broker's duty to protect the security/confidentiality of consumer data in the broker's
(See **Proposed Rules** page 7)

In This Issue

| | |
|---|---|
| Unclaimed Property | 1 |
| When Hackers Strike | 1 |
| Rules Amendments | 1 |
| Update Courses' Topics | 2 |
| New Disclosure Required | 3 |
| Q&A About Forms | 5 |
| Case Study | 7 |
| Disciplinary Actions | 9 |

Unclaimed Property: NC Law Requires Annual Records Review and Reporting

By Madison L. Mackenzie, Associate Legal Counsel I

Do you have “dormant” funds sitting in your trust or escrow account? Maybe a tenant failed to provide a forwarding address for you to return his or her tenant security deposit or maybe you received an earnest money deposit from a buyer who was never heard from again. If those funds are still sitting in your trust account after time has passed, it could pose a problem.

All businesses operating in North Carolina are subject to the State's Unclaimed Property laws, codified in Chapter 116B, Article 4 of the North Carolina General Statutes.

These laws require all businesses to review their accounting records annually and determine whether they are in possession of any dormant unclaimed property. If they are, the business is required to file a report with the Unclaimed Property Division of the N.C. Department of State Treasurer and remit the unclaimed property. Failure to file this report and properly remit unclaimed

property can result in interest charges, a \$1,000 civil penalty for each day of delinquency, and a penalty equal to 25% of the value of the unreported property.

Any real estate firm with a trust account holding money on behalf of others is a potential holder of unclaimed property and is therefore subject to these laws. The N.C. Department of State Treasurer has outlined four steps to identify unclaimed property and properly report it.

1. IDENTIFY PROPERTY THAT SHOULD BE REPORTED

Property is unclaimed if the appar-
(See **Unclaimed**, page 6)



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A REALTOR'S® purpose is to help clients find a home, a safe haven for their families and loved ones. So, what happens when hackers strike and completely rob that family of their security and dream?

Picture this scenario...a young couple, so excited about closing on their first home, one they saved for years to purchase. Throughout the process, they worked with a REALTOR®, and thought nothing of it when they received an email from this REALTOR® requesting they change the wiring instructions to

a different account with the closing attorney. Little did they know this email was a scam. In an instant, all of their hard-earned savings was gone...all of it. Without the available funds, the couple is unable to move into their new home, and with no other existing residence under contract, faces the future with no place to call home and no way to pay for alternate housing.

This situation is based upon hundreds of similar accounts across the United States, resulting in tens of millions of dollars being directed to international criminal organizations. These scammers are smart, sophisticated and their methods are constantly evolving.

(See **Hackers**, page 4)

REAL ESTATE BULLETIN

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

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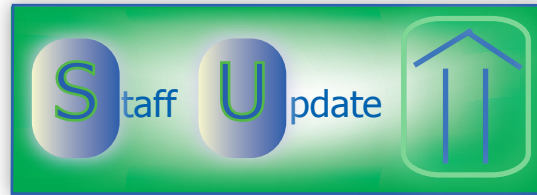
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People

Madison L. Mackenzie has been employed as Associate Legal Counsel I in the Regulatory Affairs Division. Prior to joining the Commission, she earned a law degree at the North Carolina Central University School of Law while working full time as a Paralegal for the North Carolina Department of Justice. She holds a BA in Psychology and a BS in Criminal Justice from Appalachian State University.



Chad W. Wilson has been employed as Auditor/Investigator in the Regulatory Affairs Division. Prior to joining the Commission, he was an auditor with Ernst and Young and a trooper with the Ohio State Patrol. He is a graduate of the University of Cincinnati with a BBA in Accounting and serves in the USAF Reserve.



Samantha M. Francis has been named Legal Administrative Supervisor in the Regulatory Affairs Division.

Appearances

Charlene D. Moody, Legal Counsel and Assistant Director of the Regulatory Affairs Division, spoke to the business meeting of the Allen Tate Company in Charlotte.

Frederick A. Moreno, Chief Deputy Legal Counsel, spoke to Berkshire, Hathaway, Yost & Little in Greensboro.

Stephen L. Fussell, Senior Consumer Protection Officer, spoke to the Fayetteville Regional Association of REALTORS® and the Winston-Salem Association of REALTORS®.

Peter B. Myers, Information Officer, spoke to the Allen Tate Company offices in Burlington and Charlotte and to the Orange Chatham Association of REALTORS® in Chapel Hill.

Topics Set for 2018-19 *GENUP*, *BICUP* Courses

The Commission approved topics for the 2018-19 *General Update* and *BIC Update Courses*.

General Update Course

Material Fact Issues
Contract Issues

- Offer and Acceptance
- Oral Negotiations
- Emails and Texts
- Due Diligence Fees and Earnest Money Deposits

Agency Issues

- Dual and Designated Agency

- Attempted Disclaimers of Listing Agency Responsibilities
- Oral vs. Written Buyer Agency Subagency

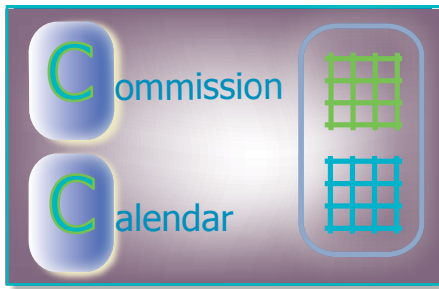
Unlicensed Activity

- Permitted vs. Unlawful Activities of Unlicensed Assistants in
- Property Management

License Law and Rules Update

Additional topics to be addressed in the *BIC Update Course* will include (1) Satellite/Branch Offices; (2) BIC Best Practices; and (3) Escrow Account Reconciliation with emphasis on related property management and commingling issues.

As to all topics except the "Law and Rules Update," the materials will focus on case studies.



February 14-15

March 14-15

April 11-12

May 9-10

All meetings, unless otherwise noted, begin at 9:00 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.

New Disclosure Required for Applications and Renewals

By Corean E. Hamlin, Director, Education and Licensing Division

Effective January 1, 2018, as required by the NC state legislature in NCGS § 143-765, all applicants for occupational licenses, permits, and certifications must disclose any investigations for employee misclassification.

Due to the new requirement, every licensee will be required to complete the renewal process individually. Brokers-in-Charge will not be able to renew the licenses of affiliated brokers.

All North Carolina Real Estate Commission applications -- including broker, firm, limited nonresident commercial, and private school licenses, temporary practice permits, and time-share registrations -- have been updated to be in compliance with the new law.

All applicants must certify that they have read and understand a Public Notice Statement from the Employee Classification Section of the State Industrial Commission (<http://www.ic.nc.gov/121317ECSPublicNotice.pdf>) and

must disclose any investigations for employee misclassification.

If an applicant does not provide the certification and disclosure, the NC Real Estate Commission is not permitted to process the application. Contact information for questions and inquiries is provided on the Public Notice Statement.

NCGS § 143-765 applies to applications for and renewals of all occupational licenses, permits, and certifications, so the certification and disclosure statements will be required during the license renewal process, which occurs annually between May 15 and June 30.

Broker Numbers

As of January 1, 2018, there are 103,459 brokers and firms licensed by the Real Estate Commission in the following categories:

Active Brokers 64,581

(Active Provisional Brokers 7,989)

Inactive Brokers 26,402

(Inactive Provisional Brokers 6,548)

Firms 12,202

Brokers-in-Charge 16,718

| Broker-in-Charge and Basic Trust Account Procedures Courses Register online at the Commission website, www.ncrec.gov , under Education/Course Registration. | | |
|--|---|--|
| Broker-in-Charge Course (Two days) Day 1: 1 - 5 p.m.; Day 2: 8:30 a.m. - 5:30 p.m. | | |
| Asheville | Western Carolina University Biltmore Park | March 5-6 May 22-23 |
| Charlotte | Goodwill Opportunity Campus | March 13-14 April 17-18 May 23-24 |
| Greensboro | Conference Center at GTCC | February 12-13 |
| Raleigh | McKimmon Center | February 20-21 March 20-21 May 7-8 June 6-7 |
| Wilmington | Best Western Coastline Center | April 24-25 |
| Basic Trust Account Procedures (Commission Offices, Raleigh) (All classes 1 - 5 p.m.) | | |
| Raleigh | Commission Office 1313 Navaho Drive, Raleigh | 3/7/18 4/9/18 |
| See Commission website to confirm course dates. Registration fees are nonrefundable. | | |

Questions and Answers About Forms

By Corean E. Hamlin, Director, Education and Licensing Division

Most NC Real Estate Commission forms concerning license status and affiliation are now web-based forms, or “webforms,” that can be completed and submitted on any desktop or laptop computer or mobile device with an Internet connection. The webforms are designed to be user-friendly and dynamic, gathering only pertinent information and taking only a few minutes to complete.

Following are the three most common questions Commission staff members are asked about forms:

Q: “I submitted a form and received a confirmation it was submitted, but my license record hasn’t been updated, yet. What’s happening?”

A: When you submit a webform, you will receive a confirmation that the form was submitted properly and has been received in our system. Even though forms are submitted electronically, most forms are processed by Commission staff members. The amount of time it will take to process your form depends on the type of form and the time of year. Once your form has been processed, a “Notice of License Record Change” will be sent to you by

postal mail or email. If the Commission needs additional information to process the form or if the form is denied, you will be notified in writing either by email or postal mail.

Q: “I submitted a form, but I don’t want it to be processed yet. Can the Commission hold it for me until a certain date?”

A: When a form is received, it is immediately placed in queue for processing. Commission staff members cannot hold forms.

Q: “Which form should I use?”

A: If you are unsure which form applies to your request or needed record change, please don’t guess. Call or email the Commission office, and one of our License Specialists will help you identify the appropriate form. Submitting the wrong form could result in unwanted changes to your license record, especially if you are a Broker-in-Charge (BIC) or a Qualifying Broker (QB) of an office or firm.

Have other questions or feedback about the Commission’s forms? Feel free to contact our office at 919.875.3700 or ls@ncrec.gov.

Hackers

(Continued from page 1)

History in NC

Reports of wire scams surfaced in North Carolina beginning in 2015, but over the last two years several dozen instances have been reported. The money stolen in those instances includes both incoming funds necessary to complete a home purchase and the net proceeds due to sellers. Additionally, there have been instances of loan payoffs being diverted. In an effort to educate the real property bar to the risks and available preventative efforts to protect home buyers and sellers, Lawyers Mutual, the NC State Bar, various title insurers and their agencies produced numerous alerts, articles, continuing education seminars and videos. However, the instances of fraud continue to increase, with more reported events in the first five months of 2017 than in 2015 and 2016 combined.

Real estate professionals rely on technology for instant and remote communication and the ability to close back-to-back transactions, including sending and receiving wires. It is also no longer practical for closing attorneys to deposit checks and wait for the funds to clear

the Federal Reserve banking system. Because of this, professionals must work diligently to avoid being the source of a compromise.

Additionally, real estate professionals must educate clients to the risks presented in sending and receiving wires. Unfortunately, clients are the parties most likely to be inconvenienced by new preventative measures, at what is admittedly an already hectic and stressful time. Here are a few important recommendations to communicate to your clients:

1. Wiring instructions should only be provided in communications directly between the closing attorney and the party sending or receiving a wire. Allowing wiring instructions to be forwarded through a REALTOR® or other party allows an additional point of interception, adds to the delay of their receipt, prevents other security measures and potentially creates liability for the REALTOR® or added party.

2. EVERY wire request initiated by the closing attorney should be verified and the more personal the verification, the better. For seller proceeds, it is important for insureds to verify wiring instructions in-person at the closing

ceremony. There is no known wire fraud that has taken place in the United States when an in-person verification occurred.

If all sellers are unable to attend the ceremony, it is recommended that wiring instructions be included in the same package as the deed, lien waiver and other original closing documents. Also utilize a signed and notarized seller wiring directive, if possible. But even then, the closing attorney should attempt to verify the instructions over the telephone directly with the seller. Reminding your seller client that such a call will likely be necessary can avoid additional delay in disbursement of funds. Email verification alone is inadequate.

3. Before sending any wire, buyers, their parents or anyone sending funds on the buyer’s behalf should verify the accuracy of the wiring instructions directly and exclusively with the closing attorney. Contact information should be obtained directly from the attorney’s web page, not from the email used to transmit the wiring instructions.

4. Any request to change wiring instructions should be assumed to be fraudulent. Hackers often use the phrase “wiring instructions changed due

Continued

to a banking error or other fraudulent activity” when trying to extract funds from buyers and sellers. Any email with that phrase or similar must be treated as suspicious and be followed up with a phone call to verify authenticity.

Closing attorneys will not change wiring instructions during the course of an individual closing except under the most extreme of circumstances. Should sellers legitimately need to change wiring instructions themselves, they should understand this will be considered a major red flag to the closing attorney and extensive verification will be required. Insureds are advised not to accept changes to wiring instructions and to only transmit a check when instructions change.

5. Faxed wiring instructions should not be assumed to be any safer than those received via email. Numerous ‘spoofing’ services exist which allow a sender to display any number on Caller ID and the printed sender line. Like all other wiring instructions, those received via facsimile transmission should be verified in person or through a telephone call to the law office, using contact information not included in the fax.

6. Wires to a closing attorney should be sent only to the law firm’s trust account. The name on the trust account should match the law firm name exactly and should be in the same geographic location as the office.

7. Attorneys should never send wires overseas. Once money leaves the United States, it is likely gone forever. Most individuals and small businesses owning property in the United States should have a domestic banking relationship.

8. After initiating a wire transfer, buyers should telephone the law office and provide details of the wire transmission and specifically request the attorney’s office confirm receipt. If the wire is not received in a timely manner, the delay should be investigated and possible remedial action taken. The ability to reverse wires is more successful when fraudulent activity is detected within 24 hours of transmission.

Again, the confirmation of transmission telephone call should be made using

contact information directly from the attorneys’ website and not the email or fax containing the wiring instructions.

9. Likewise, sellers should expect to receive a telephone call from the closing

attorney verifying their proceeds were transmitted and the details of the wire. Sellers should review the details to make sure they are accurate and immediately inform the attorney of any discrepancy.

Here are a few recommendations for all real estate professionals to adopt:

While additional security procedures are encouraged beyond the scope of this article, those listed above are free and easy to implement. Users with even minimal technical knowledge should be able to apply these measures to day-to-day business operations. For even more protection, consult an IT professional to ensure security measures are up to industry standards.

1. PROPER PASSWORD SECURITY. Not only should passwords be sufficiently complex, they should change regularly. A key element of wire scams is the hacker’s research stage, where they are monitoring email accounts for lengthy periods of time. Changing passwords regularly may deny access to hackers before the opportunity to strike ripens.

2. MULTI-FACTOR AUTHENTICATION FOR EMAIL ACCOUNTS. This service is provided for no charge under most email programs including Outlook 365 and Gmail. While the specifics vary, turning on this feature requires a user to complete additional verification steps before new computers or

devices can access an email account. For example, an account holder will receive a six-digit code via text message, which then must be entered into the new accessing device. Should an unauthorized device be used in an attempt to access the account, the user is notified immediately. The inconvenience is minimal for authorized users.

3. REVIEWING IP LOGS. While potentially more technical than the other steps, this free, preventative measure allows the user to see the physical location of devices accessing the account. If devices appear outside the United States or anywhere the user has not traveled, fraudulent activity should be presumed.

So, how do they do it?

1. EXTRACTION: The hacker uses something called an “email extractor,” or software that enables them to collect addresses for thousands of people in a particular industry. If they were to choose the real estate industry, for example, agents, brokers, officers and anyone with a real estate-related extension in their email address gets targeted.

2. PHISHING: The hacker then sends a phishing email to the thousands of addresses they just harvested. These emails are designed to look very official and include links or attachments. All the hackers need is one agent to take the bait, and they’re in, with full access to that particular agent’s account and client information.

3. RESEARCH: The hacker then takes the time to learn everything from listing addresses to sales prices to loan amounts and title company names. Sometimes hackers observe accounts for months at a time to learn local and industry-specific terminology, processes, diction and individual transaction details.

4. THE STRIKE: The hacker uses this information to send an email to buyers, instructing them to reroute funding from their lender to a new, fraudulent account. Since the hacker is actually inside the agent’s email account, it looks like a very legitimate message and buyers are likely to trust it and the instructions.

Unclaimed

(Continued from page 1)

ent owner has not communicated with the holder of the funds or indicated an interest in the property within a period of time known as the “dormancy period.” The dormancy period varies depending on the type of property being held. In most cases, the dormancy period for funds in an agent’s trust account is five years. However, disputed funds are not unclaimed property and should never be remitted to the State Treasurer.

For most holders, November 1st is the due date to report all unclaimed property that has reached its dormancy holding period as of the prior June 30th. The State Treasurer provides conversion tables on its website to assist with determining when reporting is due.

2. ATTEMPT TO LOCATE THE OWNERS

Prior to reporting unclaimed property that has reached its dormancy holding period, the agent must make an attempt to contact the apparent owner in writing when the property being held exceeds \$50. The State Treasurer refers to this written notice as a “due diligence letter,” not to be confused with the due diligence associated with real estate transactions. This notice to the apparent owner must be mailed not more than 120 days or less than 60 days from the reporting due date.

If the agent is unsuccessful in identifying the apparent owner of the funds, the agent should contact the State Treasurer for further assistance. The property will still need to be reported and remitted, even if the apparent owner is unknown.

3. PREPARE YOUR REPORT

The report(s) required will depend on the type of unclaimed property being reported. Most likely, the agent will be reporting unclaimed “cash”; and therefore, will need to complete the Unclaimed Property Verification Report (ASD-159) and Form ASD-21.

The agent should be prepared to provide names, last known addresses, social security or tax identification numbers, dates of birth, driver license numbers, and email addresses of the apparent owners, if known by the agent. Any

other information that may be available to help in identifying the owner should be reported with each property.

4. SUBMIT YOUR REPORT AND REMIT FUNDS DUE

If the agent is reporting less than 50 property owner records, the report can be filed electronically or in paper form. If more than 50 properties, the report must be filed electronically. Remitting unclaimed funds can be done by check or ACH or Wire Transfer.

For reports filed after July 16, 2012, the records accompanying the report must be retained for 5 years from the date the report is filed. (Note: record retention for reports filed before July 16, 2012 remains at 10 years.)

No report is required if there is no unclaimed property identified in the agent’s financial review. Additionally, filing extensions may be granted for good cause.

For further information, The North Carolina Holder Reporting Guide produced by the N.C. Department of State Treasurer can be found at https://www.nctreasurer.com/upp/Resources/NC_Holder_Reporting_Guide.pdf.

WHAT YOU CAN DO TO PREVENT UNCLAIMED PROPERTY?

Keeping proper and current trust accounting records will keep you from later discovering a trove of unclaimed property. Ensure that accounts are reconciled timely and resolve all exceptions, review uncashed checks in ledger accounts, and review unusual journal entries.

The real estate firm is relieved of liability once they have remitted dormant unclaimed property to the State. If the apparent owner later wishes to claim the property, they must direct that claim to the State. Also, the real estate firm avoids fines and penalties by properly and timely reporting unclaimed property.

Unclaimed property laws also apply to accounts other than trust or escrow accounts. To learn more about your responsibilities as a real estate agent or firm when it comes to unclaimed property, contact the North Carolina Unclaimed Property compliance staff at unclaimed.property@nctreasurer.com or by calling 919-814-4200.

Proposed Rules

(Continued from page 1)

possession, including secure email, encryption, etc. and to require brokers to provide a copy of all transaction files to their firm within three days of receipt.

21 NCAC 58A .0110 Broker-in-Charge – To amend the rule to (1) clarify the rule text; (2) remove the North Carolina GRI program as an exception to the Broker-in-Charge experience requirement; and (3) require nonresident brokers to complete the 12-hour BIC Course and BIC Update Course.

21 NCAC 58A .0114 Residential Property and Owner’s Association Disclosure Statement – To amend the rule to (1) change “Purchaser” to “Buyer” (the purpose of this change is to make the rule match the word usage commonly used by brokers), (2) include a question that asks if a radon mitigation system is present in the home and to clarify whether the dwelling’s sewage disposal system is permitted by the State, and (3) separate the issue of deed restrictions and Property Owners Associations, since not all properties with deed restrictions are governed by a Property Owners Association and to include “Master Insurance” under services and amenities of a owners’ association.

SECTION A .0500 LICENSING

21 NCAC 58A .0503 License Renewal – To amend the rule to remove the sentence that states a broker can renew by calling the Commission’s offices in order to safeguard credit card information. The Commission no longer accepts payments over the telephone.

21 NCAC 58A .0505 Reinstatement – To amend the rule in paragraph (a) to remove the fee associated with suspended licenses, in paragraph (b) to add language clarifying that criminal background checks will be conducted pursuant to a reinstatement application, and to amend the rule to require persons requesting reinstatement after less than six months from expiration to disclose any criminal convictions or disciplinary actions by other occupational licensing

Continued

"Between Two Firms" – A Regulatory Affairs Division Case Study

By Charlie Moody, Assistant Director, Regulatory Affairs Division

In a recent case, Commission staff received two complaints against a qualifying broker/broker-in-charge and his two firms.

The first complaint was related to the failure of the broker to withdraw a listing upon request of the client and the failure of the broker to deliver a copy of the executed listing agreement to his client.

This seemed like a relatively minor situation and even the complaining witness expressed his wish to withdraw the complaint once it had the desired effect, which was to get the broker to remove the property from the MLS.

However, the second complaint came in with yet another client alleging that the broker had failed to provide him with a copy of the executed listing agreement. That second complaint created the appearance of a pattern.

Also, the second complaint alleged that the broker rented the client's property and failed to provide the client with a copy of the lease and even more importantly failed to turn over trust funds to the owner-client. Interviews of the broker, tenant and other witnesses were

conducted and documentation collected by an investigator.

The broker's transaction file for the first client contained only an MLS printout and the signed listing agreement. The broker could produce only an incomplete and unsigned listing agreement for the second transaction. Even the tenant didn't get a copy of the signed lease from the broker.

The first page of the lease agreement, which the tenant was able to produce, named the wrong firm as the property manager. The named firm was licensed, with the broker designated as the qualifying broker, but there was no designated broker-in-charge, making the firm ineligible to conduct sales or property management.

The broker's excuse was that this was just a mistake and the named firm was not conducting brokerage. In fact, the investigator discovered the firm was actually conducting property management out of a separate office and the broker had two trust accounts as well as property management agreements and leases in place and signed by the broker.

The broker also gave conflicting information about what he had done with the tenant security deposit and first month's rent, and had no documentary evidence to show the investigator where the money went. The broker expressed much confusion and lack of memory about many of these events. The Commission permanently revoked all three licenses.

Lessons learned?

If you agree to be qualifying broker of a firm, you are responsible for ensuring that the firm has a broker-in-charge before doing any brokerage activity. If you conduct brokerage activity, deliver agency agreements to your clients and maintain a complete transaction file including the *Working With Real Estate Agents* brochure. If you collect funds, deposit those funds in a trust account and document receipt and disbursement. Documentation may also help when your memory doesn't.



North Carolina Real Estate Commission
REAL ESTATE BULLETIN

Read it. Know more.

Proposed Rules

(Continued from page 6)

boards, including any such offenses that occurred since the person's license expired or was revoked.

21 NCAC 58A .0511 Licensing of Persons Licensed in Another Jurisdiction – To amend the rule to include provisions for licensing military-trained applicants and their military spouses with temporary practice permits in compliance with G.S. 93B-15.1, as enacted in Section 3 of S.L. 2017-28.

SECTION A .1700 MANDATORY CONTINUING EDUCATION

21 NCAC 58A .1702 Continuing Education Requirement – To amend the rule to clarify continuing education credit for a broker-in-charge or broker

taking the General Update Course. This provision was previously located in 21 NCAC 58A .0110.

21 NCAC 58A .1703 Continuing Education for License Activation – To amend the rule to require brokers on inactive status for more than two years to complete additional education prior to activating their license.

21 NCAC 58A .1711 Continuing Education Required of Nonresident Licensees – To amend the rule to eliminate the requirement of nonresident brokers to notify the Commission of affiliation with a North Carolina office.

SECTION B .0100 TIME SHARE PROJECT REGISTRATION

21 NCAC 58B .0103 Renewal of Time Share Registration – To amend the rule to eliminate the notary requirement

on the renewal form in order to proceed with electronic time share renewals.

SECTION G .0100 REAL ESTATE EDUCATION – GENERAL

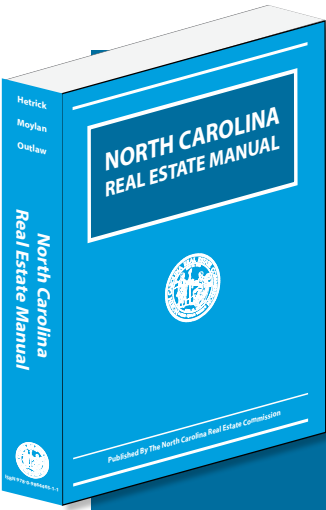
21 NCAC 58G .0103 Definitions – To amend the rule to include additional definitions of terms.

SECTION H .0200 REAL ESTATE SCHOOLS

21 NCAC 58H .0211 Prelicensing and Postlicensing Roster Reporting – To amend the rule to require schools to submit a Roster Report electronically within 7 days following the course, instead of 30 days.

SECTION H .0400 APPROVED INSTRUCTORS

21 NCAC 58H .0404 Renewal of Sponsor Approval – To amend the rule to change a rule reference.



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 in North Carolina. 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.

This September 2017 edition incorporates changes to federal and North Carolina laws, Commission rules, and revisions to various forms since publication of the 2015-16 edition in February 2015.

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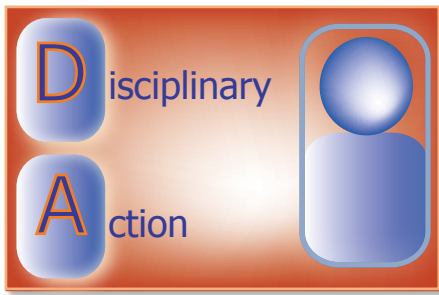
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Penalties for violations of the Real Estate License Law and Commission rules vary depending upon the particular facts and circumstances present in each case. Due to space limitations in the Bulletin, a complete description of such facts cannot be reported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

PATRICIA E. ALLEN (Matthews) – By Consent, the Commission reprimanded Ms. Allen effective October 18, 2017. The Commission found that in 2012, Ms. Allen listed a home for sale and advertised that it contained four bedrooms but failed to pull the septic permit; contrary to her firm's policy requiring agents to pull permits for properties serviced by a septic system prior to advertising; and that the current owners discovered in 2016 that the system only allowed for three bedrooms.

SCOTT RICHARD ANGELO (Asheville) – By Consent, the Commission suspended the broker license of Mr. Angelo for a period of 12 months effective December 31, 2017. The Commission then stayed the suspension for a period of probation. The Commission found that Mr. Angelo was a provisional broker affiliated with a licensed real estate brokerage firm and signed an Exclusive Buyer Agency Agreement and an Offer-to-Purchase Contract on behalf of another licensed firm with whom he was not affiliated; and that Mr. Angelo failed to ensure that personal property requested by the buyer client to be conveyed with the real property was actually conveyed at closing, as no written addendum to the contract was executed nor was an inventory made of such items.

BEAR CREEK REALTY INC (Hope Mills) – By Consent, the Commission permanently revoked the firm license of Bear Creek Realty effective September 13, 2017. The Commission found that Bear Creek Realty failed to safeguard funds held for others and retain trust account records as required by the Commission; that Bear Creek Realty failed to produce trust account records upon request by the Commission on multiple occasions; and that the trust account appears to be short in an amount in excess of \$60,000.

BEAR LAKE REALTY LLC (Tuckaseegee) – The Commission accepted the permanent voluntary surrender of the firm license of Bear Lake Realty effective January 1, 2018. The Commission dismissed without prejudice allegations that Bear Lake Realty

violated provisions of the Real Estate License Law and Commission rules. Bear Lake Realty neither admitted nor denied misconduct.

KYLE MARTIN BENDER (Charlotte) – By Consent, the Commission suspended the broker license of Mr. Bender for a period of 12 months effective December 31, 2017. The Commission then stayed the



suspension of Mr. Bender for a probationary period. The Commission found that Mr. Bender acted as the listing agent for a residential property which received multiple offers; that at the seller's request, Mr. Bender asked the buyer agents to submit their client's highest and best offer and disclosed the terms of the current highest offer to those agents; that Mr. Bender failed to receive the express authority of the offering party before disclosing this information; and that the seller ultimately went under contract with a buyer other than the one whose offer details were disclosed.

JAMES P. BENNETT (Maggie Valley) – By Consent, the Commission reprimanded Mr. Bennett effective February 15, 2018. The Commission found that Mr. Bennett, as qualifying broker and broker-in-charge of a licensed real estate brokerage firm, allowed an unlicensed individual to communicate with clients and potential clients of the firm in a manner that made the unlicensed individual appear to be a broker; that the unlicensed individual appeared to negotiate rental rates and fees on behalf of the firm; and that Mr. Bennett failed to supervise the receipt of agency agreements thereby allow-

ing the firm to advertise and rent a property without having an executed agency agreement.

MARION J. BLEDSOE (Hope Mills) – By Consent, the Commission permanently revoked the broker license of Ms. Bledsoe effective September 13, 2017. The Commission found that Ms. Bledsoe assumed responsibility for the maintenance and retention of her firm's trust account records and converted money from the trust accounts to cover expenses for the firm and herself, failed to safeguard the funds held for others or to maintain and retain trust account records as required by the Commission; and failed to produce trust account records upon request by the Commission on multiple occasions.

BLUE RIDGE MOUNTAIN RENTALS (Blowing Rock) – By Consent, the Commission suspended the firm license of Blue Ridge Mountain Rentals for a period of one year effective October 1, 2017. The Commission then stayed the suspension for a probationary period until October 1, 2018. The Commission found that Blue Ridge Mountain Rentals failed to maintain its trust account and trust account records in compliance with the Real Estate License Law and Commission rules in that deposit tickets were not properly labeled, ledgers and subsidiary ledgers were not properly maintained, and accounts not properly reconciled; that Blue Ridge Mountain Rentals engaged in deficit spending in owner accounts; and that Blue Ridge Mountain Rentals' trust accounts had an overage exceeding \$18,000.

MARK P BODFORD (Wrightsville Beach) – By Consent, the Commission suspended the broker license of Mr. Bodford for a period of six months effective October 31, 2017. The Commission then stayed the suspension for a period of probation through October 30, 2020. Mr. Bodford is also prohibited from acting as a broker-in-charge for five years. The Commission found that in November 2016, Mr. Bodford pleaded guilty to one count of Conceal-

Continued

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 Regulatory Affairs Division at 919-875-3700 for more information.

ment of Assets in Bankruptcy Proceedings; and received a three-year probationary sentence; that the federal charge related to Mr. Bodford’s failure to disclose \$55,000 on his bankruptcy petition in November of 2012; and that, upon this discovery, the bankruptcy trustee’s final report included an adjustment for the \$55,000 as cash on hand and this money was paid by Mr. Bodford.

DAVID KEITH BOONE (Durham) – By Consent, the Commission reprimanded Mr. Boone effective January 1, 2018. The Commission found that Mr. Boone, in 2016, was the listing agent for a property and advertised the square footage in the MLS using the data recorded in the county tax records; that Mr. Boone’s advertised square footage was 22% larger than the square footage measured by an appraiser; that the potential buyers were unable to negotiate a new deal with the seller and terminated the contract; and that the potential buyers lost their due diligence money, inspection fees, and appraisal fee.

WESLEY STEPHEN BOURKE (Asheville) – By Consent, the Commission suspended the broker license of Mr. Bourke for a period of 12 months effective September 19, 2017. The Commission then stayed the suspension for a period of probation. The Commission found that Mr. Bourke reported to the Commission that on November 1, 2016, he pleaded guilty to Level Two DWI and was placed on supervised probation for a period of eighteen months and forced to

surrender his driver license for one year; and that Mr. Bourke had previously been convicted of Level Two DWI in 2010 and of Level 5 DWI in 2008.

ODELL F BULLINGTON (Ocean Isle Beach) – By Consent, the Commission suspended the broker license of Mr. Bullington for a period of 12 months effective September 19, 2017. The Commission found that Mr. Bullington disclosed to the Commission his March 2016 conviction of felonious possession, with intent to manufacture, sell, or deliver a Schedule 1 Controlled Substance; that Mr. Bullington was incarcerated for six (6) months and received post-release supervision until June 4, 2017; that Mr. Bullington failed to report this conviction to the Commission within sixty (60) days of the judgement or his release from prison; and that a review of Mr. Bullington’s criminal record found that he also failed to disclose multiple misdemeanor convictions from the mid to late 1990’s on his 2000 license application.

MARTHA BRANNON BULLOCK (Greenville) – By Consent, the Commission suspended the broker license of Ms. Bullock for a period of 36 months effective September 1, 2017. The first two months of the suspension were active with the remainder stayed for a probationary period through August 31, 2020. Ms. Bullock may not engage in property management or act as a broker-in-charge for a period of five years. The Commission found that in October 2015, Ms. Bullock executed an Exclusive Property Management Agreement and Residential Rental Contract for a property and used her firm’s name as agent without the knowledge of her broker-in-charge (“BIC”); that the property owner terminated the agreement and hired another licensed firm; that the tenant security deposit transferred by Ms. Bullock to the new firm and the last rental proceeds check Ms. Bullock sent to the owner were not drawn from an account designated “trust” or “escrow” and were returned “NSF” by the new firm’s bank; that these funds were ultimately reimbursed by Ms. Bullock’s BIC by using Ms. Bullock’s earned commission from recent property closings; and that Ms. Bullock failed to maintain all documents regarding the management of this property and failed to follow all Commission trust account management rules.

CAROLINA VACATIONS INC. (Maggie Valley) – By Consent, the Commission reprimanded Carolina Vacations effective February 15, 2018. The Commission

found that Carolina Vacations allowed an unlicensed individual to communicate with clients and potential clients of the firm in a manner that made the unlicensed individual appear to be a broker; that the unlicensed individual appeared to negotiate rental rates and fees on behalf of the firm; and that Carolina Vacations failed to supervise the receipt of agency agreements thereby allowing the firm to advertise and rent a property without having an executed agency agreement.

CHARLOTTE PROPERTY MANAGEMENT AND RENTAL SERVICES, LLC (Charlotte) – By Consent, the Commission suspended the firm license of Charlotte Property Management And Rental Services, LLC for a period of three years effective April 1, 2017. The Commission then stayed the suspension for a probationary period from April 1, 2017 to April 1, 2020. The Commission found that Charlotte Property Management And Rental Services, LLC failed to properly supervise an unlicensed bookkeeper it employed; failed to review and maintain its trust account records each month; that, as a result of these failures the unlicensed bookkeeper converted to personal use over \$200,000 of money held in trust for others by the firm; and that the firm notified the North Carolina State Bureau of Investigations of the bookkeeper’s conversion of trust funds, has funded its trust accounts, and has new policies and procedures to prevent this type of issue in the future.

DAVID W COMBS (Rocky Mount) – By Consent, the Commission reprimanded
Continued

Your Pocket License Card
is your ticket for admission
to Continuing Education classes.
Allow at least 10 days to
process a replacement request
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Mr. Combs effective December 31, 2017. The Commission found that Mr. Combs, acting as qualifying broker and broker-in-charge of a licensed real estate firm, had an interest in a company which developed a subdivision, and an interest in a building company which built homes on lots it owned in the subdivision; that in 2007, plat approval for the subdivision was recorded after Mr. Combs posted a letter of credit for repairs to streets; that in May 2009, a buyer contracted to purchase a house through a contract for deed; that the buyer took possession, but closing was to take place after the purchase price was paid; that in 2014, the purchase was completed and the deed was recorded; that later the city asked Mr. Combs to provide renewed letters of credit or that he make needed repairs to the streets; that a bank acquired title to certain lots and common areas in the subdivision; that Mr. Combs failed to disclose these developments to the buyer; and that Mr. Combs executed a Residential Property and Owners' Association Disclosure Statement and checked "No Representation" for all items pertaining to the subject property.

MELANIE ROACHE CORBETT (Zebulon) – By Consent, the Commission permanently revoked the broker license of Ms. Corbett effective December 13, 2017. The Commission found that Ms. Corbett, in and between 2008 and 2012, acted as broker-in-charge for a licensed property management firm and converted \$15,000 in tenant security deposits held in the firm's trust account.

MARINA JAMES DANE (Wilmington) – By Consent, the Commission suspended the broker license of Ms. Dane for a period of 24 months effective July 1, 2017. Six months of the suspension were active with the remainder stayed for a probationary period ending July 1, 2019. Mr. Dane shall be ineligible to become or act as a broker-in-charge until July 1, 2022. The Commission found that Ms. Dane on August 16, 2010, was convicted of DWI- Level 5 and was sentenced to 60 days in jail which was suspended to 24 months' unsupervised probation; that Ms. Dane failed to report this conviction to the Commission; that on July 27, 2015, Ms. Dane was convicted of DWI- Level 2 and was sentenced to seven days in jail and 24 months' supervised probation; that Ms. Dane failed to report this conviction to the Commission; that on November 18, 2015, Ms. Dane was convicted of Misdemeanor Larceny and failed to report this conviction to the Commission; that on January 23, 2017, Ms. Dane was convicted

Commission Speakers Available

Real Estate Commission staff members are available to speak to your local board, office or special group. You can request a presentation relating to a specific subject or a general discussion on topics of interest to those attending.

To schedule a speaker, submit the "Request for Program Presenter" form available on the Commission's website, www.nrecr.gov. Please allow at least four weeks prior to your group's meeting.

of Misdemeanor Larceny and was sentenced to 45 days in jail which was suspended to 12 months' supervised probation; and that Ms. Dane failed to respond within 14 days to a Letter of Inquiry from the Commission's staff.

MARGARET M. DYER (Corolla) – By Consent, the Commission suspended the broker license of Ms. Dyer for a period of one year effective November 1, 2017. Two months of the suspension were active with the remainder stayed. The Commission also permanently prohibited Ms. Dyer from acting as or becoming a broker-in-charge, from maintaining or accessing a trust account, and from practicing property management including managing vacation rentals. The Commission found that Ms. Dyer, acting as the qualifying broker and broker-in-charge of real estate brokerage firm, failed to properly supervise, review, and maintain the firm's trust account records in accordance with the Real Estate License Law and Commission rules; that Ms. Dyer failed to safeguard funds held in the firm's trust accounts; and that a broker supervised by Ms. Dyer converted \$20,000 in trust money to personal use.

TODD MATTHEW DUNNUCK (Lake Lure) – By Consent, the Commission suspended the broker license of Mr. Dunnuck for a period of two years effective January 1, 2018. The Commission then stayed the suspension for a probation period until January 1, 2020. The Commission found that Mr. Dunnuck, as qualifying broker and broker-in-charge of a licensed real estate firm, listed a tract of undeveloped land as suitable for "Multi-Family, Private Estate, Recreational/2nd House, Residential, Subdevelopment [sic]"; that in 2006, the prior owner ordered a soil test; that soil test which found the soil on the property to be structurally unsuitable to support construction for the proposed project; that a neighboring

owner and potential buyer requested the soil test from Mr. Dunnuck; that Mr. Dunnuck passed the soil test on to a potential buyer of the subject property; that subsequently, a licensed real estate broker made an offer and purchased the subject property and that at no time before or during the closing did Mr. Dunnuck provide a copy of the soil test to the broker; that after closing, the broker discovered the soil was structurally unsuitable for the proposed project; and that Mr. Dunnuck and the broker have since reached a mutually satisfactory resolution.

MICHELE DYER (Corolla) – By Consent, the Commission permanently revoked the broker license of Ms. Dyer effective August 17, 2017. The Commission found that Ms. Dyer, while working for a licensed real estate brokerage firm, failed to safeguard funds held in the firm's trust accounts; that Ms. Dyer commingled personal funds with trust funds and converted trust money to personal use; that Ms. Dyer authorized a \$20,000 payment from the firm's trust account to her brother-in-law to repay a personal loan; and that Ms. Dyer's actions resulted in a shortage in the firm's trust accounts.

CASSANDRA LEA ELLISON (Blowing Rock) – By Consent, the Commission reprimanded Ms. Ellison effective October 1, 2017. The Commission found that Ms. Ellison was the broker-in-charge of a rental services firm between June 2014 and November 2015; that a Commission spot audit of the firm's trust account records from August to September 2015 revealed improperly labeled deposit tickets and ledgers that were not maintained in compliance with the Real Estate License Law and Commission rules; that the firm did not maintain subsidiary ledgers and failed to properly reconcile its accounts; that the firm engaged in deficit spending in owner accounts with; and that

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If you are a BIC or BIC eligible, to maintain your BIC status you must take the Broker-in-Charge Update Course (BICUP) + an Elective.

Do not take the General Update Course - it will not satisfy your BIC CE requirements.

the firm's trust accounts had an overage exceeding \$18,000.

CRYSTAL SHULL GRAGG (Hickory) – By Consent, the Commission reprimanded Ms. Gragg effective October 1, 2017. The Commission found that Ms. Gragg, acting as the listing agent for a property, did not measure the subject property prior to listing it in the MLS and, instead, initially relied on the Caldwell County tax records and her sellers' representations about the subject property's square footage.

SUSAN B. GRAHAM (Charlotte) – By Consent, the Commission suspended the broker license of Ms. Graham for a period of 30 months effective April 12, 2017. The first six months of the suspension were active with the remaining stayed for a 24-month period of probation. The Commission found that Ms. Graham, while acting as a buyer's agent on two separate occasions, failed to execute an agency agreement to be signed by her buyer clients; that instead, Ms. Graham admitted to creating a DocuSign account under both of the buyer's names, and signing the buyers' names to key Agency Agreements, without their knowledge or consent. The Commission notes that Ms. Graham fully cooperated with the investigation and that both buyers ultimately purchased the subject properties with the help of other agents.

STEPHEN WORTH GUTTU (Edenton) – By Consent, the Commission suspended the broker license of Mr. Guttu for a period of 24 months effective October 18, 2017. The Commission found that Mr. Guttu pled guilty on March 13, 2017 to misdemeanor Assault to Inflict Serious Injury and was sentenced to 60 days in jail that was suspended to 18 months supervised probation.

RYAN A. HOLLINS (Charlotte) – By Consent, the Commission suspended the broker license of Mr. Hollins for 36 months

effective April 1, 2017. Six months of the suspension were active with the remainder stayed for a probationary period through April 1, 2020. The Commission found that Mr. Hollins, acting as the Qualifying Broker and Broker-in-Charge of a licensed property management and rental services firm, failed to properly supervise an unlicensed bookkeeper employed by the firm; that Mr. Hollins failed to review and maintain the firm's trust account records each month; and that, as a result of Mr. Hollins' failures, the unlicensed bookkeeper converted over \$200,000 of money held in trust for others by the firm to her personal use. The Commission noted that Mr. Hollins notified the North Carolina State Bureau of Investigations of the bookkeeper's conversion of trust funds, funded the firm's trust accounts, and implemented new policies and procedures to prevent this type of issue in the future.

HOMEPLACE PROPERTY MANAGEMENT LLC (Raleigh) – By Consent, the Commission permanently revoked the firm license of Homeplace Property Management effective December 13, 2017. The Commission found that the broker-in-charge (BIC) of Homeplace Property Management allowed her unlicensed son and his wife, a provisional broker, to perform all brokerage activities and trust accounting for the firm and merely reviewed financials provided to her by her son; that the BIC ceased acting as broker-in-charge of Homeplace Property Management in and around July 2016, but did not cancel the firm license or confirm that the firm had ceased operations; and that

the unlicensed operator of Homeplace Property Management converted approximately \$128,000 in trust funds to his own use both during and after the period the BIC acted as broker-in-charge.

JAMES SCOTT HUNTER (Charlotte) – By Consent, the Commission suspended the broker license of Mr. Hunter for a period of two years effective December 31, 2017. The Commission then stayed the suspension for a probationary period, ordered that Mr. Hunter comply with all NC DMV license restrictions, and restricted him from transporting customers or clients should his vehicle require an interlock device. The Commission found that Mr. Hunter pleaded guilty to Level 5 DWI in 2009, in Mecklenburg County and that he failed to report this conviction to the Commission; that Mr. Hunter pleaded guilty to Level 2 DWI in 2016, in Mecklenburg County and failed to report this conviction to the Commission; and that Mr. Hunter pleaded guilty to Level 1 DWI in 2017, in Mecklenburg County and that Mr. Hunter timely reported this conviction to the Commission. Mr. Hunter has met all of the terms of his unsupervised probation.

STEPHANIE RAE HUDSPETH JOHNSON (Asheville) – Following a hearing, the Commission suspended the license of Ms. Johnson, effective January 31, 2018, for a period of twenty-four (24) months. The Commission then stayed the suspension for a probationary period through January 30, 2020, upon Ms. Johnson's completion of certain real estate education. The Commission

found that Ms. Johnson was affiliated with a licensed real estate firm, but after leaving the firm, Ms. Johnson communicated with tenants occupying a property managed by the firm regarding their receipt of a notice to vacate and upcoming summary ejection hearing; that Ms. Johnson accessed a Zip forms database used

Continued

Brokers Should Ask Closing Attorneys to Not Disburse Proceeds Without Confirming Disbursement Instructions

Brokers are urged to encourage closing lawyers in each transaction not to disburse proceeds other than as specifically authorized in a written document signed by the seller. There have been instances of hackers diverting funds from real estate transactions, i.e., criminals hacked into a real estate broker's computer database and monitored email traffic to learn about an impending closing. They send an email to the lawyer instructing the lawyer to wire the seller's proceeds to a bank account other than the one originally identified. That email comes from an address that looked like the broker's or seller's. The lawyer wires the seller's proceeds to the criminals' account. By the time the lawyer learns of this crime, the criminals have wired the funds to a foreign bank account.

to manage the property; that Ms. Johnson created and filled out a Move-in Inspection Form for the tenants and backdated the document; that the Move-in Inspection Form was then presented by the tenants to a magistrate during a summary ejectment hearing where the magistrate denied the firm's motion to summarily eject the tenants.

KARICHELE REALTY INC. (Corolla) – By Consent, the Commission permanently revoked the firm license of Karichele Realty effective November 1, 2017. The Commission found that Karichele Realty, through its qualifying broker/broker-in-charge, failed to properly maintain its trust account records in compliance with Commission Laws and rules; that Karichele Realty failed to safeguard funds held in its trust accounts; that personal funds were commingled with trust funds and an unaffiliated broker converted trust money to personal use; that Karichele Realty's actions resulted in a shortage in the trust accounts; and that the firm failed to timely remit money owed to property owner clients.

WILLIAM F. LUTHER III (Hope Mills)– By Consent, the Commission revoked the broker license of Mr. Luther effective January 2, 2018. The Commission found that Mr. Luther, acting as broker-in-charge of a licensed firm, gave full control of the firm's trust accounts to another broker who subsequently admitted to converting trust monies to her and the firm's own use leading to a trust account shortage in excess of \$80,000; and that Mr. Luther failed to safeguard the funds held for others or to maintain and retain trust account records as required by the Commission.

DAVID N. MATTHEWS (Lake Lure) – By Consent, the Commission suspended the broker license of Mr. Matthews for a period of 24 months effective September 19, 2017. The Commission found that Mr. Matthews, acting as the qualifying broker of a licensed real estate brokerage firm, failed to maintain a trust account journal, property ledgers, or a trial balance for the firm's trust account; that an audit of the account also discovered a shortage and deficit spending due to Mr. Matthews' failure to perform monthly reconciliations; that the firm's website used an unregistered assumed name and the rental agreements failed to comply with the Vacation Rental Act; and that Mr. Matthews handled all aspects of the business because the broker-in-charge was largely absent.

JOHN D. MCCONNELL JR. (Raleigh) – By Consent, the Commission

suspended the broker license of Mr. McConnell for a period of three years effective November 1, 2017. The Commission found that Mr. McConnell executed a \$125,000 promissory note in favor of a creditor for a loan; that a Deed of Trust was recorded in Wake County that pledged two commercial properties as collateral for the loan; that the two commercial properties that secured the promissory note were sold in a foreclosure sale; that unaware of the foreclosure sale, the creditor loaned \$125,000 to Mr. McConnell; that at no time prior to the execution of the promissory note and deed of trust did Mr. McConnell disclose to the creditor that the two commercial properties were subject to foreclosure; that at no time after the deed of trust was recorded or after the foreclosure sale did Mr. McConnell disclose to the creditor that the properties were sold in foreclosure; that Mr. McConnell signed a Confession of Judgment confessing he owed the creditor \$125,000 in principal, plus interest and attorneys' fees; and that at the time of this Consent Order, Mr. McConnell had paid the creditor funds totaling \$101,225.89.

MTN LAND PROPERTIES LLC (Lake Lure) - By Consent, the Commission suspended the firm license of MTN Land Properties for a period of two years effective January 1, 2018. The Commission then stayed the suspension for a probation period until January 1, 2020. The Commission found that MTN Land Properties listed a tract of undeveloped land as suitable for "Multi-Family, Private Estate, Recreational/2nd House, Residential, Subdevelopment [sic]"; that in 2006, the prior owner ordered a soil test; that soil test found the soil on the property to be structurally unsuitable to support construction for the proposed project; that a neighboring owner and potential buyer received the soil test from MTN Land Properties; that MTN Land Properties passed the soil test on to a potential buyer of the subject property; that subsequently, a licensed real estate broker made an offer and purchased the subject property and that at no time before or during the closing did MTN Land Properties provide a copy of the soil test to the broker; that after closing, the broker discovered the soil was structurally unsuitable for the proposed project; and that MTN Land Properties and the broker have since reached a mutually satisfactory resolution.

RANDY DALE NEALEY (Charlotte) – Following a hearing, the Commission permanently revoked the broker license of Mr. Nealey effective November 20, 2017. The Commission found that Mr. Nealey, acting

as broker-in-charge and qualifying broker of a real estate brokerage firm, conducted property management for its landlord clients; that a landlord client filed a complaint with the Commission alleging that Mr. Nealey had not remitted rental proceeds for January, February, and March 2016, had not communicated since January 2016, and that all of Mr. Nealey's phone numbers were out of service; that another landlord client filed a complaint with the Commission alleging that Mr. Nealey was not collecting rent from tenants, did not collect a tenant security deposit from the current tenants, and had ceased all communications; that the Commission attempted to contact Mr. Nealey but was unable to locate him or to receive responses to any form of communication; that Mr. Nealey did not provide any records requested by the Commission; and, that a review of Mr. Nealey's bank records revealed two accounts from which transfers were made for personal use, funds of landlord clients were commingled with his own, and the accounts were not in compliance with the Real Estate License Law and Commission rules.

NORMA CLAYTON REALTY CO LLC (Brevard) – By Consent, the Commission reprimanded Norma Clayton Realty effective January 1, 2018. The Commission found that Norma Clayton Realty failed to maintain trust account and trust account records in compliance with the Real Estate License Law and Commission rules; that deposit tickets were not properly labeled or maintained, ledgers were not properly maintained, reconciliations were not accurate, trial balances were not regularly performed, and, in some cases, Norma Clayton Realty failed to re-issue client checks that had gone uncashed for a period of time; and that an audit of Norma Clayton Realty's trust account revealed an overage.

DUKE GREGORY PARRISH (Brevard) – By Consent, the Commission reprimanded Mr. Parrish effective January 1, 2018. The Commission found that Mr. Parrish, acting as the qualifying broker and broker-in-charge of a licensed real estate brokerage firm, failed to maintain the firm's trust account and trust account records in compliance with the Real Estate License Law and Commission rules; that deposit tickets were not properly labeled or maintained, ledgers were not properly maintained, reconciliations were not accurate, trial balances were not regularly performed, and, in some cases, Mr. Parrish failed to re-issue client checks that had gone uncashed for a period of time;

Continued

and that an audit of Mr. Parrish's trust account revealed an overage.

PATTON PROPERTY GROUP LLC (Asheville) – By Consent, the Commission suspended the firm license of Patton Property Group for a period of 12 months effective December 31, 2017. The Commission then stayed the suspension for a period of probation. The Commission found that the broker-in-charge (BIC) of Patton Property Group supervised a provisional broker and allowed the provisional broker to sign an Exclusive Buyer Agency Agreement and Offer-to-Purchase Contract on behalf of another licensed firm with whom he was not affiliated; that the BIC of Patton Property Group failed to actively and directly supervise the provisional broker who failed to ensure that personal property requested by the buyer client to be conveyed with the real property was actually conveyed at closing; that the BIC of Patton Property Group allowed the provisional broker to receive compensation from someone other than his BIC; and that the BIC of Patton Property Group allowed a licensed broker from another firm to work with her firm as a showing agent when the necessary secondary affiliation paperwork was never filed with the Commission.

ROWENA PATTON (Asheville) – By Consent, the Commission suspended the broker license of Ms. Patton for a period of 12 months effective December 31, 2017. The Commission then stayed the suspension for a period of probation. The Commission found that Ms. Patton, while acting as broker-in-charge, supervised a provisional broker and allowed the provisional broker to sign an Exclusive Buyer Agency Agreement and Offer-to-Purchase Contract on behalf of another licensed firm with whom he was not affiliated; that Ms. Patton failed to actively and directly supervise the provisional broker as he failed to ensure that personal property requested by the buyer client to be conveyed with the real property was actually conveyed at closing; that Ms. Patton allowed the provisional broker to receive compensation from someone other than Ms. Patton; and that Ms. Patton allowed a licensed broker from another firm to work with her firm as a showing agent when the necessary secondary affiliation paperwork was never filed with the Commission.

BRENDA R. PORTER (Raleigh) – By Consent, the Commission revoked the broker license of Ms. Porter effective January 1, 2018. The Commission found that Ms. Porter in 2014, obtained a license for a firm and designated herself as its qualifying broker and broker-in-charge; that Ms. Porter

allowed her unlicensed son and his wife, a provisional broker, to perform all brokerage activities and trust accounting for the firm and merely reviewed financials provided to her by her son; that Ms. Porter ceased acting as broker-in-charge of the firm in and around July 2016, but did not cancel the firm license or confirm that the firm had ceased operations; and that the unlicensed operator of the firm converted approximately \$128,000 in trust funds to his own use both during and after the period Ms. Porter acted as broker-in-charge.

PROPERTIES PLUS INC. (Statesville) – By Consent, the Commission suspended the firm license of Properties Plus effective September 19, 2017. The Commission then stayed the suspension for a probationary period. The Commission found that Properties Plus held a Property Management Agreement (“PMA”) to manage eight rental properties; that Properties Plus failed to provide monthly statements of all monies received and disbursed to the property owners as required by the PMA; that during an audit of the firm's trust account, deficient spending was discovered and the broker-in-charge immediately funded the account; and that it does not appear that any consumers were harmed. The Commission notes that upon termination of the PMA by the property owners, all entrusted funds were accounted for and sent to the new management company.

SCARLETT PROPERTIES LLC (Charlotte) - By Consent, the Commission suspended the firm license of Scarlett Properties for a period of 12 months effective December 31, 2017. The Commission then stayed the suspension of Scarlett Properties for a probationary period. The Commission found that Scarlett Properties acted as the listing firm for a residential property which received multiple offers; that at the seller's request, Scarlett Properties asked all of the buyer agents to submit their client's highest and best offer and disclosed the terms of the current highest offer to those agents; that Scarlett Properties failed to receive the express authority of the offering party before disclosing this information; and that the seller ultimately went under contract with a buyer other than the one whose offer details were disclosed.

D. BARRY SECHRIST (Statesville) – By Consent, the Commission suspended the broker license of Mr. Sechrist for a period of 12 months effective September 19, 2017. The Commission then stayed the suspension for a probationary period. The Commission found that Mr. Sechrist was the broker-

in-charge of a licensed real estate brokerage firm that held a Property Management Agreement (“PMA”) to manage eight rental properties; that Mr. Sechrist failed to provide monthly statements of all monies received and disbursed to the property owners as required by the PMA; that, during an audit of the firm's trust account, deficient spending was discovered and Mr. Sechrist immediately funded the account, and that it does not appear that any consumers were harmed. The Commission notes that upon termination of the PMA by the property owners, all entrusted funds were accounted for and sent to the new management company.

ROBERT B. SECHRIST (Statesville) – By Consent, the Commission reprimanded Mr. Sechrist effective September 19, 2017. The Commission found that Mr. Sechrist was affiliated with a licensed real estate brokerage firm and signed a Property Management Agreement (“PMA”), on behalf of the firm to manage eight rental properties owned by three siblings; that Mr. Sechrist, despite knowing that current tenants of these properties were bound by pre-existing leases which contained some unlawful language, failed to execute new leases with these tenants; and that Mr. Sechrist also failed to provide monthly statements of all monies received and disbursed to the property owners as required by the PMA. The Commission notes that upon termination of the PMA by the property owners, all entrusted funds were accounted for and sent to the new management company.

JASON REID SMITH (Stanfield) – By Consent, the Commission permanently revoked the broker license of Mr. Smith effective September 13, 2017. The Commission found that Mr. Smith in October 2012 induced a recent widow to invest in two properties owned by Mr. Smith; that the widow invested \$50,000 for each property for a total investment of \$100,000; that Mr. Smith signed two promissory notes promising to pay the widow the principal plus interest; that the promissory notes state that the investments are secured by the properties; that Mr. Smith has defaulted on both promissory notes and never recorded deeds of trust in the county register; that in July 2016, Mr. Smith promised an investigator for the Consumer Protection Division of the North Carolina Department of Justice that he would repay the principal of the investment to the investor; and that Mr. Smith at this time has not repaid any money to the widow.

Continued

SQUARE REALTY INC. (Charlotte) – Following a hearing, the Commission permanently revoked the firm license of Square Realty Inc. effective November 20, 2017. The Commission found that Square Realty conducted real estate brokerage and property management for its landlord clients; that on or about March 29, 2016, a landlord client filed a complaint with the Commission alleging that Square Realty had not remitted rental proceeds for January, February, and March 2016, had not communicated since January 2016, and that the phone numbers of Square Realty and its broker-in-charge were out of service; that on May 12, 2016, a landlord client filed a complaint with the Commission alleging that Square Realty was not collecting rent from tenants, did not collect a tenant security deposit from the current tenants, and had ceased all communications; that the Commission attempted to contact Square Realty but was unable to locate the firm or to receive responses to any form of communication; that Square Realty did not provide any records requested by the Commission; and, that a review of Square Realty's bank records revealed two accounts from which transfers were made for personal use, funds of landlord clients were commingled with those of the broker-in-charge, and the accounts were not in compliance with the Real Estate License Law and Commission rules.

APRIL ATKINSON TAYLOR (Wilson) – The Commission accepted the permanent surrender of the broker license of Ms. Taylor effective September 13, 2017. The Commission dismissed without prejudice allegations that Ms. Taylor violated provisions of the Real Estate License Law and Commission rules. Ms. Taylor neither admitted nor denied misconduct.

THE COMBS COMPANY LLC (Rocky Mount) – By Consent, the Commission reprimanded The Combs Company effective December 31, 2017. The Commission found that David Combs had an interest in a development company which developed a subdivision, and an interest in a building company which built homes on lots it owned in the subdivision; that in 2007, plat approval for the subdivision was recorded after David Combs posted a letter of credit addressing repairs to the streets; that in 2009, a buyer contracted with the building company to purchase a house through a

contract for deed; that in 2014, the buyer completed the purchasing, and the deed was recorded; that in 2009 and 2010, the City asked David Combs to provide renewed letters of credit or make needed repairs to the streets; that during this same period, the developer's bank acquired title to certain lots and common areas in the subdivision; that the Combs Company failed to disclose these developments to the buyer; that also in 2014, David Combs executed a Residential

Mail From The Commission

The Commission corresponds with licensees at their business addresses of record. Licensees are required to respond to Letters of Inquiry from this office within fourteen (14) days of receipt of same. Full brokers who work primarily from their homes must make arrangements with their offices to be notified regarding mail from the Commission so that the brokers can receive and respond to such mail in a timely manner. Additionally, if a broker changes offices or firms, he or she must provide the Commission with the new business address within ten (10) days of the change.

Property and Owners' Association Disclosure Statement and checked "No Representation" for all items pertaining to the subject property.

THE PROFESSIONALS GROUP (Asheville) - By Consent, the Commission reprimanded The Professional Group effective December 31, 2017. The Commission found that The Professionals Group, a licensed real estate firm, executed an Exclusive Buyer Agent Agreement with a client and represented this client in the purchase of a residential house; that The Professionals Group allowed a provisional broker, who was not affiliated with the firm, to execute both the agency agreement and the Offer to Purchase on behalf of the firm; that The Professionals Group failed to supervise the provisional broker while he represented the firm; that after closing, The Professionals Group paid a commission directly to the provisional broker, rather than to his broker-in-charge; and that The Professionals Group also allowed one of its brokers to work with another firm as a showing agent when the necessary secondary affiliation paperwork was never filed with the Commission.

UNLIMITED RESOURCES LLC (Cary) – By Consent, the Commission permanently revoked the firm license of Unlimited Resources effective December 1, 2017. The Commission found that Unlimited Resources received compensation for a

maintenance referral without providing full and timely disclosure to its principal; that Unlimited Resources improperly applied the tenant security deposit for various expenses and failed to provide the tenant with accounting; that Unlimited Resources failed to provide all documents requested by Commission staff; that a review of Unlimited Resources' tenant security account found that cancelled checks and deposit tickets lacked the required identifying information and were not properly retained; that two expenses from this account were used for a broker's personal benefit; that a trust escrow journal was not maintained; that an audit trail was lacking and a shortage was present; and that a review of Unlimited Resources' rental deposits account found that the account contained an overage and that some owners were being overpaid, causing deficit spending.

CHESTER ARTHUR WALKER, JR. (Pineville)

– The Commission accepted the voluntary surrender of the broker license of Mr. Walker for a period of one year effective November 15, 2017. The Commission dismissed without prejudice allegations that Mr. Walker violated provisions of the Real Estate License Law and Commission rules. Mr. Walker neither admitted nor denied misconduct.

DIANE MICHELLE WEEDEN (Denver) – By Consent, the Commission suspended the broker license of Ms. Weeden for a period of 24 months effective June 14, 2017, and prohibited Ms. Weeden from serving as a broker-in-charge for five years from December 14, 2017. The Commission found that Ms. Weeden, a provisional broker whose license has been inactive since December 2016, was issued a broker license by the Commission in January 2016 based on information provided by Ms. Weeden in her application and state background checks; that it has now been discovered that Ms. Weeden failed to report that she was found guilty in United States District Court for the Western District of New York of six (6) counts of Bankruptcy Fraud in December 2005, was ordered to pay a \$2,500 fine, was incarcerated 14 months, and placed on supervised release for two years.

Continued

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DEWEY J. WIGGINS (Lenoir) – By Consent, the Commission suspended the broker license of Mr. Wiggins for a period of 24 months effective October 18, 2017. The Commission then stayed the suspension for period of probation. The Commission found that Mr. Wiggins was convicted in District Court on January 26, 2016 of Level 5 DWI and Level 2 DWI; and that Mr. Wiggins was convicted on February 13, 2017 of Aggravated Level I DWI and received 24 months of supervised probation and lost his driving privileges. The Commission noted that Mr. Wiggins timely reported his convictions to the Commission.

EDITH ANNETTE WISE (Asheville) – By Consent, the Commission reprimanded Ms. Wise effective December 31, 2017. The Commission found that Ms. Wise was broker-in-charge of a licensed real estate firm and allowed a provisional broker, who was not affiliated with the firm, to execute both an agency agreement and Offer to Purchase for a client on behalf of the firm; that Ms. Wise failed to supervise the provisional broker while he represented the firm; that af-

ter closing, Ms. Wise paid a commission directly to the provisional broker, rather than to his broker-in-charge; and that Ms. Wise also allowed one of her brokers to work with another firm as a showing agent when the necessary secondary affiliation paperwork was never filed with the Commission.

MICHAEL DAVID ZIOLKOWSKI (Huntersville) – By Consent, the Commission suspended the broker license of Mr. Ziolkowski for a period of 12 months effective October 1, 2017. The Commission then stayed the suspension for a probationary period ending October 1, 2018. The Commission found that Mr. Ziolkowski, in January 2017, submitted an application for a firm license; and disclosed a 2003 DUI conviction

in New Hampshire and a 2016 possession of marijuana conviction in Utah; that in Mr. Ziolkowski's 2012 broker application, he failed to disclose the 2003 conviction; that on October 3, 2016, Mr. Ziolkowski was convicted of Possession or Use of a Controlled Substance and Use or Possession of Drug Paraphernalia in Utah and was placed on 18 months' supervised probation and ordered to pay a fine; and that Mr. Ziolkowski failed to report the 2016 conviction within 60 days of final judgment.

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