

REAL ESTATE BULLETIN

Volume 49 • May 2018 • Number 1

Rule Changes Effective July 1 Approved

At its March 2018 meeting, the Commission adopted 16 rule amendments and withdrew two proposed rule amendments, 21 NCAC 58A .0109 and 21 NCAC 58A .0502, from consideration. The 16 rule amendments were approved by the Rules Review Commission at its April 19, 2018 meeting and will be come effective July 1, 2018.

The text for the adopted rule amendments may be found on the Commission's website under [License Law and Rule Changes](#).

Also effective July 1, 2018 is 21 NCAC 58A .0512, Death or Incapacity of Sole Proprietor. This Rule was adopted in 2017 by the Commission with a delayed effective date to allow for necessary programming changes.

If you would like to receive notifications of rulemaking proceedings, please visit www.ncrec.gov/home/subscribe or contact Melissa Vuotto, Rulemaking Coordinator.

New License Renewal Process; Learn With Simulation on Website

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

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

Due to new laws and rules, you will have to answer more questions during the license renewal process. All licensees must provide the "Employee Misclassification"

disclosure and certification. Additionally, if you are a Broker-in-Charge,

you will be required to disclose information regarding your trust account(s) and any criminal convictions or disciplinary actions that have occurred within the previous year, if applicable.

To help you prepare for the new questions, the Commission has created a renewal simulation, which is posted on the Commission's homepage (www.ncrec.gov). Also, an overview of the renewal pro-

cess is provided at the end of this article.

The renewal fee is \$45.00. Per Commission Rule 58A .0503, you must renew online at www.ncrec.gov. To renew

online, login to your record on the Commission's website, 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.

You may pay by Visa, MasterCard, Discover, American Express, or PayPal. A printable confirmation of renewal will appear on your screen when the process is complete.

If your renewal fee has not been received, (See **Renewals**, page 5)

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Protect Against Security Risks When Using Automated Clearing House Transaction Files

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By Chuck L. Kelley, RMP®

Thousands of property management companies pay owners and vendors using Automated Clearing House (ACH) transactions. Most of us use ACH because it's built into the software we use, it's easy, and convenient. One of the most common methods to facilitate an ACH transfer involves a file, usually referred to as a National Automated Clearinghouse Association (NACHA) file. In this article, we are going to explore what the risks are, why a NACHA file is dangerous, and how to protect yourself and your company.

Let's start by talking about the risk and why it matters. Ask yourself this question: "What would happen to your company if you lost all the money before you could pay your owners?" The answer is probably that you would go out of

(See **NACHA**, 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.

NORTH CAROLINA REAL ESTATE COMMISSION

1313 Navaho Drive
P. O. Box 17100
Raleigh, North Carolina 27619-7100
Main Office (919) 875-3700
Regulatory Affairs (919) 719-9180
www.ncrec.gov

Roy Cooper, Governor

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People

Katherine A. Buchholz has been employed as Education Officer in the Education and Licensing Division. She is a graduate of Appalachian State University and received an M.Ed. in English from UNC at Wilmington. She has been a teacher in London, England, Washington D.C., and eastern North Carolina, and a real estate broker in the Triangle area.



Danielle M. Alston has been employed as Auditor/Investigator in the Regulatory Affairs Division. She received an MS in Accounting from Southern New Hampshire University while working full time as a Loan Closing Processor with



the State Employees Credit Union. She holds a BS degree in Accounting from North Carolina A&T State University.

Robin R. Trout has been employed as Legal Assistant/Receptionist in the Regulatory Affairs Division. Prior to joining the Commission, she was associated with the Wake County Justice Center as Deputy Clerk in the Criminal Division.



Appearances

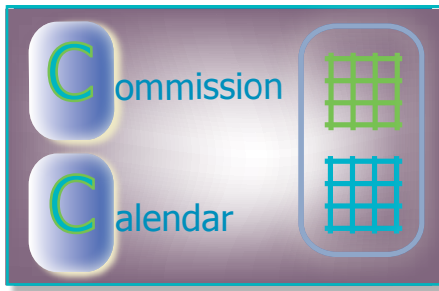
Marcia M. Waldron, Auditor/Investigator, spoke to BHHS Carolina Realty in Charlotte.

Jean A. Wolinski-Hobbs, Auditor/Investigator, spoke to the Outer Banks Association. (See **Appearances**, page 3)



120 Years of Service to Commission

Seven staff members were recipients of awards recently for 120 combined years of service. Commission Chair Robert J. Ramseur, Jr., (back, right) and Vice Chair Anna Gregory Wagoner (back, left) presented the awards to: (front, l. to r.) Systems Administrator Diana L. Carnes and License Specialist Juanita G. Kiaku, both 15 years; Regulatory Affairs Director Janet B. Thoren, 20 years, and Executive Director Miriam J. Baer, 30 years; and (back, l. to r.) Senior Auditor/Investigator Bart H. Allen and Administrative/CE Specialist LaToya S. Simms, both 15 years. Senior Legal Auditor/Investigator M. Spier Holloman, 15 years, was not present.



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

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.

Appearances

(Continued from page 2)

ciation of REALTORS® brokers-in-charge and to its Property Management Council.

Peter B. Myers, Information Officer, spoke to to GrayBeard Realty in Black Mountain and Home Towne Realty in Clayton.

Elizabeth W. Penney, Information Officer, spoke to Fonville Morisey Realty in Chapel Hill, to Home Towne Realty-Clayton East in Clayton, and to the Union County Association of REALTORS®.

Broker Numbers

As of April 1, 2018, there are 105,888 brokers and firms licensed by the Real Estate Commission in the following categories:

Active Brokers 66,105

(Active Provisional Brokers 8,146)

Inactive Brokers 26,917

(Inactive Provisional Brokers 7,074)

Firms 12,573

Brokers-in-Charge 17,004

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	May 22-23 August 20-21 November 26-27
Charlotte	Goodwill Opportunity Campus	May 23-24 July 24-25 August 21-22 November 13-14
Greensboro	Conference Center at GTCC	August 1-2 October 2-3
Raleigh	McKimmon Center	June 6-7 July 19-20 August 13-14 September 5-6 October 8-9 November 5-6 December 10-11
Wilmington	Cape Fear Community College	August 8-9 October 23-24

Basic Trust Account Procedures (Commission Offices, Raleigh)

(All classes 1 - 5 p.m.)

Raleigh	Commission Office 1313 Navaho Drive, Raleigh	6/5/18 7/11/18 8/20/18 9/5/18 10/2/18
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See Commission website to confirm course dates.
 Registration fees are nonrefundable.

business. The answer might even be more severe, resulting in lawsuits and prison bars. No matter how big or small your company is, can your company survive if you lost other people's money? Every time money is sent via ACH, the entire company is at risk.

Before we can dive into why a NACHA file is dangerous, we need to understand how a NACHA file is used. Every software package and banking system is a little different, but most of them operate similarly. Using your property management software, you decide how much to pay owners. Then, your software creates a NACHA file and you upload it to your bank's website. Your bank transfers money into other people's accounts based on the account numbers and routing numbers in the NACHA file.

So, what is a NACHA file? Most would assume that a NACHA file is a secure encrypted file, but unfortunately, it's not. It's just a simple text file that anyone can read. You can open any NACHA file with any text editor and see all the info. It's just setup in a specific way so that the bank knows what to do with it. There is no encryption or verification that the data is correct. It's just a text file, renamed with a different file extension. The crux of the problem is that it would be trivial for anyone to change all the account numbers and routing numbers in a NACHA file.

Computers are inherently complex, and VERY hard to make secure. We all take computer security for granted and just assume we are secure. Even if you are using great passwords with 2-Factor Authentication, keeping everything updated, and not surfing strange websites, it's still hard to make sure your computer is secure. In fact, did you know that in 2014, Technewsworld.com reported that 33% of ALL computers are ALREADY infected with malware! You are probably thinking, but I have antivirus software. Well, in February 2015, Tripwire.com reported that 70% of malware infections go undetected by antivirus software. If you have read this far and thought this couldn't happen to you, think again.

The real danger is when the NACHA file is sitting on your computer, before you upload it to your bank. It's trivial for someone to change a NACHA file. It's also trivial for a hacker to put a virus on your computer to modify NACHA files, so you send all the money to them instead of your owners. Unfortunately, this happens regularly to property management companies. From a hacker's point of view, it's extremely easy, and the payoff is huge. Hackers target property management companies because we transfer large sums of money with ACH and usually have very little understanding of computer security.

I hope I've convinced you that using ACH is not as secure as you may have originally thought. Before you go running to your accountant screaming to stop using ACH, let's discuss how to protect yourself.

There are essentially three ways:

1. Stop using ACH and go back to mailing checks. This would be more secure, but most owners have come to expect direct deposit and most property management companies have moved away from checks. Checks also have their own security concerns.
2. Don't process a NACHA file on your computer. Many property management software companies have a feature where they can do the ACH within their system and their bank. Some call it an eCheck instead of ACH. Consider using that instead of downloading a file to your computer. You get all the benefits of ACH, but without the risk. Most companies do charge for this service, but usually it's a nominal fee compared to the risks.
3. Verify your ACH batch every time.
 - Get a new computer you know hasn't been compromised, keep it updated, and lock it down as much as possible.
 - ONLY use that computer for ACH and never use it for anything else.
 - After uploading the NACHA file, view the processed ACH batch from inside your bank's website.
 - Go through the list line by line and verify each account number and routing number. This is a very labor intensive and time consuming task. It's important that you check every single payment. To avoid detection, many hackers will only change a couple of payments, not the whole batch.

If you have any questions about this process, please reach out to your software company, bank, and insurance provider to see what protections they have in place for this. They will probably say that there is no protection in place, and they will not cover any of the lost money initiated by your company via an ACH transfer. Unfortunately, this means the risk is entirely on your company. Take the steps now to protect yourself, your business, and your reputation.

Chuck L. Kelley, RMP®, is the Property Manager for Porter Realty, Inc., in Alamosa, Colorado. He has 12 years' experience in security and law enforcement. In 2012, he left law enforcement to pursue a career in real estate and currently manages about 250 rental units.

Renewals

(Continued from page 1)

ceived 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) for detailed information regarding the reinstatement process.

Be sure to renew your license even if you do not complete your continuing

As of January 1, 2018, the Commission no longer accepts credit card numbers by telephone.

If you have questions about the renewal process, our License Specialists will be happy to assist you. However, they cannot process your renewal by phone.

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.

NOTE: Brokers-in-charge and

BIC-eligible brokers whose license statuses change to expired or inactive automatically lose BIC status and/or eligibility. If that happens, 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.

RENEWAL PROCESS STEPS

For a detailed explanation and preview of these steps, go to the Commission's homepage (www.ncrec.gov) and click on Renewal Simulation.

Step 1: UPDATE INFORMATION

This step is required for all brokers.

Your license record will be displayed, and you will verify that all information is correct and make changes as needed. Commission Rule 58A.0103 requires every licensee to maintain current and accurate residence and email addresses and telephone numbers with the Commission.

Step 2: EMPLOYEE MISCLASSIFICATION

This step is required for all brokers.

As required by the NC state legislature in NCGS § 143-765, effective January 1, 2018, in order to renew an occupational license, you must certify that you have read and understand the public notice statement from the Employee Classification Section of the State Industrial Commission and must disclose any investigations for employee misclassification.

Step 3: CRIMINAL CONVICTIONS

This step is required only for BICs. If your license record does not reflect BIC status, this step will not appear.

You will select Yes or No to indicate whether you have been convicted of a misdemeanor or felony or have been disciplined by an occupational licensing agency since your

last renewal. If you select Yes for either question, you will be required to indicate whether you have previously reported the violation(s) to the Commission. If you indicate that you have not previously reported the issue, you will be prompted to report the requirement using the Criminal Conviction Disciplinary Action Reporting Form (REC 2.09) upon completion of renewal.

Step 4: TRUST ACCOUNT INFORMATION

This step is required only for BICs. If your license record does not reflect BIC status, this step will not appear.

You will select Yes or No to indicate whether you or any firms where you are designated as BIC maintain trust accounts. If you select Yes you will be required to enter the name(s) of the bank(s) at which the trust account(s) are maintained.

FINAL STEP: PAYMENT

This step is required for all brokers. It will appear as Step #5 for BICs and Step #3 for all other Brokers.

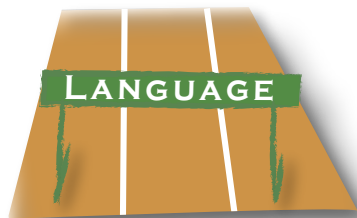
You may pay the \$45 renewal fee by Visa, MasterCard, Discover, American Express or PayPal account.

Once you submit your payment, a confirmation page will appear. On the confirmation page, you may click on the Pocket Card button to view/download/print your digital pocket card or you may click on the Receipt button to view/print a receipt* of your renewal transaction.

Year after year it seems that multiple cities across the state of North Carolina continue to show up on “Best of” listings and rankings. These accolades tend to bring new companies, more jobs, and an increase in population to those regions which create a demand for housing and new clients for real estate brokers.

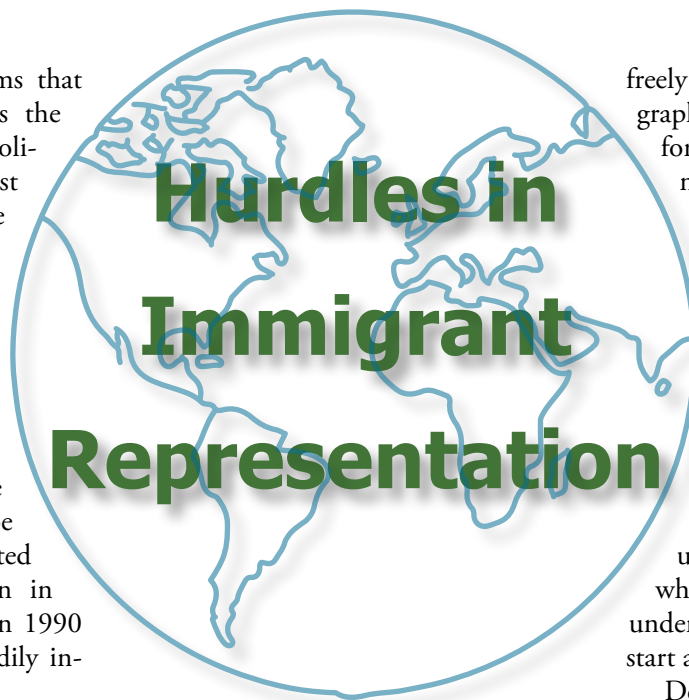
Did you know that many of the people that make up these increases in population might be immigrants? It has been reported that the immigrant population in NC has increased from 1.7% in 1990 to 7.6% in 2014, and has steadily increased year after year.

From 2000 to 2010, NC’s Latino population, for example, ranked sixth in the nation for growth, according to the UNC Charlotte Urban Institute. With these increases to the market population, some brokers are trying to build future potential immigrant client bases by engaging in their representation. As with all clients, brokers must exercise skill, care and diligence.



Probably the largest hurdle in the representation of certain immigrant populations is that of language. Many brokers believe that certain immigrant populations do not speak English very well, if at all. However, a 2012 study by the U.S. Census Bureau found that 44% of the foreign-born population age 5 and older, who arrived in the United States in the year 2000 or later, reported high English-language speaking ability.

This may be due to the global economy and its ability to spread English music, literature, and entertainment to other parts of the world quickly. It may also be due to other countries requiring school aged children to take English



*By Fred Moreno,
Chief Deputy Legal Counsel*

courses as part of that country’s education curriculum. So, the chances that an immigrant would in fact speak English seem to be pretty good. Even in cases where a broker’s client cannot speak English, if that client has children that were born in the U.S., chances are that their children may speak English along with their parent’s native language very well.

According to a 2013 study conducted by the Pew Research Center, 73% of Latinos ages 5 and older said they speak Spanish at home and 89% of U.S.-born Latinos spoke English proficiently. It is quite common to see children act as “translators” for their parents in many situations. However, brokers should proceed with this line of communication with caution. It is difficult to know if your message is being delivered to your client exactly as you intended or if a different message altogether is being conveyed. Furthermore, there may be words that are “lost in translation” as your client’s language may not have a word similar to the English version.

To help ease the language barrier, there are now several translation options which a broker may choose from simply by tapping their smartphone.

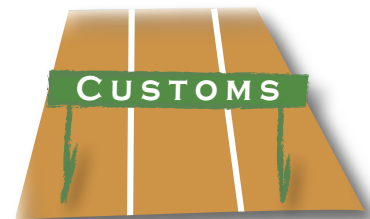
Google, for example, allows you to

freely input words, sentences, and paragraphs that can be translated into many foreign languages, all at no cost. This may also help if you can speak a certain language conversationally, but are unfamiliar with specific terms such as “contract” or “agency agreement”.

Other software programs are also readily available for a fee that can do anything from text-to-speech, email, and document translations. Finally, there are easy-to-use software programs used to learn foreign languages, which can provide for immediate understanding of basic terminology to start a conversation.

Despite technological advances in communication, issues may still persist. For example, a broker may not be able to determine if the software program made an accurate translation or if the correct word was translated but was not used in the appropriate grammatical format. The best course to overcome a language hurdle would be to hire a professional translator. Due to the country’s diverse population, certified translators are now more widely available through various business entities.

Additionally, many relevant documents are produced in Spanish language versions. For example, the Working with Real Estate Agents brochure and three Commission Q&A brochures are available in Spanish. Go to www.ncrec.gov/Publications for ordering information. Similarly, NCREALTORS® offers some Spanish language forms for use by its members, including the listing and buyer agency agreements and the 2T Offer to Purchase and Contract.



Another hurdle in the representation of certain immigrant populations is a lack of understanding of the customs or

traditions celebrated by that immigrant population. After all, this population may speak a different language, dress differently, celebrate different holidays, and eat differently. When immigrants move to a new area, they may network with people who share their background as this may help with their assimilation to their new environment.

Some brokers may see an opportunity to expand their client base by building relationships within this network. With advances in technology and the Internet, brokers have more information readily available at their fingertips than ever before. Not only could a broker learn to speak the potential client's native language as discussed above, a broker could also research the various traditions and gift-giving practices that are accepted by diverse cultures.

Implementing these practices through their representation, a broker may soon find that it brings a sense of ease and comfort to their client during what can be a stressful event of buying or renting a home or leasing commercial space. Furthermore, by successfully representing just one member of an immigrant population, a broker may tap into an excellent referral network among this population.

A broker must still use caution, however, when attempting to participate in an immigrant client's customs or traditions. If a broker does not have a full and complete understanding of a client's ethnic traditions and cultural background, it could work to their disadvantage. Some immigrant clients may take offense at a broker participating in certain customs or traditions when the broker does not share the same background. In addition to this, brokers must use caution when practicing common American customs and traditions with immigrant clients, as there are certain customs or practices in the U.S. that are at odds with other cultures. For example, in most Asian and Caribbean cultures, it is expected that you take your shoes off when entering someone's home. Also, touching a person on the arm, although it may seem innocent, might be considered offensive to those

who grew up in China, Thailand, Korea, and the Middle East.



Finally, another hurdle in the representation of certain immigrant populations is the belief that those persons would have difficulty in obtaining a loan due to limited credit or with transferring legal documents at closing. While it is true that obtaining financing from a lender may be more difficult for anyone with limited credit history, it is not impossible.

There are a number of loan packages offered by a variety of lenders either through the typical conventional loan or portfolio lender. Also, a number of lenders market to certain immigrant populations and provide assistance by hiring employees who speak their language and by providing translated forms. A broker could gain valuable insight by meeting with these lenders as well and learning what they have to offer. It is also possible that an immigrant client may also decide to pay cash, and this could sidestep most financing concerns.

On the flip side, brokers should expect that the closing process may take longer for immigrant clients than their American counterparts. This may be due to more stringent verification processes required by lenders or source of funds verifications in cash transactions mandated by the Internal Revenue Service. Should a broker decide to engage in the representation of an immigrant client, it would be a good idea to reach out to local law firms that specialize in immigration law for advice.

Due to shifting populations, more and more brokers are interacting with immigrant populations through representation. These potential new clients are searching for housing and looking for persons to communicate with about their new environment. It is also im-

portant to know that a broker is still obligated to follow all NC license laws and Commission rules, regardless of the ethnicity of their client or the challenges it may bring. This requires the broker to represent each client competently, and prohibits discriminatory practices.



North Carolina Real Estate Commission
REAL ESTATE BULLETIN

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Educators Conference Theme “Get in the Game” Focused on Classroom Interactivity, Engagement

By Pamela R. Rorie, Continuing Education Officer

A record crowd of more than 250 real estate instructors, school officials, and publisher representatives participated in the 2018 Real Estate Educators Conference held March 27-28 at the Embassy Suites in Cary. Sponsored by the Real Estate Commission, this year’s event featured the theme *Get in the Game*.

Commission Chair Robert Ramseur opened the conference and welcomed the crowd with comments on the value of education. Commission Executive Director Miriam Baer’s State of the Commission address informed educators that the past year has seen a substantial increase in license applicants, licensees, calls, emails, and information requests and described the Commission’s accomplishments and ongoing projects.

Corean Hamlin, Director of Education and Licensing, entertained the group with a *Two Truths and a Lie* presentation reviewing recent Education and Licensing changes, statistics, and future initiatives. Hamlin was joined by Director of Regulatory Affairs Janet Thoren to present rule changes becoming effective July 1, 2018.

Jake Gore, Chief Technology Officer, and Diana Carnes, Systems Administrator, introduced the newly developed Instructor Login program, and addressed recent technological updates in various Commission processes and procedures.

During the first day’s luncheon, the North Carolina Real Estate Educators Association (NCREEA) held its spring meeting under the direction of President Len Elder, DREI. Following the business meeting, NCREEA Immediate Past President Oscar Agurs, DREI, officiated the traditional awards presentation and presented its “Program of the Year” award to Sandy Williams, DREI, for her continuing education elective course, *Tackling What Ifs*, and their “Educator of the Year” award to Len Elder, DREI.

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

In the afternoon, educators received updates on Commission education programs. Education and Examination Officer Deborah Carpenter reminded the group of changes to the Prelicensing and Postlicensing programs, and Continuing Education Officer Pamela Rorie reviewed various continuing education processes and presented the topics for the 2018-2019 Update courses. Day one of the conference concluded

with a presentation by Education Officer Katherine Buchholz on *Interactivity & Engagement in the Classroom*.

Day two of the conference opened with keynote speaker Ryan Ohm, Director of Educational Initiatives with REALTOR® University, whose presentation focused on gamification in education. Roundtable discussions followed in which conference attendees responded to various questions posed by Commission staff.

The conference concluded with the Regulatory Affairs Forum titled *Myths and Rumors*. Commission Regulatory Affairs



Top Photo: Len Elder, center, is the recipient of the Larry A. Outlaw Award for Excellence in Education, presented by Commission Chair Robert Ramseur, right, and Mel Black. Bottom photo: Sandy Williams is the recipient of the Program of the Year award presented by NCREEA President Len Elder, right, and Immediate Past President Oscar Agurs.

Director Janet Thoren, Assistant Director of Regulatory Affairs Charlene Moody, Chief Deputy Legal Counsel Fred Moreno, Associate Legal Counsel II Rob Patchett, and Associate Legal Counsel I Madison Mackenzie entertained educators with discussions of myths and rumors that have circulated about the Commission and its processes and procedures.

The Commission thanks North Carolina’s real estate educators for their continued interest and support, and congratulates Sandy Williams, DREI, and Len Elder, DREI, for their accomplishments.

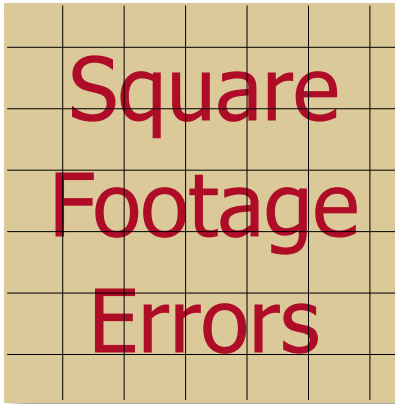
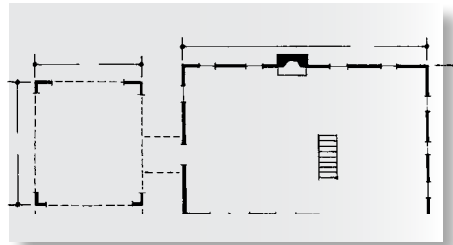
The details in this case study are based upon an actual complaint. A real estate broker (father) who was also a licensed general contractor listed his daughter's house for sale at \$161,500. The father had built his daughter's house and nearly every other house in the subject neighborhood. A buyer contracted to buy the daughter's house at list price. Two weeks later, the buyer's agent informed the father that the house only appraised at \$152,000. The buyer and seller agreed to reduce the sales price to the appraised amount.

The father asked for a copy of the appraisal report and after reviewing it, saw that two of the comparable sales ("comps") were houses that the father had built in the same neighborhood. The appraisal indicated that both of the comps had 1427 sq. ft. The appraiser had gotten the square footage information for the comps from the MLS system. The father indicated that as the builder, he knew that these comps actually contained 1334 and 1347 sq. ft., respectively. Comparing the advertised square footage with the actual square footage, the square footage errors by the listing broker for the two comps were 7% and 6%, respectively.

The county tax records indicated that the two comps contained 1427 and 1274 sq.ft., respectively. The listing broker claimed to have measured both properties and that the 1427 figure she entered for the second comp was a "typo" because she meant to enter 1274 sq. ft., the same amount indicated in the tax record. However, the evidence in the case indicated that the listing broker used the tax card information instead of measuring and calculating the square footage.

The listing broker eventually corrected the square footage data in the MLS for one of the comps, but did not correct the other comp saying it was too old to be used. However, both comps were still used in the preparation of the appraisal in the subject transaction, because they were in the same neighbor-

hood as the subject property and were comparable in many ways. The subject transaction closed at a sales price that was adversely affected by the incorrect square footage figures entered into the MLS by the listing broker for the two other properties.



Possible violations of the Real Estate License Law in this case study include violations of N.C.G.S. § 93A-6(a)(1), (3), (8), and (10) for misrepresentation of a material fact, false advertising, being unworthy or incompetent to act in a manner which protects the public, and engaging in dishonest dealing, respectively. The broker-in-charge of the firm which listed the two comps also bore the responsibility for ensuring that the advertising for the property was accurate (Commission Rule A.0110(i)(3)).

As indicated in this case study, square footage misrepresentations have the potential to adversely affect more people than just the buyer of the property being misrepresented. Many other buyers, sellers, brokers, appraisers and lenders can be adversely affected. Every broker or appraiser who has used the sales prices of the aforementioned comps when preparing a CMA, BPO or an appraisal may have arrived at incorrect market values or expected selling prices for the properties they were evaluating, because the square footage for the comps were misstated.

Any broker who includes a square footage figure in the MLS or any other form of advertising should exercise great care to accurately determine and report the square footage. A broker should never rely upon tax records, MLS data for previous listings/sales, previous appraisals, blueprints, or the seller's word for square footage. The Commission's publication, "Residential Square Footage Guidelines," is an excellent resource for brokers who measure and calculate square footage themselves.

A Regulatory Affairs Division Case Study

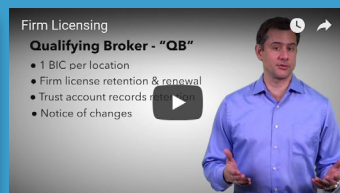
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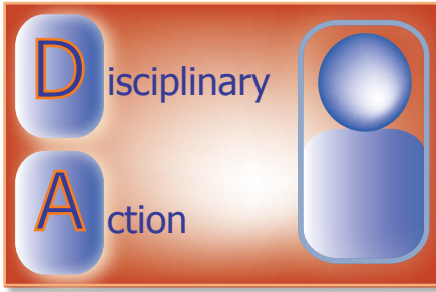
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Penalties for violations of the Real Estate License Law and Commission rules vary depending upon the particular facts and circumstances present in each case. Due to space limitations in the Bulletin, a complete description of such facts cannot be reported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

ETHEL T. CLARK (Fayetteville) – By Consent, the Commission suspended the broker license of Ms. Clark for a period of 12 months effective February 1, 2018. The Commission found that Ms. Clark, as the qualifying broker and broker-in-charge of a licensed real estate firm, failed to maintain the firm's trust accounts in compliance with Commission Rules, failed to properly label checks and deposit tickets, failed to maintain property or owner ledgers, failed to produce trial balances, and failed to properly reconcile the trust accounts. As a result, the firm's rental trust account and tenant security deposit account have shortages.

DONNA B. CLONINGER (Gastonia) – By Consent, the Commission suspended the broker license of Ms. Cloninger for a period of one year effective January 1, 2018. The Commission then stayed the suspension on certain conditions. The Commission found that Ms. Cloninger, acting as qualifying broker and broker-in-charge of a real estate brokerage firm, failed to inspect properties managed by the firm which resulted in significant unnoticed damage to a client-landlord's property; that Ms. Cloninger failed to adequately supervise unlicensed employees of the firm, one of whom engaged in the practice of real estate by signing property management agreements on behalf of the firm, and failed to maintain firm trust account funds to cover bank service fees causing the bank to draft trust money to cover the fees, thereby causing a trust account shortage. The Commission noted that Ms. Cloninger and the firm have refunded the bank service fees to the trust account.

BRADLEY B. EAGLES (Wilson) By Consent, the Commission suspended the broker license of Mr. Eagles for a period of six months effective March 1, 2018. The Commission found that Mr. Eagles failed to report within 60 days a plea conviction for misdemeanor stalking and, in conjunction with his guilty plea, admitted texting

profane messages and an explicit video of himself and the victim, his ex-girlfriend, without her consent.

FAMILY REALTY INVESTMENTS LLC (Fayetteville) – By Consent, the Commission permanently revoked the firm license of Family Realty Investments effective February 14, 2018. The Commission found



that Family Realty Investments through its qualifying broker and broker-in-charge failed to provide requested records to a Commission investigator during a spot inspection and, after numerous attempts to get information, admitted to converting approximately \$50,000 in trust funds to its own use.

FAMILY REALTY INVESTMENTS LLC (Fayetteville) – By Consent, the Commission permanently revoked the firm license of Family Realty Investments effective February 14, 2018. The Commission found that Family Realty Investments through its qualifying broker and broker-in-charge failed to provide requested records to a Commission investigator during a spot inspection and, after numerous attempts to get information, admitted to converting approximately \$50,000 in trust funds to its own use.

FIRST CLASS PROPERTY MANAGEMENT LLC (Fayetteville) – By Consent, the Commission accepted the permanent voluntary surrender of the firm license

of First Class Property Management effective January 17, 2018. The Commission dismissed without prejudice allegations that First Class Property Management violated provisions of the Real Estate License Law and Commission rules. First Class Property Management neither admitted nor denied misconduct.

GASTON LAKE LIMITED (Littleton) – The Commission accepted the voluntary permanent surrender of the firm license of Gaston Lake Limited effective March 14, 2018. The Commission dismissed without prejudice allegations that Gaston Lake Limited violated provisions of the Real Estate License Law and Commission rules. Gaston Lake Limited neither admitted nor denied misconduct.

PAULA L. K. GARCIA (Fayetteville) – By Consent, the Commission accepted the permanent voluntary surrender of the broker license of Ms. Garcia effective January 17, 2018. The Commission dismissed without prejudice allegations that Ms. Garcia violated provisions of the Real Estate License Law and Commission rules. Ms. Garcia neither admitted nor denied misconduct.

SUSANNE TERESA GEE (Fayetteville) - Following a hearing, the Commission permanently revoked the broker license of Ms. Gee, effective February 2, 2018. The Commission found that Ms. Gee, while acting as broker-in-charge and qualifying broker for Pyramid Investments LLC, failed to return tenant security deposits to tenants or her landlord clients on numerous occasions, failed to provide an accounting for the tenant security deposits, failed to respond to inquiries by Commission staff, failed to provide documents requested by Commission staff, and maintained a trust account containing overdraft fees, deficit spending, and a shortage. Moreover, Ms. Gee routinely promised to deliver the outstanding secu-

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.

rity deposits to landlords or tenants with no apparent intention to do so.

GOLDEN REAL ESTATE LLC dba The Preserve at Jordan Lake Realty (Chapel Hill) – By Consent, the Commission suspended the firm license of Golden Real Estate for a period of six months effective April 1, 2018. The Commission then stayed the suspension on certain conditions. The Commission found that Golden Real Estate through its qualifying broker and broker-in-charge acted as the listing agents for lots in The Preserve at Jordan Lake, a community in Chapel Hill and entered into a “Preferred Builders Program” that requires the

Real Estate Education and Recovery Fund Reimburses Victims

At its June 15, 2017 meeting, the Commission approved a payment totaling \$21,825.70 out of the Real Estate Education and Recovery Fund to one applicant who suffered financial loss due to the misconduct of James E. Grimes

By Consent, the Commission ordered permanent revocation of the real estate license of Mr. Grimes effective March 15, 2017.

preferred builders to pay Golden Real Estate and qualifying broker and broker-in-charge a commission for referring a lot buyer to one of the preferred builders to build a custom home. Golden Real Estate and its qualifying broker and broker-in-charge did not disclose the referral commission program to lot buyers when the lot buyers were choosing a custom home builder.

TONY R. GOLDEN (Chapel Hill) - By Consent, the Commission suspended the broker license of Mr. Golden for a period of six months effective April 1, 2018. The Commission then stayed the suspension on certain conditions. The Commission found that Mr. Golden was the qualifying broker and the broker-in-charge of a licensed real estate brokerage firm, that Mr. Golden and the firm acted as the listing agents for lots in The Preserve at Jordan Lake, a community in Chapel Hill and entered into a “Preferred Builders Program” that requires the preferred builders to pay Mr. Golden and the firm a commission for referring a lot buyer to one of the preferred builders to build a custom home. Mr. Golden and the firm did not disclose the referral commission program to lot buyers when the lot buyers were choosing a custom home builder.

LESTER QUINTIN GRANT (Maysville) – By Consent, the Commission reprimanded Mr. Grant effective April 3, 2018. The Commission found that Mr. Grant, acting as the broker-in-charge of a licensed real estate brokerage firm, marketed a property for sale nine days prior to obtaining a fully executed listing agreement and placed a tenant in the subject property and undertook the management of the property for a period of five months without obtaining a fully executed written property management agreement from the owners, and the firm’s property ledger for the subject property failed to identify the owner and tenant, the amount and date of monies deposited, the purpose of the monies deposited, from whom deposits were received, the purpose and identity to whom disbursements were paid, and the running balance of the funds on deposit.

HALL REAL ESTATE & INS AGENCY (Fayetteville) – By Consent, the Commission suspended the firm license of Hall Real Estate & Insurance Agency for a period of 12 months effective February 1, 2018. The Commission found that Hall Real Estate & Ins Agency, through its quali-

fying broker and broker-in-charge, failed to maintain its trust accounts in compliance with Commission Rules, failed to properly label checks and deposit tickets, failed to maintain property or owner ledgers, failed to produce trial balances, and failed to properly reconcile the trust accounts. As a result, the firm’s rental trust account and tenant security deposit account have shortages.

JASON DUANE JORDAN (Charlotte) – By Consent, the Commission permanently revoked the broker license of Mr. Jordan effective February 14, 2018. The Commission found that Mr. Jordan, as broker-in-charge of a licensed real estate firm, performed property management services for a client and failed to provide owner statements and rental proceeds in a timely manner, failed to respond to Letters of Inquiry from the Commission, and failed to provide property management and trust account records to Commission representatives despite agreeing to do so. Subpoenaed records showed that Mr. Jordan failed to maintain trust monies in a designated trust account. Mr. Jordan failed to provide records adequate to ascertain his liabilities or to confirm proper deposit and disbursement of trust monies.

TRISTA K. JONES (Wallace) – By Consent, the Commission suspended the broker license of Ms. Jones for a period of 36 months effective February 1, 2017. Thirteen months of the suspension were active
Continued

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with the remainder stayed through January 31, 2020. The Commission found that Ms. Jones was the bookkeeper for a licensed real estate brokerage firm, that in a Commission random letter audit of the firm's trust account Ms. Jones failed to provide all of the requested documentation, and that an auditor in a site visit found that Ms. Jones failed to perform reconciliations, failed to maintain a general ledger, and failed to maintain a trust account journal. Moreover, Ms. Jones could not account for all rents and security deposits received and failed to deposit all rent payments and security deposits, received in cash, into the trust account within three banking days. Ms. Jones' broker-in-charge further admitted to spending entrusted funds on expenses, other than for which the funds were intended, which led to deficit spending and a shortage in excess of \$80,000 of firm's trust account. Ms. Jones admitted to knowing that a shortage existed in the account

L Q GRANT PROPERTIES LLC (Maysville) – By Consent, the Commission reprimanded L. Q. Grant Properties effective April 3, 2018. The Commission found that L Q Grant Properties marketed a property for sale nine days prior to obtaining a fully executed listing agreement, placed a tenant in the subject property and undertook the management of the property for a period of five months without obtaining a fully executed written property management agreement from the owners, and the firm's property ledger for the subject property failed to identify the owner and tenant, the amount and date of monies deposited, the purpose of the monies deposited, from whom deposits were received, the purpose and identity to whom disbursements were paid, and the running balance of the funds on deposit.

ROBERT WESTON LEAROYD III (Raleigh) – By Consent, the Commission revoked the broker license of Mr. Learoyd effective March 14, 2018. The Commission found that Mr. Learoyd, in August 2010, pled guilty to a misdemeanor Operating Personal Watercraft with Child without a Life Jacket in Carteret County; that in August 2014, Mr. Learoyd pled guilty to a misdemeanor Operating a Boat in a Careless Manner in Carteret County; that in June 2016, Mr. Learoyd pled guilty to five counts of Trafficking in MDA/MDMA, one count of Maintain Vehicle, Dwelling, or Other Place for Use, Storage, or Sale of

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a Controlled Substance, and five counts of Possession/Distribution of a Precursor Chemical in Wake County and was sentenced to four terms of 6-17 months in prison to be served one after the other and ordered to pay \$25,352.50; and that Mr. Learoyd failed to report any of these convictions to the Commission.

MOUNTAIN MANAGER & ASSOCIATES INC (Hiawassee, Georgia) – By Consent, the Commission accepted the voluntary surrender of the firm license of Mountain Manager & Associates for a period of 10 years effective January 17, 2018. The Commission dismissed without prejudice allegations that Mountain Manager & Associates violated provisions of the Real Estate License Law and Commission rules. Mountain Manager & Associates neither admitted nor denied misconduct.

NOBLE LLC (Huntersville) – By Consent, the Commission reprimanded Noble LLC effective April 1, 2018. The Commission found that Noble failed to enter into buyer agency agreements in any of its sales

transactions and failed to have clients sign the Working with Real Estate Agents brochures.

JOHN F. PINTER (Tuskasegee) – By Consent, the Commission suspended the broker license of Mr. Pinter for a period of two years effective November 15, 2017. The Commission then stayed the suspension effective February 15, 2018 on condition that Mr. Pinter is ineligible to become or act as a broker-in-charge for a period of three years. The Commission found that Mr. Pinter failed to adequately execute his responsibilities as a broker-in-charge and failed to actively supervise a provisional broker affiliated with the firm and its unlicensed employees. The Commission also found that Mr. Pinter operated a firm under an assumed name without notifying the Commission, operated a branch office without designating a separate broker-in-charge; deposited rent monies and other entrusted funds in a trust account located in a Texas bank; failed to adequately review the trust account records, to ensure that all agency agreements complied with Commission Rule, or ensure that trust money was deposited in a reasonable amount of time; and allowed unlicensed individuals and business entities to be paid commissions. An audit conducted by the Commission determined that no money was missing from Mr. Pinter's firm's trust account, and it does not appear that any consumers have been harmed.

JOSE MANUEL POMALES (Fayetteville) – By Consent, the Commission permanently revoked the broker license of Jose Pomales effective February 14, 2018. The Commission found that Mr. Pomales, acting as qualifying broker and broker-in-charge of a licensed real estate firm, failed to

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.

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.

provide requested records to a Commission investigator during a spot inspection and, after numerous attempts to obtain information from him, admitted to converting approximately \$50,000 in trust funds to his own use.

AMY J. POMERANTZ (Chapel Hill) – By Consent, the Commission reprimanded Ms. Pomerantz effective February 14, 2018. The Commission found that Ms. Pomerantz listed a property in the MLS with a square footage measurement of 4,807 square feet provided by an appraiser she hired; then received a 2013 appraisal from her seller client and changed the square footage in the MLS listing to 5,272 square feet, a difference of approximately nine percent. Another appraiser measured the property for the buyer as having 4,849 square feet and the buyer asked for and negotiated a price reduction before the buyer closed on the property.

DEANNA MARIE PORTER (Raleigh) – By Consent, the Commission revoked the provisional broker license of Ms. Porter effective March 14, 2018. The Commission found that Ms. Porter, as a provisional broker, regularly performed real estate brokerage without the supervision of her broker-in-charge; and along with her now deceased husband, an unlicensed employee of the firm, managed the day-to-day operations of the firm; and that Ms. Porter's husband converted approximately \$128,000 in trust funds to their own use including transferring funds to their joint and personal accounts, and paying rent on their residence.

PYRAMID INVESTMENTS LLC (Fayetteville) - Following a hearing, the Commission permanently revoked the firm license of Pyramid Investments, effective February 2, 2018. The Commission found that the broker-in-charge and

qualifying broker for Pyramid Investments, failed to return tenant security deposits to tenants or her landlord clients on numerous occasions, failed to provide an accounting for the tenant security deposits, failed to respond to inquiries by Commission staff, failed to provide documents requested by Commission staff, and maintained a trust account containing overdraft fees, deficit spending, and a shortage. Moreover, the broker-in-charge routinely promised to deliver the outstanding security deposits to landlords or tenants with no apparent intention to do so.

JAMES WESLEY RUSSELL (Cartersville, Georgia) – By Consent, the Commission accepted the voluntary surrender of the broker license of Mr. Russell for a period of 10 years effective January 17, 2018. The Commission dismissed without prejudice allegations that Mr. Russell violated provisions of the Real Estate License Law and Commission rules. Mr. Russell neither admitted nor denied misconduct.

SRP MANAGEMENT (Gastonia) – By Consent, the Commission suspended the firm license of SRP Management for a period of one year effective January 1, 2018. The Commission then stayed the suspension on certain conditions. The Commission found that SRP Management through its qualifying broker and broker-in-charge failed to inspect properties managed by the firm that resulted in significant unnoticed damage to a client-landlord's property; that the broker-in-charge failed to

adequately supervise unlicensed employees of the firm, one of whom signed property management agreements on behalf of the firm, and failed to maintain funds to cover bank service fees causing the bank to draft trust money to cover the fees, thereby causing a trust account shortage. The Commission noted that the broker-in-charge and the firm have refunded the bank service fees to the trust account.

TRIAD REALTY PROS LLC (Greensboro) – By Consent, the Commission permanently revoked the firm license of Triad Realty Pros effective April 11, 2018. The Commission found that Triad Realty Pros worked closely with a property management firm which it often paid through its operating account. The property management firm's license was previously revoked by the Commission due to its unlicensed owner having signature authority over the accounts, among other things, in violation of its probation sanction. An audit of Triad Realty Pros' trust accounts found: deficit spending, journals which failed to identify the check number, payee, and purpose of disbursements, lack of an audit trail, failure to perform monthly bank reconciliations, ledger sheets which failed to identify the property, owners and tenants, and from whom monies were received, the same check numbers being used on a regular basis, and shortages in excess of \$17,000. Multiple checks were being cashed by an unlicensed assistant who also had signature authority for Triad Realty Pros' accounts.

U R B A N HOMES REALTY AND MANAGEMENT LLC (Charlotte) - By Consent, the Commission permanently revoked the firm license of Urban Homes Realty and Management effective February 14, 2018. The Commission found that Urban Homes Re-
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 sellers. 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.

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alty and Management through its broker-in-charge performed property management services for a client and failed to provide owner statements and rental proceeds in a timely manner, failed to respond to Letters of Inquiry and failed to provide property management and trust account records to Commission representatives despite the agreement of its broker-in-charge to do so. Subpoenaed records showed that the firm failed to maintain trust monies in a designated trust account. Urban Homes Realty and Management failed to provide records adequate to ascertain its liabilities or to confirm proper deposit and disbursement of trust monies.

VIJAY KRISHNA MOHAN VULLI (Huntersville) – By Consent, the Commission reprimanded Mr. Vulli effective April 1, 2018. The Commission found that Mr. Vulli acted as the qualifying broker and broker-in-charge of a licensed real estate brokerage firm, that Mr. Vulli failed to enter into buyer agency agreements in any of its sales transactions, and failed to have clients sign the Working with Real Estate Agents brochures.

QING WANG (Cary) - By Consent, the Commission suspended the broker license of Ms. Wang for a period of 10 months effective April 11, 2018. The Commission then stayed the suspension for a probationary period from April 11, 2018 through February 10, 2019. The Commission found that Ms. Wang reported her Level 1 DWI conviction to the Commission 82 days after

receiving the final judgement. Ms. Wang received 18 months of supervised probation, completed a substance abuse assessment, and surrendered her driver license.

DAVID MATTHEU WOOLARD (Jacksonville) – By Consent, the Commission suspended the broker license of Mr. Woolard for a period of six months effective March 15, 2018. The Commission then stayed the suspension for a probationary period of six months. The Commission found that Mr. Woolard timely reported a July 6, 2017 plea conviction for misdemeanor possession of drug paraphernalia stemming from a January 2013 arrest, that Mr. Woolard reported five misdemeanor

convictions on his 2010 broker license application, and that the conviction is Mr. Woolard's second possession of drug paraphernalia conviction.

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