

# REAL ESTATE BULLETIN

Volume 48 • May 2017 • Number 1

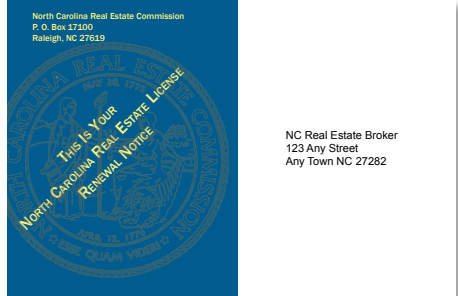
## License Renewal Period Begins May 15; Renew Online Before June 30 Deadline

By Corean E. Hamlin, Director, Education and Licensing

The annual period for renewal of your real estate license begins at midnight on May 15 and continues until June 30. If you do not renew by June 30, your license will expire.

The renewal fee is \$45.00. Per Commission Rule 58A .0503, you must renew online at [www.ncrec.gov](http://www.ncrec.gov). To renew online, login to your record on the Commission's website, [www.ncrec.gov](http://www.ncrec.gov), on or after May 15. Your PIN (password) will be the last four digits of your Social Security number unless you have changed it. (A broker who does not have the ability to renew online may renew by calling the Commission's office between 8:30 a.m. and 5:00 p.m., Monday through Friday (919/875-3700).)

You may pay by Visa, MasterCard,



Discover, or PayPal. A printable confirmation of renewal will appear on your screen when the process is complete. While logged in, be sure to verify and

(See **Renew**, page 3)

### Rule Changes Effective July 1

Approved changes to rules may be reviewed on the Commission's website at [https://www.ncrec.gov/Pdfs/Rules/ApprovedRules\\_eff717.pdf](https://www.ncrec.gov/Pdfs/Rules/ApprovedRules_eff717.pdf).

### Fee Changes

Fees for broker license reinstatement and license applications will change effective July 1, 2017.

The fee for license reinstatement will be \$90 and the fee for both broker and firm license applications will be \$100.

**New Direct Line: Regulatory Affairs (919) 719-9180**

### In Memoriam

**Matthew J. "Rick" Watts** of Fayetteville, Chairman of the Commission in 2004 and 2005, and a member from 2002 to 2012.

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## Introducing: Digital Pocket Cards!

By Diana L. Carnes, Systems Administrator



Tired of keeping up with your paper pocket card? You may now choose to keep a digital pocket card.

In March 2017, the Commission rolled out a redesigned digital pocket card. Effective immediately, you may choose to either carry a paper pocket card or to store a digital pocket card on your smartphone or other electronic device. There is no fee for the digital pocket card.

You may view, download, or print your digital pocket card at any time by logging in to your online license record. Digital pocket cards for licensed firms may be accessed through the Qualifying Brokers' online license records.

**LICENSE RENEWAL:** Brokers who renew their individual or firm licenses between May 15-June 30, 2017, and those who reinstate their licenses online between July 1-December 31, 2017, will receive paper pocket cards. The Commission will not issue paper pocket cards during the 2018-2019 renewal season.

**NEW LICENSEES:** Beginning July 1, 2017, paper pocket cards will no longer be issued to newly licensed brokers and firms. Instead, new licensees will be directed to download digital pocket cards upon issuance of the licenses. Brokers will still have the ability to request paper pocket cards by completing an online request form and submitting a \$5.00 fee.

Whether you choose to use the paper or digital pocket card, remember that Commission Rule 58A .0101 requires you to retain the pocket card as evidence of licensure and be able to produce the card at all times.

## 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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Roy Cooper, Governor

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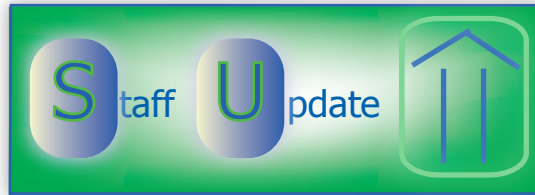
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Miriam J. Baer

### Editor

Robert L. Forshaw



## Appearances

**Frederick A. Moreno**, spoke to the Charlotte chapter of the National Association of Residential Property Managers.

**Stephen L. Fussell**, Senior Consumer Protection Officer, spoke to the Duplin-Sampson Council of the Wilmington Regional Association of REALTORS®.

**Glenn M. Wylie**, Consumer Protection Officer, spoke to Paracle Realty in Fort Mill, South Carolina.

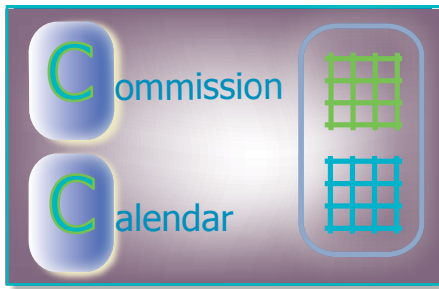
**Peter B. Myers**, Information Officer, spoke to Howard Perry and Walston North Hills in Raleigh.

## People



## 45 Years of Service to Commission

*Four members of the Commission staff received awards recently for a total of 45 years of service. The awards were presented by Commission Chairman George Bell (left) and Vice Chairman Robert J. Ramseur, Jr. (far right). The award recipients are (l. to r.) Jacob A. Gore, Chief Technology Officer, five years; April M. Conyers, Information Specialist/Accounting Specialist, 10 years; Sarah E. Herman, Consumer Protection Officer, five years; and Stephen L. Fussell, Senior Consumer Protection Officer, 25 years.*



June 14-15  
 July 12-13  
 August 16-17  
 September 13-14  
 October 18-19

*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.*

## Renew

*(Continued from page 1)*

update all contact information, including address, telephone number, and email address. Note that you may designate your email address as "PRIVATE," meaning it will be used exclusively for communication from the Commission to you; or "PUBLIC," meaning it will be provided upon request to the public, including CE course sponsors and others.

If your renewal fee has not been received by the Commission by June 30, your license will expire. To reinstate an expired license, you must pay a \$90 fee between July 1 and December 31. Failure to reinstate the former license by December 31 will result in your having to submit a new application, including application fee and criminal background report. You will also be required to take additional education and/or pass the state license examination. Refer to the "Reinstate your License" page on the Commission's website ([www.ncrec.gov](http://www.ncrec.gov)) for detailed information regarding the reinstatement process.

Be sure to renew your license even if you do not complete your continuing education by June 10. By doing so, your license will be changed to inactive status on July 1, rather than expired. Refer to Rule 58A. 1703 for license activation instructions.

All broker license records are updated on July 1 to reflect license status as of that date. The Commission's website will be unavailable on July 1 and 2, due to the annual records maintenance process.

NOTE: Brokers-in-Charge and BIC-Eligible brokers whose license statuses change to expired or inactive automatically lose BIC status and/or eligibility. In such case, a broker who wishes to regain BIC status must (1) return the license to

active status; (2) meet the experience requirements for BIC designation; (3) take the 12-hour Broker-in-Charge Course before re-designation; and (4) send the Commission the BIC Declaration Form.

Do NOT take the 12-hour BIC Course before your license is on active status! Refer to Rule 58A. 0110(m) for detailed instructions regarding re-designation as BIC.

### Broker-in-Charge and Basic Trust Account Procedures Courses

Register online at the Commission website, [www.ncrec.gov](http://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	May 16-17 July 31-August 1 November 7-8
Kannapolis	NC Research Campus, Kannapolis	May 22-23 July 26-27 August 21-22 September 26-27 October 25-26 December 5-6
Greensboro	Deep River Event Center	July 17-18 November 27-28
Raleigh	McKimmon Center	June 5-6 July 10-11 August 14-15 September 6-7 October 11-12 November 20-21 December 18-19
Wilmington	Best Western Coastline Center	August 29-30 November 1-2

#### Basic Trust Account Procedures (Commission Offices, Raleigh) (All classes 1 - 5 p.m.)

Raleigh	Commission Offices 1313 Navaho Drive, Raleigh	May 9 June 7 July 10 September 6
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See Commission website to confirm course dates.



# New Education Rules, Digital Pocket Cards Among Spring Educators Conference Topics

By Pamela R. Rorie, Continuing Education Officer

An energetic crowd of real estate instructors, school officials, and publisher representatives attended the 2017 Real Estate Educators Conference held in Cary on March 23 and 24 at the Embassy Suites, Raleigh-Durham/Research Triangle. The Commission-sponsored meeting drew approximately 225 participants – a near record crowd – from across the state for this year’s event.

George Bell, Commission Chair, welcomed the group and recognized instructor Jim Hagan, who has attended every Educators Conference. Bell introduced new Education & Licensing Division Director Corean Hamlin, who briefly reviewed the division’s latest projects.

Miriam Baer, Commission Executive Director gave a *State of the Commission* presentation covering various topics, including licensing trends and new digital pocket cards.

Janet Thoren, Regulatory Affairs Division Director, and Hamlin jointly presented and answered questions about the newly reformed and adopted education rules which will be effective July 1, 2017.

During the first day’s luncheon, the North Carolina Real Estate Educators Association (NCREEA) held its spring meeting under the direction of President Oscar Agurs, and Immediate Past President Arvil Price officiated the traditional awards presentation. The Association presented its *Program of the Year* award to Matthew Davies for his Real Estate Prelicense Math Book, and their *Educator of the Year* award to Travis Everette.

Commission Chair Bell presented the Commission’s *Larry A. Outlaw Excellence in Education Award* to Travis Everette. The award was established in memory of Mr. Outlaw, an attorney who served as the Director of the Commission Education and Licensing Division for 35 years from the position’s inception until his retirement in 2014.

Following the luncheon, Jake Gore,

Commission Chief Technology Officer, and Diana Carnes, Systems Administrator, provided a demonstration of the Commission website, [www.ncrec.gov](http://www.ncrec.gov), and webforms. Real estate attorney and Commission Vice Chair Robert J. Ramseur presented *Confessions of a Real Estate Closing Lawyer (and other TRID Disasters)*.

The remainder of the day was devoted to Education and Licensing Program Updates. Legal Education Officer Tricia Moylan presented the topics for the 2017-2018 *General and Broker-in-charge Update Courses*; Continuing Education Officer Pamela Rorie alerted the educators to rule changes that will specifically impact continuing education; and Education and Examination Officer Deborah Carpenter discussed prelicensing and postlicensing changes and recognized prelicensing schools and instructors whose students had exhibited outstanding performance on the license examination.

The second day of the conference opened with keynote speaker Karel Murray’s presentation of *The Language of Intent: How Self Talk Transforms Outcomes*. Phillip Jordan, Executive Director of the NC Human Relations Commission, explained the meaning of “disparate impact” and discussed HUD’s policies regarding applicant screening.

The conference concluded with the Regulatory Affairs Forum in which the Commission’s attorneys – Thoren, Assis-



Top photo: Travis Everette, with Commission Vice Chair Robert J. Ramseur, Jr. (left) and Commission Chair George Bell (right) received the Commission’s *Larry A. Outlaw Excellence in Education Award* and the NCREEA *Educator of the Year* award. Bottom photo: Matthew Davies, with President Oscar Agurs (left) and Immediate Past President Arvil Price (right) received the NCREEA *Program of the Year* award.

tant Director of Regulatory Affairs Charlene Moody, Deputy Legal Counsel Fred Moreno, and Associate Legal Counsel II Robert Patchett answered questions received from the educators in advance of the conference.

The Commission thanks North Carolina’s real estate educators for their continued interest and support, and congratulates Matthew Davies and Travis Everette for their accomplishments.

**Q**: Does the Commission Regulatory Affairs Division take general real estate questions?

A: Yes. The Regulatory Affairs Division phone number is (919) 719-9180.

Q: Who can call in with a question? Do you only take calls from real estate licensees?

A: Anyone can call us. We answer questions from licensees, consumers, attorneys, landlords, tenants, etc. If you are a licensee, we will ask you for your license number, but you don't have to provide it.

Q: What kinds of questions will we answer?

A: As one might imagine, we get calls on a multitude of subjects. However, keep in mind that the Commission is the state agency that licenses and regulates real estate brokers so we primarily answer questions related to the License Law and Commission rules. Other questions related to real estate likely will not fall within the scope of what we can answer, but we will point the caller in the right direction or offer suggestions, depending on the nature of the question.

Q: What kinds of questions will we NOT answer?

A: We cannot give legal advice. We cannot solve disputes related to legal liability, lawsuits, contract disagreements, commissions owed by clients, landlord/tenant issues, and the like. Those questions are for a private attorney. Furthermore, the Commission cannot enforce contracts or require real estate agents to fulfill promises, reimburse money, or perform other acts.

Also, we do not resolve disputes over referral fees or commissions owed between real estate licensees. Those disputes are often resolved through arbitration by the local REALTOR® association, if you are a member. If you're not a member, see your attorney or consider taking the matter to small claims court.

Q: Will we take complaints related to disputes with attorneys, appraisers, home inspectors, lenders, etc.?

A: No. Consumers should contact

## We Answer Lots of Questions About Real Estate! Some We Do Not. Read This First Before Calling.

By Peter B. Myers  
Information Officer

the North Carolina State Bar (for attorneys), the North Carolina Appraisal Board (for real estate appraisers), the North Carolina Home Inspector Licensure Board (for home inspectors), the North Carolina Office of Commissioner of Banks (for banks, mortgage companies or mortgage brokers), or other appropriate agencies.

Q: What is the process for calling the Commission?

A: Call the number mentioned above and our administrative assistant will get your name and phone number, licensee number, and information about your question. One of our Regulatory Affairs staff will call you back in the order calls are received. We normally return our calls on the same day, assuming they are received before 4 p.m.. If not, expect a call back the next business morning. Keep in mind we return all our calls, *so please be patient!* We will return your call as soon as we possibly can.

Q: When I get a call back, will I be speaking with an attorney?

A: No. Although there are attorneys on staff at the Commission, they do not return general information calls. Calls are typically returned by a Regulatory Affairs Information Officer. As stated above, callers who need legal advice must call a private attorney.

Q: Do we take complaints over the phone?

A: We do not take complaints over the phone. We will not give an opinion whether there have been any violations of License Law of Commission rules or of a licensee's guilt based on a phone call. Complaints should be submitted in writing using the complaint form found on our website. The complaint can either be submitted online or mailed in to us at the address on the form. Relevant documents can also be attached and submitted online with the complaint. Complaints are assigned a case number and the Commission will send confirmation of receipt of the complaint by mail.

Q: How should I present my question so I get a quick, efficient answer?

A: That's easy- keep it simple! Give us a quick, efficient question. Generally the Information Officer does not need to hear the detailed, exhaustive story before we know what your question is. We first need the basic facts. And please don't forget: we need to know your question! Once we get your question, we can explore what other details might be necessary to fully answer the question.

Please ask us the question from the very beginning. Chances are we can answer it right off the bat. If not, we will ask for the information we need to give an answer.

Q: Lastly, if I have a license and I call in a certain number of times, will I be put on a "watch list" or something like that?

A: No. We will keep a written record of calls received, but we don't monitor how often anyone calls.



North Carolina Real Estate Commission  
**REAL ESTATE BULLETIN**

Read it. Know more.

**A**s brokers are keenly aware, the due diligence process is one of the most important phases of a real estate transaction. The standard form Offer to Purchase and Contract (Form 2-T) is used in the majority of residential transactions in North Carolina. The standard form includes a due diligence period which is the opportunity for buyers to fully investigate a property and transaction with only a minimal risk of loss.

The due diligence fee is paid directly to the seller, generally at the time the contract is executed. The amount of the due diligence fee varies between transactions depending on a range of factors, such as the listing price of the home and duration of the due diligence period

(“Seller Obligations”) or Paragraph 12 (“Risk of Loss”), or in accordance with any addendum attached to the contract.

A buyer may terminate the Offer to Purchase and Contract if a seller materially breaches the contract. A material breach of contract occurs when a party fails to satisfy a material condition or term of the contract. There are some terms of a contract that are not likely to be viewed as material, such as certain seller representations. Representations are important because they provide valuable information to parties but some representations may not rise to the level of materiality. For example, whether the seller has owned the property for one year versus less than one year (Paragraph 7(a)) is likely not material to the

an earnest money and due diligence fee refund or proceed with the execution of the contract. For example, if a house burns to the ground in a fire, the buyer can terminate the contract and receive a full refund because the seller can no longer perform a material term of the contract. Whether improvements on a property are destroyed or materially damaged will require a legal opinion and, most likely, a determination by an insurance provider.

Finally, a buyer may receive a refund of their due diligence fee if a contract addendum provides for it. Just as actual due diligence fee refunds are rare, contract addendum provisions providing for due diligence fee refunds are also rare. The Contingent Sale Addendum

## Due Diligence Fees: When Are They Refunded?

*By Robert A. Patchett, Associate Legal Counsel II*

along with local market conditions. A buyer should also consider the amount of money they can afford to lose if they choose to terminate.

In the course of a successful transaction, the due diligence fee is paid to the seller at the time of contract execution and credited to the buyer at the closing. In the event of an unsuccessful transaction in which the buyer exercises their right to terminate the contract during the due diligence period, the due diligence fee will be retained by the seller. It is important to note that in most transactions, regardless of whether the transaction is successful, the seller will retain the due diligence fee. This outcome makes sense because the purpose of the due diligence fee is to secure a time period in which the buyer can inspect the property and access the transaction without fear of a competing buyer luring the seller away.

The more complicated issues surround the instances in which the buyer demands the refund of the due diligence fee. In standard form 2-T, Paragraph 1(i) states that the due diligence fee is nonrefundable unless the seller materially breaches the contract, the buyer terminates the contract under Paragraph 8

transaction. If you believe a seller has materially breached a contract, contact an attorney who can provide legal advice on the matter. In the event a seller materially breaches the contract, the buyer may be entitled to a full refund of the due diligence money, earnest money, and reasonable costs incurred in connection with the buyer’s due diligence. However, this is rare.

A buyer may also terminate the contract and receive a full refund of the due diligence fee, earnest money, and reasonable costs of due diligence, if a seller materially fails to comply with any of the enumerated obligations in Paragraph 8, “Seller Obligations.” Whether a seller materially complies with a stated obligation in Paragraph 8 is a legal question brokers should direct their client to discuss these issues with an attorney before deciding on a course of action.

Paragraph 12, “Risk of Loss” also gives the buyer the right to terminate the Offer to Purchase and Contract and receive a full refund of the earnest money and due diligence fee. Under this paragraph, if “improvements on the[p]roperty are destroyed or materially damaged prior to closing,” the buyer may terminate the contract and receive

(2A2-T) states in Paragraph 2 that if a seller, in accordance with that addendum, terminates the contract during the due diligence period then the seller must refund the due diligence fee to the buyer. Buyers and sellers may enter into other addenda that may provide for a due diligence fee refund but those provisions must be drafted by the parties or, preferably, by an attorney.

As a general rule, the due diligence fee is paid to the seller at the time of contract formation and is nonrefundable except in the rarest of circumstances. Unless the contract was materially breached by the seller, the seller failed to materially comply under Paragraph 8 of the Offer to Purchase and Contract, the contract was terminated under Paragraph 12 of the Offer to Purchase and Contract, or if explicitly provided for in a contract addendum, then the buyer is not entitled to a due diligence fee refund.



## What is Radon Gas?

Radon is a colorless, odorless, radioactive gas which occurs naturally from the decomposition of uranium and is found in varying amounts in virtually all soils and in every state. It poses little to no health risk when allowed to dissipate in open air, but can present a significant health risk over time if it becomes trapped and accumulates in buildings. Radon gas rises through cracks and fissures in the earth's surface, and enters homes through cracks or holes in the foundation or walls, in gaps around service pipes, around construction joints, and sometimes in water if the source is groundwater, rather than surface water.

### What Level of Radon Gas is Safe?

Theoretically, *any* amount of radon poses some health risk since it is radioactive. The danger comes more from breathing radon. If radon is in the groundwater, then the gas is released whenever water is used. Radon gas decays into radioactive particles which become trapped in the lungs and as they continue to decay, they release small bursts of energy which can damage lung tissue and lead to lung cancer. The Environmental Protection Agency (EPA) recommends that indoor radon levels not exceed 4 picocuries per liter (pCi/l) of air.

### Is the Presence of Radon Gas a Material Fact that Must Be Disclosed?

*If a broker knows that dangerous levels of radon are present in any structure which will be occupied regularly by people, then the broker must disclose that to all prospective buyers or tenants.*

A broker is not expected to test all properties for radon. However, a broker listing a property should have the homeowner complete the Residential Property and Owners' Association Disclosure Form. Question 25 on that form deals with hazardous or toxic substances, including radon gas. If the broker has any reason to suspect that radon may be present at a hazardous level, the broker has a duty to inquire as to whether

the property has been tested for radon. If the results of such a test were above the level recommended by the EPA, the broker has a duty to disclose this information to any prospective buyers. A buyer agent should always recommend to a buyer that the buyer have a radon test as a part of their due diligence, par-

## Revisiting Radon Gas and Radon Mitigation Systems

ticularly if the broker knows that other buildings in the area have unusually high radon levels.

### How Are Radon Levels Determined?

It is extremely easy to test for radon in a home or business. There are several "do-it-yourself" kits which may be purchased in hardware stores or from the EPA or over the internet and there are qualified testers trained to conduct such tests. A list of qualified testers may be obtained from the North Carolina Department of Environment and Natural Resources, Division of Radiation Protection at [www.ncradon.org](http://www.ncradon.org). Test kits can be ordered from the same website. There are both short-term and long-term tests available. Radon levels may vary from day to day and season to season and may be influenced by severe storms or high winds. Short-term tests are less likely to render an accurate picture of the year-round average radon level but do provide immediate feedback. They generally take a couple of weeks to get results. If the results are 4.0 pCi/l or above, it is recommended that a second test, either short-term or long-term be conducted. Long-term

testing generally takes more than 90 days. Long-term tests will provide a more accurate reading of the year-round average radon level.

### What if the Seller Installed a Radon Reduction or Mitigation System?

If a seller had a radon problem in the past, but installed a radon reduction system to remediate the problem and bring the radon within acceptable EPA levels, is the broker required to disclose the presence of the system?

In the 2008-2009 Update Course, Commission staff stated that the system was installed to remedy an existing problem which could reoccur if the system failed to operate correctly and therefore the mere presence of the system should be viewed as a material fact and disclosed to prospective purchasers. However, since that time radon mitigation systems have become far more common and are often being installed in new construction homes with no history of radon gas. Such systems are often included as part of a green building program or as a feature in new homes since installation at the time of construction is much less expensive than installing an after-market system. In order to not stigmatize such homes as this feature becomes more prevalent, the Commission has since revisited the issue and determined that the mere presence of a system is not, in and of itself, a material fact but the best practice for a listing broker is to disclose and let potential buyers make a fully informed decision before they go under contract. When a radon mitigator system is evident, buyer agents should inquire as to why a mitigator system was installed. And, buyers should be advised to have the property tested for radon gas and have the mitigation system tested to be certain it is functioning properly as part of their due diligence if they are interested in purchasing the home.

The North Carolina Radon Program at [www.ncradon.org](http://www.ncradon.org) provides much helpful information about radon including a map showing various radon levels across the state.



Seven Tips  
for a  
Successful Closing

Closing Attorneys  
Want Brokers  
To Actively Partner  
in the  
Closing Process

*By Robert J. Ramseur, Jr.,  
Vice Chair, Real Estate Commission*

**A**s a lawyer who has practiced real estate law in North Carolina for over 20 years, I have seen my fair share of real estate transactions: residential and commercial, challenging and simple, stressful and enjoyable- and everything in between. Admittedly, I viewed the real estate closing process early in my career through a narrow lens, one that focused simply on my role in the process. I was so wrapped up in the zealous representation of my client that I often failed to recognize and appreciate the hard work and dedicated professionalism being exhibited by the other participants in the closing process.

Two events in my career radically changed my focus and shaped the way I practice today. First, I was chosen to serve on the Joint Forms Committee of the North Carolina Bar Association and the North Carolina Association of Realtors®. Next, I was appointed to serve as a lay member of the North Carolina Real Estate Commission. Service on the Joint Forms Committee and the Real Estate Commission afforded me the privilege to work with some exceptionally smart and dedicated real estate brokers from all over the state. It allowed me to step back from the daily grind of office work and see things from a different perspective, providing me with great insight as to the true mechanics of the real estate transaction. It enabled me to appreciate how critical it is for every professional involved in a real estate transaction to be an active participant in the success of that transaction.

I suspect that many of you may be in a place where I found myself many years ago, focused on day-to-day survival

rather than how the pieces of the transaction should properly fit together to benefit your clients. Last month I was asked to speak at the Real Estate Commission's North Carolina Educators Conference to discuss the implementation of the TRID Disclosure Rules by the Consumer Financial Protection Bureau. To prepare for my presentation, I sent an email to real estate lawyers across the state asking for feedback on issues and problems that they are experiencing with TRID. To my surprise, the responses were extremely consistent - the TRID Disclosure Rules were actually not a problem at all. In fact, most of the feedback was positive - consumers appeared to like the new closing process and despite a rough start, lenders and closing attorneys were beginning to understand and streamline the process.

Another surprise was that I received a tremendous amount of feedback requesting that real estate brokers become more active participants in the closing process. It was a remarkable call to ac-

tion - closing attorneys wanted brokers as partners in the process, not just passive participants. A variety of closing attorneys from every corner of our state-urban, rural, large firm, small firm, solo practitioner, residential, commercial-responded that they wanted and needed your assistance in making the closing process more efficient. The feedback contained consistent themes and constructive advice that I have summarized below. So how can you, as a licensed Real Estate Broker, assist North Carolina's closing attorneys in streamlining and simplifying the closing process?

**1. TAKE GREAT CARE TO MAKE SURE THAT THE CONTRACT IS WELL CRAFTED.**

Attorneys suggested that many issues and closing table delays would be prevented if brokers simply exercised caution when placing a property under contract. Is the buyer's name really "Betty Sue" or is it actually "Elizabeth Susan"? Did your contract provide for a non-closing cost credit from the seller to the buyer- something that most lenders have not allowed in a decade? Did you ask for the closing attorney to draft an addendum to the contract rather than undertaking the task yourself?

**2. MAKE SURE THAT YOU HAVE ALLOWED SUFFICIENT TIME FOR THE "CLOSING PROCESS" TO HAPPEN.**

The 2008 banking crisis and the 2015 implementation of the CFPB's TRID regulations have created due diligence requirements and timing challenges for lenders and other professionals that take time to navigate. A contract that calls for a short due diligence period and a quick closing is simply not feasible in today's environment. Before adding dates in a contract, make sure that you have communicated with the lender, the home inspector, the surveyor, the closing attorney, etc. to make sure that your client can meet the due diligence and closing deadlines without difficulty.

**3. MAKE SURE THAT YOUR CLIENTS HAVE A "PLAN B".**

Many closing issues would be minimized if your clients have made alter-



native plans in the event of a closing delay. If your closing is scheduled on a Friday afternoon of a holiday weekend, it is a good idea to insist that your clients not schedule movers that day. Try to avoid closings on Fridays and the last day of the month. Caution your clients against scheduling painters and hardwood floor installers the day of closing. Have your clients wire their funds to close several days prior to the closing. Many attorneys reported that most of the stress in a closing delay was unrelated to the actual closing- it was created by the fact that buyers had not made any contingency plans for a delay. Anticipate challenges before they arise so that your client can easily adapt in the event of a delay.

**4. MAKE SURE THAT YOU ARE PROACTIVE IN GETTING IMPORTANT INFORMATION TO THE CLOSING ATTORNEY.**

The TRID regulations have made it extremely difficult for closing attorneys to make last minute changes to the settlement statement and Closing Disclosure. Get invoices to the closing attorney as soon as you receive them. Remember that many lenders require that any changes to the Closing Disclosure and settlement statement be approved by the underwriter prior to closing. Fill out closing information sheets immediately and completely- closing attorneys need that information to prepare for closing. Obtaining a payoff statement or homeowners' association statement can take 7-10 business days, so every minute is critical in attempting to avoid a delay.

**5. USE EFFECTIVE COMMUNICATION WITH THE CLOSING ATTORNEY AND BE AN ACTIVE PARTICIPANT IN THE PROCESS.**

If you tell the closing attorney that you will follow up with an email, make sure you follow up with an email. What is the closing attorney's preferred method of communication? Are you checking to see if the closing attorney has everything ready for closing or are you just assuming that he has it under control? Effective communication between the broker and closing attorney

is essential. Attorneys crave your active participation in the process as it makes for a smoother transaction and reduces the chance of a closing day surprise.

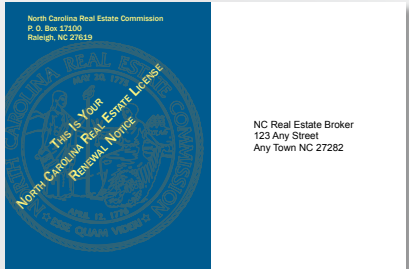
**6. ASSIST THE CLOSING ATTORNEY IN THE EFFORT TO PROTECT CONSUMER PRIVACY.**

Are you frustrated that the new TRID closing procedures appear to have reduced your participation in the process? There may be a good reason why- lenders and closing attorneys have had to spend vast sums of money upgrading their systems to protect consumer privacy and they tend to exclude those participants in the process who have not. Privacy was one of the primary mandates of the new TRID Disclosure regulations and lenders are going to great lengths to comply. Consider upgrading to an encrypted email system. Never send social security numbers or wiring instructions via email. Get rid of that outdated email provider and invest in your business. In fact, consider bringing back some of the methods that we used to use to conducting business- reintroduce yourself to the telephone, the fax machine, Federal Express and hand delivery.

**7. REVIEW THE CLOSING DISCLOSURE AND SETTLEMENT STATEMENT CAREFULLY.**

While there is some variation as to what documents closing attorneys send brokers to review prior to a closing, there is no doubt that closing attorneys want your assistance in carefully reviewing those documents for accuracy. In addition to reviewing the commission calculation, look for other potential errors. Review them with your client prior to closing. Remember that closing attorneys are human and another set of eyes on a settlement statement is extremely helpful. Once the transaction has closed and the funds have been disbursed, it is difficult, if not impossible, to make corrections and adjustments.

On behalf of real estate lawyers across the state, I want to thank each of you for being our partners in this process. Without you, our task would be next to impossible. With you, we can accomplish great things for our clients.



**Remember  
to  
Renew!**  
(See page 1)



**REAL ESTATE BULLETIN**

**Read it. Know more.**

**Broker Numbers**

As of April 1, 2017, there are 100,691 brokers and firms licensed by the Real Estate Commission in the following categories:

- Active Brokers 62,855  
(Active Provisional Brokers 7,226)
- Inactive Brokers 26,220  
(Inactive Provisional Brokers 6,060)
- Firms 11,616
- Brokers-in-Charge 16,443



# Commission Publications

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### How to Order:

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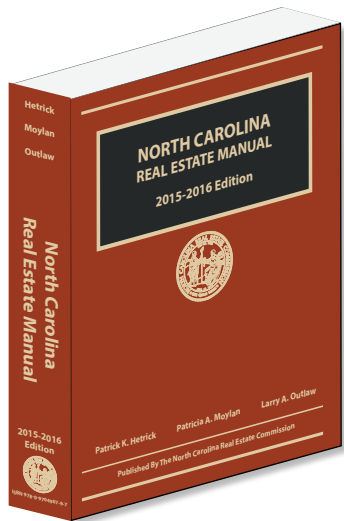
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**2015-2016 Edition**

# 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.

The 2015-2016 edition covers a wide variety of topics including the new Mineral and Oil and Gas form and portions of the new federal Loan Estimate and Closing Disclosure documents to replace the HUD-1 and GFE as well as coverage of revisions to standard forms.

The files on the Web site and on disk are "READ ONLY" and may not be printed or changed.

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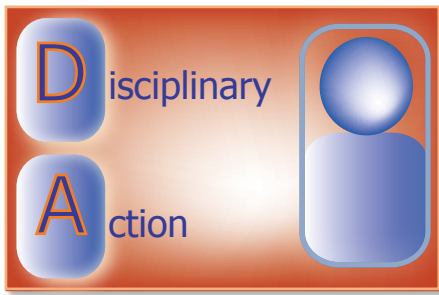
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*Penalties for violations of the Real Estate License Law and Commission rules vary depending upon the particular facts and circumstances present in each case. Due to space limitations in the Bulletin, a complete description of such facts cannot be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

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**WARREN KEITH BARNES** (Autryville) - Following a hearing, the Commission permanently revoked the broker license of Mr. Barnes effective March 2, 2017. The Commission found that Mr. Barnes, acting as broker-in-charge, managed the properties of various owners; that Mr. Barnes failed to respond to Letters of Inquiry and document requests sent by the Commission; that Mr. Barnes failed to provide owner statements, copies of management agreements, copies of leases, and rent proceeds to various property owners; and that Mr. Barnes failed to maintain documents in accordance with Commission rules. A review of the trust accounts found that cancelled checks failed to identify the purpose for the disbursement; the deposit slips were not designated "trust" or "escrow"; the deposit tickets failed to identify the purpose of the deposit, the property or owner, or the remitter of the monies deposited; and that multiple funds received were being transferred to Mr. Barnes' personal account, indicating conversion. Finally, Mr. Barnes' firm was administratively dissolved by the North Carolina Office of the Secretary of State in May 2012, and Mr. Barnes failed to notify the Commission of the firm's dissolution while continuing to practice brokerage under its name.

**CHESLEY G BOWENS, JR.** (Raleigh) – By Consent, the Commission reprimanded Mr. Bowens effective January 1, 2017. The Commission found that Mr. Bowens entered into an Exclusive Buyer Agency Agreement with three buyer clients, in which they agreed to compensate

Mr. Bowens \$1000 for his services; that the Exclusive Buyer Agency Agreement was not for a definite period; that the buyers were Spanish-speakers and Mr. Bowens did not speak Spanish; that on December 29, 2015, buyers submitted an offer to purchase a property, with a due dili-

*Don't Forget!  
Write your real estate broker license number on all agency agreements.*

gence period ending January 8, 2016; that the buyers were unable to obtain financing and the sellers terminated the contract; that Mr. Bowens requested that his buyer clients pay an additional commission based on his fulfillment of his duties, but he was not entitled to additional compensation under the terms of the Exclusive Buyer Agency Agreement; that the buyers did not pay the additional commission demanded.

**CRAVEN RANDALL CASPER** (Morehead City) – Following a hearing, the Commission permanently revoked the broker license of Mr. Casper effective January 30, 2017. The Commission found that on September 8, 2016, Mr. Casper pleaded guilty to one count of Felony Larceny after Breaking and Entering, one count in each of four cases of Felony Obtaining Property by False Pretenses, one count of Felony Identity Theft

in each of six cases, and one count of Felony Larceny; that Mr. Casper was sentenced to a maximum of 25 months of incarceration, given credit for 62 days of confinement prior to his plea and ordered to spend an additional 45 days in jail, after which the remainder of his sentence was suspended and he was placed on supervised probation for 60 months; that Mr. Casper was ordered to pay restitution and court costs totaling \$34,560.21; that as a condition of his supervised probation, Respondent was prohibited from engaging in real estate brokerage in the State of North Carolina; that Mr. Casper failed to respond to two Letters of Inquiry sent by Commission staff.

**CHARLES H. COOPER, JR.** (Fayetteville) – Following a hearing, the Commission permanently revoked the broker license of Mr. Cooper effective January 31, 2017. The Commission found that Mr. Cooper, acting as the broker-in-charge of his sole proprietorship, entered into an Exclusive Property Management Agreement with the owner of a residential property and agreed to hold money in trust as a repair deposit to be used pursuant to an agreement by the owner; that, in fact, Mr. Cooper failed to use the deposit to cover repairs, never accounted for the deposit and that between 2011 and 2015, Mr. Cooper provided the owner with annual financial statements that were inaccurate and misleading; that Mr. Cooper wrote seven checks for trust money from his personal bank account rather than from a trust account; that Mr. Cooper placed a

*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.

stop payment order on some of the checks; that Mr. Cooper failed to provide any trust account documentation to the Commission investigator after requested to do so; that Mr. Cooper transferred funds from his trust account to his personal accounts and made personal purchases using trust monies; that Mr. Cooper deposited rent checks from tenants into his personal account and wrote rental proceeds disbursement checks to the property owner clients from his personal account.

**JAMES E. GRIMES** (Spring Lake) – By Consent, the Commission permanently revoked the broker license of Mr. Grimes effective March 15, 2017. The Commission found that Mr. Grimes, acting as broker-in-charge of a sole proprietorship, collected and deposited \$21,825.70 on behalf of a single property owner client and failed to deliver said funds to his client; that Mr. Grimes collected \$21,703 in cash payments belonging to at least seven additional property owner-clients and failed to deposit said funds into a trust account and converted them to personal use; that Mr. Grimes failed to create and main-

tain trust account records in accordance with Commission rules and, as a result, his trust account had a significant shortfall.

**KEVIN EMANUEL GRULLON** (Fayetteville) – By Consent, the Commission reprimanded Mr. Grullon effective April 1, 2017. The Commission found that Mr. Grullon, acting as a dual agent for a new construction residential property, failed to provide a buyer with full and timely disclosure of a \$1,500 selling agent bonus.

**DESIREE CHARMAINE HILLARD** (Charlotte) – By Consent, the Commission revoked the broker license of Ms. Hillard for a period of one year effective February 15, 2017. The Commission found that Ms. Hillard collected a check payable to the firm with which she was affiliated in the amount of \$3,780 at the conclusion of a closing on a Friday; that Ms. Hillard took the check to the firm and was told that it could not be processed until Monday; that Ms. Hillard left with the check and on Monday, cashed the check at a check cashing business, and retained the full commission for personal use.

**WILLIAM RODNEY HAIRE** (Cameron) – The Commission accepted the voluntary surrender of the broker license of Mr. Haire for a period of four years effective February 15, 2017. The Commission dismissed without prejudice allegations that Mr. Haire violated provisions of the Real Estate License Law and Commission rules. Mr. Haire neither admitted nor denied misconduct.

**STEFAN ERIC KOMODOWSKI** (Asheville) – By Consent, the Commission suspended the broker license of Mr. Komodowski for a period of 28 months effective December 1, 2016. Three months of the suspension were active with the remainder stayed until May 1, 2019. The Commission found that in April 2016,

Mr. Komodowski pleaded guilty to felony breaking and entering, felony larceny after breaking and entering, and misdemeanor assault on a female; that Mr. Komodowski was sentenced to 127 days incarceration, six months electronic monitoring, and 36 months supervised probation; and that all of the guilty pleas stemmed from entering a residence that Mr. Komodowski had at one time occupied.

**ANDREW B. MIDDLEDITCH** (Charlottesville, Virginia) – By Consent, the Commission reprimanded Mr. Middleditch effective March 6, 2017. The Commission found that Mr. Middleditch, on April 27, 2016, entered an Alford plea to one count of felony DUI Manslaughter and one count of misdemeanor DUI 2<sup>nd</sup> offense within five years in the Circuit Court of Albemarle County, Virginia; that Mr. Middleditch timely reported these criminal convictions to the Commission and to the Virginia Department of Professional and Occupational Regulation; and that Mr. Middleditch is in compliance with all court imposed requirements.

*Continued*

Your Pocket License Card  
is your ticket for admission  
to Continuing Education classes.  
Allow at least 10 days to  
process a replacement request  
or  
download  
a replacement immediately  
from the Commission's website.

**MARC PAPPALARDO** (Raleigh)  
- The Commission accepted the voluntary surrender of the broker license of Mr. Pappalardo for a period of three years effective March 15, 2017. The Commission dismissed without prejudice allegations that Mr. Pappalardo violated provisions of the Real Estate License Law and Commission rules. Mr. Pappalardo neither admitted nor denied misconduct.

**KAITLIN CAROL RUSH** (Charlotte) – By Consent, the Commission suspended the broker license of Ms. Rush for a period of six months effective January 1, 2017. Three months of the suspension were active with the remainder stayed for a probationary period until June 30, 2017. The Commission found that Ms. Rush acted as the listing agent for a property which was owned by an LLC; that her husband was the only member of the LLC; that Ms. Rush and her husband had made substantial renovations to the property; that a buyer contracted to purchase the property, which was to be sold “as is”; that the property failed a final inspection and a Certificate of Occupancy was not issued; that Ms. Rush was aware that the property had failed the final inspection, but failed to disclose that fact to the buyer prior to closing.

**RUSH REALTY LLC** (Charlotte)  
– By Consent, the Commission suspended the firm license of Rush Realty for a period of six months effective January 1, 2017. Three months of the suspension were active with the remainder stayed for a probationary period until June 30, 2017. The Commission found that Rush Realty, through its qualifying broker/ broker-in-charge acted as the listing agent for a property that was owned by an LLC; that the husband of the qualifying broker/broker-in-charge of Rush Realty was the only member of the LLC property owner; that a buyer contracted to purchase the property, which was to be sold “as is”; that the property failed a final

## 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.nrec.gov](http://www.nrec.gov). Please allow at least four weeks prior to your group’s meeting.

inspection and a Certificate of Occupancy was not issued; that Rush Realty aware that the property had failed the final inspection, but failed to disclose that fact to the buyer prior to closing.

**ANNETTE N. STEWART** (Brevard) – By Consent, the Commission suspended the broker license of Ms. Stewart for a period of 24 months effective December 14, 2016. Two months of the suspension were active with the remainder stayed for 22 months. The Commission found that Ms. Stewart falsely represented to her landlord-client that she only had the executed signature page of a lease from a tenant and failed to deliver the full lease and the pet addendum which were in her possession until after the tenant had taken occupancy; that Ms. Stewart disbursed tenant security deposit funds to the tenant contrary to the written agreement signed by both the landlord and tenant that disbursement would be to the landlord; that an audit of Ms. Stewart’s trust account showed a shortage, deficit spending and a number of violations of Commission trust account rules.

**THE REALTY GROUP OF NEW BERN, LLC** (New Bern) – The Commission accepted the permanent voluntary surrender of the firm license of The Realty Group of New Bern effective March 15, 2017. The Commission dismissed without prejudice allegations that The Realty

Group of New Bern violated provisions of the Real Estate License Law and Commission rules. The Realty Group of New Bern neither admitted nor denied misconduct.

**LINDA SUE TURNER** (Cornelius) – The Commission accepted the permanent voluntary surrender of the broker license of Ms. Turner effective April 12, 2017. The Commission dismissed without prejudice allegations that Ms. Turner violated provisions of the Real Estate License Law and Commission rules. Ms. Turner neither admitted nor denied misconduct.

**SHIRLEY MIDDLETON VAN-STORY** (Greensboro) – By Consent, the Commission suspended the broker license of Ms. Vanstory for a period of one year effective March 1, 2017. The Commission found that Ms. Vanstory, acting as the broker-in-charge of a sole proprietorship failed to maintain trust account records in compliance with Commission rules; that an audit of Ms. Vanstory’s trust accounts indicated shortages in both her rental and security deposit accounts; that the audit also revealed that Ms. Vanstory improperly paid an employee and purchased office supplies with trust account funds; that Ms. Vanstory failed to provide trust account records to a Commission auditor upon request and failed to return a tenant security deposit or provide the tenant an accounting of

*Continued*



## 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.

its use within 30 days of the termination of the tenancy.

**OLEDA WELLS** (Whittier) – By Consent, the Commission suspended the broker license of Ms. Wells for 18 months effective March 7, 2017. The Commission then stayed the suspension for a probationary period until September 7, 2018. Ms. Wells is also prohibited from acting as a broker-in-charge for a period of five years. The Commission found that Ms. Wells, acting as the qualifying broker and broker-in-charge of a licensed real estate firm, took over the rental properties from her son after he failed to renew his broker license; that an audit of Ms. Wells's firm's trust account revealed that she failed to collect from her son all tenant security deposits and owner reserves for these properties, which caused a shortage of over \$40,000 in the account; that Ms. Wells became aware of the shortage and stopped collecting the full amount of management fees owed to the firm in order to decrease the deficit, which caused her personal funds to commingle with entrusted funds; that the audit further discovered that the bank accounts were not designated "trust" or "escrow", bank reconciliations and ledger trial balances were not performed monthly, and lack of an audit trail. The Commission notes that Ms. Wells has sold all of the firm's assets to another licensed entity which has agreed to accept the liability and fully fund the trust account.

**MICHAEL V. WELSH** (Asheville) – By Consent, the Commission suspended the broker license of Mr. Welsh for a period of one year effective February 1, 2017. The Commission found that Mr. Welsh owned a rental property in Boone, North Carolina; that the Town of Boone passed an ordinance prohibiting the owners of single-family residential properties from renting to more than two unrelated persons; that Mr. Welsh rented his property to more than two unrelated tenants and the Town sent Mr. Welsh a Notice of Violation for exceeding the occupancy limit; that, despite knowing about the ordinance, Mr. Welsh again rented his property to four unrelated persons; that when the Town discovered the violation, the tenants were forced to vacate the property before the end of their lease term.

**CHRISTA MARIE WILLEY** (Arden) – By Consent, the Commission suspended the broker license of Ms. Willey for a period of three years effective June 7, 2017. The Commission then stayed the suspension for a probationary period until June 7, 2020. The Commission found that Ms. Willey, acting as the qualify-

ing broker and broker-in-charge of a real estate brokerage firm, failed to disburse rental proceeds to landlord-clients in a timely manner; that Ms. Willey failed to provide transaction records or ledgers when requested by the Commission representative; that Ms. Willey admitted that she failed to perform reconciliations as required and a trust account inspection of subpoenaed bank documents showed evidence of shortages, and trust accounts not maintained in full compliance of Commission rules; that Ms. Willey has hired an accountant and provided evidence that her trust account is fully funded and being maintained in compliance with Commission rules.

**WNC MOUNTAIN PROPERTIES LLC** (Arden) - By Consent, the Commission suspended the firm license of WNC Mountain Properties for a period of three years effective June 7, 2017. The Commission then stayed the suspension for a probationary period until June 7, 2020. The Commission found that WNC Mountain Properties, a licensed real estate brokerage firm, failed to disburse rental proceeds to landlord-clients in a timely manner; that

### 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. 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.

WNC Mountain Properties failed to provide transaction records or ledgers when requested by the Commission representative; that WNC Mountain Properties failed to perform reconciliations as required and a trust account inspection of sub-

*Continued*

**\*\* Attention \*\***  
**BIC's and BIC**  
**eligible brokers!**

Please update your record to include your current phone number. You can designate your phone number as "public" or "private." Log on to your record at [www.ncrec.gov](http://www.ncrec.gov) and provide your phone numbers!

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poenaed bank documents showed evidence of shortages, and trust accounts not maintained in full compliance of Commission rules; that WNC Mountain Properties has hired an accountant and provided evidence that its trust account is fully funded and being maintained in compliance with Commission rules.

**ZOLA ENTERPRISES LLC D/B/A FLAT RATE REALTY SMOKY MOUNTAINS** (Whittier) – By Consent, the Commission revoked the firm license of Zola Enterprises LLC effective February 15, 2017. The Commission found that Zola Enterprises took over the rental properties from the son of its qualifying broker and broker-in-charge after the son failed to renew his broker license; that an audit of the firm's trust

account revealed that the firm failed to collect from the son all tenant security deposits and owner reserves for these properties, which caused a shortage of over \$40,000 in the account; that the broker-in-charge of the firm became aware of the shortage and stopped collecting the full amount of management fees owed to the firm in order to decrease the deficit, which caused the personal funds of the broker-in-charge to commin-

gle with entrusted funds; that the audit further discovered that the bank accounts were not designated "trust" or "escrow", bank reconciliations and ledger trial balances were not performed monthly, and lack of an audit trail. The Commission notes that the firm has sold all of its assets to another licensed entity which has agreed to accept the liability and fully fund the trust account.

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