



REAL ESTATE BULLETIN

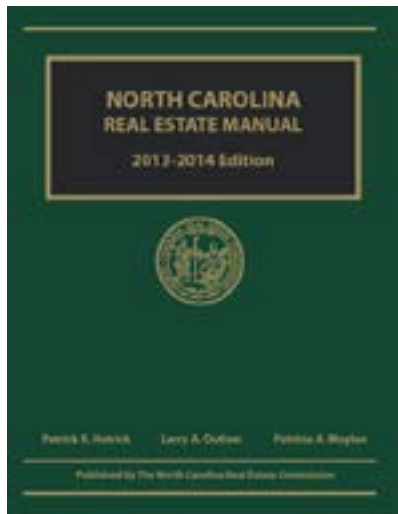
Volume 43 • February 2013 • Number 3

Commission Publishes Updated 2013-14 Real Estate Manual

The 2013-2014 North Carolina Real Estate Manual is now available for purchase. It is the definitive work on the legal aspects of real estate brokerage in North Carolina and essential for any practicing real estate broker.

Published in late December, the volume serves as the mandatory textbook for the three 30-hour postlicensing courses. It is widely used as a reference book for attorneys, instructors and anyone interested in real estate law and brokerage practice.

(See Manual, page 6)



Anti-Money Laundering Guidelines for Real Estate Professionals Page 4

Cone, Bromhal, Crayton Receive Appointments to Commission

Laura B. Bromhal of Raleigh and Walter (Walt) F. Crayton, Jr. of New Bern have been appointed to the Commission by former Governor Beverly E. Perdue, it was announced by Miriam J. Baer, Executive Director.

Benjamin Cone III, Commission Chairman and a Commission member since 2007, has been reappointed by Perdue for the term ending July 31, 2013.



Cone

Bromhal is a listing and sales REALTOR® with Prudential York Simpson Underwood Realty in Raleigh, with whom she has been associated for more than twenty years. She succeeds M. Rick Watts of Fayetteville for the term ending July 31, 2013.



Bromhal

Crayton succeeds former Vice Chairman Alice L. Mosteller of Waynesville for a three-year term ending July 31, 2015.



Crayton

Bromhal, a native of Roanoke Rapids, is a graduate of Meredith College and, as an alumnus, has served on the Meredith College Advisory Committee. She is a past president of the Wake County Bar Auxiliary and is a sustaining member and past director of the Junior League of Raleigh.

Bromhal is active in the arts and civic affairs and has participated in the work of numerous area organizations including the North Carolina Museum of History, North Carolina Arts Museum, Mordecai Historic Society, Executive Mansion, The Opera Company of North Carolina, North Carolina Symphony, Raleigh Chamber of Commerce, YWCA, United Way and the SPCA.

As a member of a family with a long heritage in North Carolina, she is actively involved with the Colonial Dames of Raleigh, First Families of North Carolina, Daughters of Colonial Wars,

(See Commission, page 3)

DOJ Oil and Gas Leasing Documents Merit Real Estate Brokers' Attention

Two recently issued documents from the North Carolina Department of Justice (DOJ) relating to oil and gas leases merit the attention of real estate brokers as they conduct business at a time of substantially increasing interest in oil and gas leasing in the state.

The documents are available on the Home page of the Commission's Web site, www.ncrec.gov, and inform landowners of their rights and summarize public protections in the Law.

Last year, the General Assembly

passed the Clean Energy and Economic Security Act which legalizes fracking and horizontal drilling (see "Fracking: What Every Agent Needs to Know" in the *Real Estate Bulletin*, October 2012) and establishes the North Carolina Mining and Energy Commission. The Act prohibits drilling until the Commission establishes rules for fracking (to be in place by October 1, 2014), requires companies to obtain drilling permits from the NC Department of Environ-

(See DOJ, page 8)

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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Patrick McCrory, Governor

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Glenn M. Wylie	Information Officer

Editor-In-Chief
Miriam J. Baer

Editor
Robert L. Forshaw



People

Amy E. Preddy has been employed as a Licensing Specialist with the Licensing and Education Division. Prior to joining the Commission, she worked in Human Resources and Accounts Payable at GCA Services Group, Inc., a facility management company in Research Triangle Park. She is currently completing a bachelor's degree in Digital Cinematography and Film at Full Sail University.



Appearances

Miriam J. Baer, Executive Director, spoke to the Fayetteville Regional Association of REALTORS® and to its Property Management Division on landlord/tenant issues. She also spoke to the North and South Carolina Associations of REALTORS® at their joint convention, and to the Charlotte Regional REALTORS® Association on current issues.

Janet B. Thoren, Regulatory Affairs Director and Legal Counsel, spoke to the High Point Regional Association of REALTORS® and to the Durham Regional Association of REALTORS® on the top issues in real estate regulation.

Charlene D. Moody, Assistant Director, Regulatory Affairs, and Legal Counsel, spoke to the Wilson Board of REALTORS® on recent legislative changes.

S. Adam Stallings, Chief Deputy Legal Counsel, spoke to the Burke County Board of REALTORS® on "fracking" and mineral rights and new Commission rules and to the Asheville Board of REALTORS® on broker price opinions, underground storage tanks, and permitting concerns.

Pamela M. Vesper, Senior Auditor/Investigator, spoke to the National Association of REALTORS® Property Management chapter meeting in Charlotte.

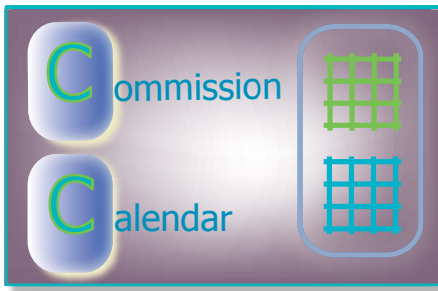
Stephen L. Fussell, Senior Consumer Protection Officer, spoke to the Johnston County Top Producers about the Commission and the services it provides to licensees.

Glenn M. Wylie, Information Officer, spoke to the Cleveland County Board of REALTORS® and the Goldsboro Board of REALTORS®.

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, call Janet Thoren at (919) 875-3700, Ext. 136. Please allow at least four weeks prior to your group's meeting.



November 14
 December 12
 January 9
 February 6
 March 6

All meetings, unless otherwise noted, begin at 9 a.m. and are held in Raleigh in the Commission's Conference Room at 1313 Navaho Drive (27609). Occasionally, circumstances necessitate changes in meeting times and locations.

Commission

(Continued from page 1)

Jamestown Society, Daughters of the American Revolution, the Crepe Myrtle Society, and the Sovereign Colonial Society Americans of Royal Descent.

Crayton is the president and owner of Crayton Commercial, LLC, which specializes in retail shopping center development, re-development, leasing and management throughout the southeast-

ern United States. He also is a licensed real estate broker in both North and South Carolina and broker-in-charge of his company.

Prior to establishing Crayton Commercial, Crayton worked in the retail leasing and shopping center development field in Charlotte, and is an Official Member of the International Council of Shopping Centers.

Crayton is a 2004 graduate of the Kenan-Flagler Business School at the

University of North Carolina at Chapel Hill with a BS in Business Administration and a Life Member of the UNC Alumni Association. He is an Eagle Scout, Life Member of the National Eagle Scout Association, a member of the New Bern Noon Rotary, and a member of Centenary United Methodist Church and its finance committee.

COURSE SCHEDULES

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

Please see the Commission Web site, www.ncrec.gov, under Course Registration, for locations, dates, and times from February thru June, 2013.

**Broker-in-Charge Course
 Two-days. Day one, 1-5 p.m.; Day two, 8:30-5:30 p.m.**

Asheville	February 20-21 May 13-14	Holiday Inn East/Blue Ridge Parkway
Banner Elk	April 10-11	Best Western Mountain Lodge
Concord	February 25-26 April 15-16 June 5-6	Hilton Garden Inn, Concord
Greensboro	March 26-27 May 22-23	Deep River Event Center
Nags Head/Kill Devil Hills	March 12-13	Sea Ranch Resort
Raleigh	March 18-19 April 24-25 June 3-4	McKimmon Center
Wilmington	May 6-7	Coastline Convention Center

Basic Trust Account Procedures Course

Raleigh	March 5, 1-5 p.m. June 5, 1-5 p.m.	McKimmon Center
Greensboro	May 23, 9 a.m. - 1 p.m.	Deep River Event Center

See Commission Web site to confirm courses.

Anti-Money Laundering Guidelines for Real Estate Professionals

The following article is copyrighted by and reprinted with the permission of the National Association of REALTORS®.

Overview

The crime of money laundering continues to be a growing area of concern in the United States. Therefore, law enforcement agencies and the financial sector devote considerable time and resources to combatting these illegal financial activities. However, many non-financial businesses and professions are also vulnerable to potential money laundering schemes.

Real estate professionals are a category of the non-financial business sector that may encounter persons engaging in money laundering activities. The purpose of this fact sheet and suggested voluntary guidelines is to increase real estate professionals' awareness, knowledge, and understanding of the potential money laundering risks surrounding real estate and enable them to identify practical measures to mitigate the risks.

What Is Money Laundering?

Money laundering is the process criminals use to disguise the illegal origin of their funds. Certain criminal activities generate substantial proceeds. Legitimizing, or "laundering" this money through the financial system, is a critical component for criminals to hide their activities and not draw attention to their illegally derived proceeds.

The actual process of money laundering is a three step process that is initiated by introducing the illegal proceeds into the financial system, e.g., breaking up large amounts into small deposits or by purchasing financial instruments, such as money orders, which is referred to as placement. This is typically followed by distancing the illegal proceeds from the source of the funds through layers of financial transactions, referred to as layering, and finally by re-

turning the illegally derived proceeds to the criminal from what appears to be a legitimate source, known as integration.

A real estate transaction can be used in any one of the three stages of money laundering. For example, if an individual purchases a home and uses illegal funds as part of the down payment, this would be considered integration.



Generally speaking, most money laundering activities are concentrated in the financial sectors. Therefore, banks and other financial institutions are subject to anti-money laundering/counter-terrorist financing (AML) laws and regulations, primarily the Bank Secrecy Act (BSA), and have safeguards in place to help detect and mitigate money laundering activity. But other industries, such as real estate, can also be exposed to questionable business practices and be utilized as a vehicle for money laundering activities.

The Role of Real Estate Agents

As a general matter, the real estate agent's AML risk is substantially mitigated by the fact that the great majority of real estate transactions involve regulated entities such as banks and non-bank mortgage companies, which have BSA obligations. However, when a transaction steps outside the norm or in cases where certain risk factors are present, as detailed below, a real estate agent faces an elevated chance of encountering a possible money-laundering scheme and should consider taking measures to address the risk.

As a real estate professional, knowledge of how real estate transactions normally progress and the resulting ability to recognize and evaluate whether variances from the norm may signify an enhanced AML risk is an important way real estate agents can help to mitigate AML risk in real estate transactions. This requires brokers and agents to be aware of how real estate transactions may be used in illegal financing schemes and what steps should be taken to detect and deter those activities.

Being familiar with the signs of money laundering activity in the real estate market will help real estate agents to:

1. Identify potential money laundering activities;
2. Take appropriate steps to mitigate the money laundering risk; and
3. If necessary, alert the proper authorities to help deter and mitigate the use of real estate in money laundering schemes.

Guidelines

Law enforcement and financial experts have identified some of the warning signs of money laundering activity in connection with real estate. By familiarizing oneself with these voluntary guidelines, real estate agents can assist and help minimize the risk of real estate becoming a vehicle for money laundering activities.

Know Your Business

Every broker and agent should be aware of certain characteristics of a real estate transaction that may be indicative of illegal financing activities. A real estate agent's familiarity with the normal course of business will help them to identify any unusual or suspicious patterns. Law enforcement, regulators and the international community have identified multiple money laundering risk factors. In general, these risk factors (red flags) can be grouped in the three categories: country/geographic, customer, and transaction risk.

(Continued)

Geographic Risk:

Geographic risk may arise because the customer and/or the source of the customer's funds are located in a jurisdiction that has a weak AML regime, supports or funds terrorism, or has a high degree of political corruption. Although there is no definitive list of such jurisdictions, one good source is the list of jurisdictions subject to sanctions of the Office of Foreign Assets Control (OFAC) of the U.S. Treasury Department. OFAC administers and enforces economic and trade sanctions based on U.S. foreign policy and national security goals.

OFAC-administered sanctions can be either comprehensive or selective, and generally restrict or prohibit dealings (including business and financial activities) by U.S. persons or in the United States that involve countries (or persons) subject to OFAC sanctions. Countries subject to comprehensive OFAC sanctions include Iran, Cuba, and Syria. The names of individuals, groups, and entities subject to OFAC sanctions are generally listed on OFAC's List of Specially Designated Nationals and Blocked Persons.

Customer Risk

- Location of property in relation to the buyer.
 - Is there a large unexplained geographic distance between the two?
- Unusual involvement of third parties.
- Titling a residential property in the name of third party; for example, a friend, relative, business associate, or lawyer. Use of legal entities (corporations, LLCs or partnerships) that obscure the identity of the person who owns or controls them without a legitimate business explanation.
- High-ranking foreign political officials or their family members.

Transaction Risk

- Under or over-valued properties.
 - For example, is the property

- owner selling the property for significantly less than the purchase price?
- Does the seller seem disinterested in obtaining a better price?
- Use of large amounts of cash.
 - Buyer brings actual cash to the closing.
 - The purchase of a property without a mortgage, where it does not match the characteristics of the buyer.
 - While rules and regulations governing the financial sector are designed to detect situations where large amounts of cash are being introduced, real estate agents should keep this factor in mind when evaluating whether a transaction seems suspicious.
- Property purchases inconsistent with the individual's occupation or income.
 - Is the property being purchased significantly beyond the purchaser's means?
- Immediate resale of the property.
 - Especially if the sale entails a significant increase or decrease in the price compared to the prior purchase price, without a reasonable explanation.
- Speed of transaction (without reasonable explanation).
- Unusual source of funding.
 - Example: use of third-party funds to purchase a property where it doesn't make sense, i.e. third-party is not a parent, sibling, etc., use [of] several different sources of funds without logical explanation, funding coming from a business but property not being held in business' name, or purchase of property doesn't match the business' purpose.
- Purchases being made without viewing the property, no interest in the characteristics of the property.
- Any other activities which demonstrate suspicious behavior and do not make professional or commercial sense based on the agent's familiarity with the real estate industry and the normal course of business.

What Real Estate Professionals Can Do to Mitigate Risk

The presence of a single risk factor, or even multiple factors, does not necessarily mean the purchaser or seller is engaging in money laundering activities. The role of real estate agents is to be familiar with these risk factors, and exercise sound judgment based on their knowledge of the real estate industry, and when a combination of these factors truly raises a red flag, know the proper action to take.

Know Your Customer/Customer Due Diligence (CDD)

This is a critical component of the role real estate professionals can play in helping to identify and combat money laundering. Knowing an agent's true customer and understanding their interest and planned use for a property will help agents evaluate a situation where one or more red flags are raised.

The process by which the real estate agent forms a reasonable belief that he/she knows the true identity customer and is then able to assess AML risk, is commonly referred to as know-your-customer or customer due diligence (CDD). In cases where red flags are present, the agent should apply increased levels of CDD, which could include the following:

1. Obtain additional information, a driver's license, passport or other reliable identification document, to confirm the true identity of the customer.
2. If a legal entity is involved, such as a corporation or LLC, take additional measures to identify who actually controls or owns the entity and take risk based measures to verify the identity of the owner. This is commonly referred to as beneficial ownership information.
3. Obtain other appropriate information based on the agent's experience and knowledge to understand the customer's circumstances and business.

(Continued)

Anti-Money

(Continued from page 5)

In addition, depending on the size of the firm, it may be appropriate for the agent to notify and discuss with senior management the higher risk customer or a particular situation that raises red flags, and to monitor the relationship if there are a series of transactions with the customer.

Reporting Suspicious Activity

When confronted with suspicious activity, real estate agents always have the option of reporting the information to local law enforcement or the FBI.

In addition, agents may also consider filing a suspicious activity report, or SAR, which is reported to the U.S. Treasury's Financial Crimes Enforcement Network (FinCEN). SARs are primarily designed for use by financial institutions and are a significant tool for enforcement agencies to combat money laundering. Real estate professionals are not required to file a SAR, but should be aware of the availability of this tool to the extent that they have reasonable suspicion that a transaction may be a vehicle for illegal financing activity.

The electronic SAR form is available at: <http://bsaefiling.fincen.treas.gov/main.html>.

For further information or assistance regarding how to file a SAR, real estate professionals may call FinCEN's Regulatory Helpline 1-800-949-2732.

It is important to note that while the Bank Secrecy Act contains a safe harbor shielding financial institutions from civil liability in connection with the filing of a SAR, there is no precedent to suggest that the safe harbor would extend beyond financial institutions to real estate professionals. Therefore, a real estate agent should be prudent and file a suspicious activity report only after thoroughly evaluating the circumstances surrounding the suspicious activity, and additionally should consider consulting an attorney on the matter prior to filing a SAR. Otherwise, a real estate agent could subject themselves to civil liability as a result.

Form 8300

A Form 8300 must be filed by a business that receives more than \$10,000 in cash in the course of a single transaction or two or more related transactions. It is not a SAR and is not used to report suspicious activity. Form 8300 is an information report that is required to be filed by any trade or business (such as a car or boat dealer) that receives in excess of \$10,000 in cash in a single transaction. Therefore, if for any reason a real estate agent or broker receives more than \$10,000 in cash from a buyer or seller in the course of a real estate transaction, the form must be filled out and filed, and can be found at <http://www.irs.gov/pub/irs-pdf/f8300.pdf>.

Cash, for purposes of this requirement, includes cash equivalents such as cashier's checks, bank drafts, money orders. If the cash equivalent instrument is for more than \$10,000, the transaction will be reported by the issuing bank, and the agent does not need to also file a Form 8300. If, however, an agent receives a cashier's check or other cash equivalent of less than \$10,000, but which in combination with other cash or cash equivalents totals more than \$10,000, a Form 8300 must be filed.

Conclusion

While the illicit finance risk for real estate agents is often mitigated by the involvement of financial institutions already subject to strict AML laws, the use of real estate in money laundering schemes continues to be an area of concern to the government. Adherence to these voluntary guidelines will help the real estate agent identify potential money laundering risks. These voluntary guidelines will also help real estate agents be effective partners with enforcement agencies in detecting and addressing the use of real estate in illegal financing activities.

Manual

(Continued from page 1)

The 1,021-page Manual is available as a printed book, on CD-ROM disks, and as a subscription to the files on the Commission's Web site, www.ncrec.gov. The link to order a subscription can be found on the Home page of the Web site.

Orders for books and CD's should be made through the online or mail-in order forms on the Web site publications page. An order form for mailing or faxing is available in every issue of the *Real Estate Bulletin*.

The printed Manual is priced at \$49 for a single copy and \$44 for additional copies on the same order. The CD-ROM and subscription are \$20 each. Prices include shipping, handling and sales tax where applicable.

In the updated Manual, the most significant revisions relate to the new state law and Commission rules that permit brokers other than provisional brokers to perform a broker price opinion (BPO) or comparative market analysis (CMA) for a fee. Other revisions address significant changes to the standard offer to purchase and contract form, the Residential Property and Owners' Association Disclosure Statement, the Dodd-Frank Wall Street and Consumer Protection Act and various other laws and rules, as well as the general updating of information and forms.



'Offer and Acceptance': Clients Rely On Brokers' Knowledge, Guidance

By Glenn M. Wylie, Information Officer

Few processes in the practice of real estate brokerage are more important for a broker to understand than those relating to negotiating contract offer and acceptance. While many considerations arise between buyers and sellers during negotiations, three deserve special attention:

- Knowing when a legally binding contract between a buyer and a seller has been formed;
- Clear communication by each party to the contract throughout the period of negotiation;
- Timely and complete *notice of acceptance* when all parties have reached agreement.

Know When Contract is Binding

Buyers and sellers rely upon brokers to guide them through offers and counter-offers of price and terms, to know the difference between potentially binding and non-binding proposals, and to inform them when a contractual relationship has been established.

Consider this example illustrating the difference between a non-binding proposal and a potentially binding offer or counter-offer:

The listing agent, having received and presented an offer to the sellers, sends an email to the buyer agent stating, "My clients have reviewed your buyers' offer and they are unable to accept it. However, they would accept an offer of \$225,000 with the same terms in your clients' original offer."

A few hours later the buyer agent sends an email back stating, "I spoke with my buyers and they will pay the \$225,000 your clients are looking for; we have a deal. I will have the amended paperwork to you first thing tomorrow."

The buyer agent tells the clients that they "have a deal" and

the next morning emails the amended offer signed by the buyers to the listing agent. Later that day, another email arrives from the listing agent:

"My sellers have received a second offer, so we are now in a multiple-offer situation. My clients are asking the buyers to submit their highest-and-best offer."

The buyer agent emails the listing agent stating the belief the buyers are "under contract" (they are not) and the buyers expect the sellers to honor the deal. The listing agent advises the sellers that they are free to consider another offer (which they are) and the sellers subsequently accept the offer of the second buyer.

Clear Communication

Here the buyer agent mistakenly believes that because the necessary terms for a contract were in writing between the brokers, a binding contract was formed. It is important to understand that "negotiations" between the brokers, even those in writing, will generally not bind their clients to a contract since brokers do not generally possess the necessary power or authority. (This may not be the case when the buyer and seller negotiate in writing, as a binding contract can then be formed).

Also, in this example, clarity in both

oral and written communications is vitally important for a broker. When you as a broker propose possible terms on your client's behalf, use language to signal that it is a non-binding proposal: "The seller will consider an offer of \$225,000 upon the same terms," or simply "This is a non-binding proposal."

Although emails between brokers regarding contract terms should never be interpreted as a binding agreement between the principals, avoiding ambiguity is in everyone's best interest. Brokers should always advise clients that contracts are not binding unless accepted and signed by all the parties, with any changes initialed and approved by all parties.

Notice of Acceptance

Finally, in the example, there was no clear *notice of acceptance*. This is the final step in forming a binding contract, and can be made orally or in writing. It is the notice given to the *offeror* that the *offeree* has signed and accepted the offer, and a binding contract has been formed. It does not mean that a broker is accepting on their client's behalf.

When a broker gives *notice of acceptance*, he or she is communicating that the seller has *signed and accepted* the buyer's last offer *as written* (without any changes to the terms) and the parties are under contract. A broker simply stating "we have a deal" does not, by itself, create a contract. The broker giving notice of acceptance should always be clear as to whether or not the contract in the possession of the seller is signed and the broker receiving notice of acceptance should always ask.

Brokers often raise the issue of whether it is *ethical* for a seller (or buyer) to consider other offers when they have made a "commitment" to a buyer (or seller). Until a binding, written contract is formed, the parties are free to consider other options.



DOJ

(Continued from page one)

ment and Natural Resources (DENR), and requires General Assembly approval before DENR can issue permits.

In the meantime, landowners with property in locations deemed more likely to contain oil and gas deposits will be confronted with solicitations to lease rights to companies to extract these deposits from the properties. These leases are complex legal documents and DOJ advises contacting an attorney with expertise in real estate law.

Brokers should read the DOJ documents to understand the issues facing owners and, when representing buyers or sellers, to be better able to fully disclose any material facts affecting value and title and to advise customers and clients about obtaining advice from attorneys who specialize in real estate law.

In "Landowners' Rights", DOJ offers tips when considering leasing for oil or gas exploration. These include:

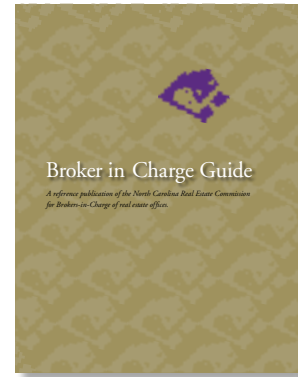
- contacting the mortgage lender, conservation easement holder, or Farm Service Agency office
- checking out the salesman (landman) soliciting a lease
- researching the salesman's company

- knowing the risks to your land and water supply
- making sure your payment is reasonable and it covers damages and costs
- talking with your neighbors, get all promises in writing, get a copy of your lease and your legal protections
- not being pressured to sign and know your right to cancel
- knowing where to turn for help

In "Summary of Landowner and Public Protections Under the Law", DOJ provides discussion of the following nine key points:

- Notice and entry to property
- Water supply and water contamination
- Surface activities and compensation for damages
- Indemnification
- Reclamation
- Actions for damages
- Landman registry
- Required lease terms

Additional provisions include recording, assignment, and, very important for brokers to know, mandatory disclosure of mineral rights with real estate sales.



New BIC Guide Available in Spring

The Broker-in-Charge Guide is being revised and updated and a new edition will be published this spring.

The BIC Guide was first issued in November 2004 to serve as a reference publication for brokers-in-charge of real estate offices. It is used as the text for the 12-hour Broker-in-Charge Course.

Reminder: Revised Property Disclosure Form Effective Jan. 1

The Residential Property and Owners' Association Disclosure Statement underwent revision in 2012 to become effective January 1, 2013.

Be certain you are using the correct form which bears the text "REV 1/13" in small type in the lower left corner of the first of four pages.

You will find the document on the Commission Web site under "Forms". It is an interactive PDF - enabling it to be filled out online and then printed.

You may download the form to your computer by right clicking on it and choosing "Save target as". It may then be emailed to clients for them to fill out and print.

The form underwent revision primarily to make it easier to use. The prior form's use of lead-in and subordinate questions has been replaced with 37 independent questions.

New Commission Videos

Two new videos are available on the Commission's Web site: *License Reinstatement* and *How to File a Complaint*.

License Reinstatement - the process of reinstating an inactive or expired license is explained including any continuing education which may be necessary.

How to File a Complaint - primarily directed toward consumers, this video describes the procedure for filing a complaint and explains how the Commission responds.

To view these videos, click on [Video Library](#) on the Home page.



License Reinstatement



How to File a Complaint

You Are A Broker and Selling Your Own Home

By Stephen L. Fussell, Senior Consumer Protection Officer



When a broker sells his or her own home, the Commission recommends, but does not require the broker to disclose that he or she has a real estate license. The Commission recommends this disclosure, because having a license may give the broker an advantage when negotiating with an unlicensed buyer. If a broker chooses to disclose that he or she is licensed, the disclosure can be made orally or by incorporating a statement into the offer to purchase notifying the buyer that the seller has a license.

Every seller of a residential dwelling of four or fewer units must give the prospective buyer a Residential Property Disclosure Statement ("RPDS"). Every seller, including real estate brokers, may answer, "Yes," "No" or "No Representation" to any or all of the questions on the RPDS. However, real estate brokers

are held to a higher standard than unlicensed persons when buying, selling or leasing their own properties. A broker must still disclose all material facts in transactions where the broker is a party to the transaction. A material fact is any information that would affect a reasonable buyer's decision to purchase. Therefore, if a broker knows or reasonably should know a material fact about a home he or she is selling and chooses to answer "No Representation" to all of the questions on the RPDS, then the broker must still disclose the material fact to prospective buyers no later than the point at which a buyer makes an offer. The Commission has the authority to discipline a broker who fails to disclose a material fact when selling his or her own property.

Brokers who sell their own homes have a duty to discover and disclose material facts. The duty to discover means that brokers must exert reasonable ef-

fort to learn about any material fact that may affect a reasonable buyer's decision to purchase and disclose such information to prospective buyers no later than the point at which the buyer makes an offer.

A broker selling his or her own home should not represent or offer to represent a buyer. This would create an obvious conflict of interest and is strongly discouraged. If a buyer desires representation, then the seller/broker should advise the buyer to seek representation from another broker. If the seller/broker has listed his or her own property with his or her own real estate firm and the firm offers designated dual agency, then another broker in the firm may represent the buyer. The best way to avoid a conflict of interest is always to encourage the buyer to seek representation from another firm.

Surrendering Disputed Funds to Clerk of Court

By Elizabeth W. Penney, Information Officer

Are you carrying old escrow funds in your trust accounts? Perhaps turning over these monies to the clerk of court might be the remedy for you. This method is best used when the parties refuse to come to an agreement yet fail to initiate legal action to determine rightful ownership.

Under N.C.G.S. 93A-12, a real estate broker or attorney holding disputed monies may deposit these funds with the clerk of court in the county where the property is located after properly notifying the persons claiming ownership of the funds. (Residential security deposits are specifically not allowed to be disposed of in this manner.)

Notification is satisfied by providing written notice directly to the person claiming ownership or by mailing the notice by first-class mail to the person

at his or her last known address. This allows the parties claiming ownership to renew their interest in the dispute and possibly resolve the claim.

The broker must wait 90 days following notification to the parties before attempting to deposit the funds with the clerk and must certify that the 90-day time period has passed. Once the broker deposits the monies with the clerk, his responsibility over the disputed funds is over.

Thereafter, either party may file a special proceeding with the clerk to recover the funds. The clerk of court is responsible for determining the rightful ownership of the monies and disbursing accordingly. If no such proceedings are filed within one year of the deposit, the funds shall be deemed unclaimed and will be turned over to the Escheat Fund

of the State Treasurer.

The "Certificate of Notice & Deposit of Disputed Funds" form is available at the Commission's website: www.ncrec.gov/forms-html/forms.html.



How to Start a Real Estate Firm

By Stephen L. Fussell, Senior Consumer Protection Officer

[Note: This article is not intended to cover every possible issue that a broker will or should consider when starting a firm. It does provide guidance for many of the basic issues that will commonly arise.]

You are an active broker and have your broker-in-charge designation and have thought about starting your own firm for a long time and have decided that now is the time to do it. Here are some things to consider when doing so.

Types of Firms

Sole Proprietorship: If your firm will be a sole proprietorship, then no additional real estate license will be required. If the name of your firm will not include your last name, then you must register the name of your firm with the Register of Deeds in each county where you intend to do business and retain the Assumed Name Certificate(s) in your records. For example, if your name is Jordan Greentree and your firm name will be Greentree Properties, then you will not have to register your firm name with the Register of Deeds because the name of your firm includes your last name. However, if you desire to call your firm Awesome Real Estate Consultants, then you must register this assumed name at the Register of Deeds in the counties where you will engage in real estate brokerage services.

Corporation, Subchapter S-Corp, LLC, Partnership: If your firm will be a corporation, subchapter S-corp, or LLC, then you will need to contact the Corporations Division of the Secretary of State's office and set up the company. (See *Firm License Application* form for instructions on licensing a partnership.) After establishing the company with the Secretary of State (for which you may call upon the assistance of a lawyer), you must obtain a real estate broker license for the firm by submitting a firm license application to the Commission. Firm license application forms are available on the Commission's website. **If you are setting up a firm for the sole purpose of receiving sales commissions, you must still obtain a license for the firm**

before receiving any such sales commissions.

Trust Accounts

If you intend to collect trust monies (i.e. earnest money, rents, security deposits, etc.), you must set up a trust or escrow account designated as such. This means that you must visit a federally insured depository institution lawfully doing business in North Carolina and set up a basic checking account in the name of your firm. The title or subtitle of the account must include the words, "Trust Account" or "Escrow Account", and these words must appear on the signature cards, checks and deposit tickets. The broker-in-charge of the firm must account for all trust account monies in accordance with Commission rules. This includes performing a complete trust account reconciliation on a monthly basis. If you have not taken the Commission's Basic Trust Account Course, we recommend that you do so before handling trust monies. You are not required to have a trust or escrow account unless you are holding trust monies.

Location

If you choose to operate your firm from your home or any other non-commercial setting, make sure that there are no zoning regulations or restrictive covenants which prohibit you from operating a real estate business from that location.

Signage

The Commission has no specifications for the size or shape of signs for a real estate office. For Sale and For Rent signs should clearly indicate the name of the firm so that prospective buyers and tenants will know that the sign and the telephone number on the sign belongs to a real estate broker.

Broker-In-Charge Declaration

If you actively engage in real estate brokerage activities, hold trust monies or have at least one associate, you must declare yourself Broker-In-Charge. You must have at least two years of real estate brokerage experience within the previous five years to be eligible to de-

clare yourself broker-in-charge. You may do this by completing and submitting a Broker-In-Charge Declaration form available on the Commission's website (www.ncrec.gov). If you have set up your firm for the sole purpose of receiving sales commissions and have no associates or trust monies, then you are not required to declare yourself broker-in-charge.

Associates

If you hire a provisional broker to work at your firm, you must actively supervise him or her. Therefore, you must provide a work space from which the provisional broker can conduct his or her business under your supervision. If you hire a full broker to work at your firm, the full broker may conduct his or her business from any location provided, however, make sure that they deliver to you all agency agreements, transaction documents and trust monies in a timely manner. Full brokers must visit or at least communicate with their corporate offices on a regular basis to inquire about mail, because the Commission corresponds with active licensees at their business addresses. Make sure that any broker you hire has a current, active license.

Continuing Education & License Renewal

As a broker-in-charge, you will be responsible for assuring that every broker associated with your firm completes eight (8) hours of continuing education by June 10 of each year and renews his or her license by June 30 of each year. Brokers who allow their licenses to expire or become inactive must cease all real estate brokerage activities immediately.

Forms

The only trade or business forms provided by the Real Estate Commission are the Residential Property Disclosure Statement and the Working With Real Estate Agents brochure. All other forms are available through the North Carolina Association of REALTORS®. If you are not a member of NCAR, you may contact the North Carolina Bar Association for any forms they have jointly-created or consult an attorney to draft any documents that you need.

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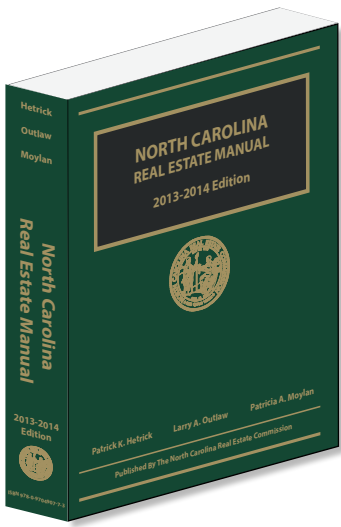
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NORTH CAROLINA REAL ESTATE MANUAL

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.

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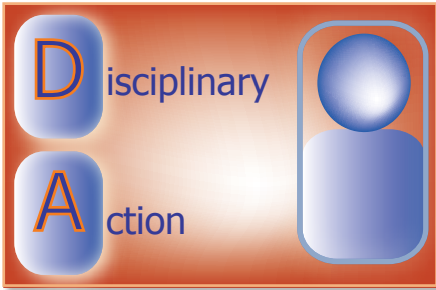
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Penalties for violations of the Real Estate License Law and Commission rules vary depending upon the particular facts and circumstances present in each case. Due to space limitations in the Bulletin, a complete description of such facts cannot be reported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

TONY J. ALEXANDER (Charlotte) – By Consent, the Commission revoked the broker license of Mr. Alexander effective February 1, 2013. The Commission found that Mr. Alexander, as qualifying broker and broker-in-charge of a real estate brokerage firm, failed to maintain the firm's trust account records in compliance with Commission rules, failed to perform reconciliations and had a negative bank balance in the firm's trust account. The Commission also found that Mr. Alexander failed to remit owner proceeds and tenant security deposits, sent multiple NSF checks to parties, and allowed unlicensed individuals to perform property management without supervision.

DENNIS L. BEAN (Camden) – The Commission accepted the voluntary surrender of the broker license of Mr. Bean for a period of one year effective January 10, 2013. The Commission dismissed without prejudice allegations that Mr. Bean violated provisions of the Real Estate License Law and Commission rules. Mr. Bean neither admitted nor denied misconduct.

JEFFREY M. BUCHANAN (Charlotte) – By Consent, the Commission revoked the broker license of Mr. Buchanan effective January 10, 2013. The Commission found that Mr. Buchanan, acting as qualifying broker and broker-in-charge of a real estate brokerage firm, engaged in property management and failed to make timely accountings or forward rental proceeds to their landlord client. The Commission also found that Mr. Buchanan, after the landlord client terminated his property manage-

ment agreement, failed to return tenant security deposits or forward the funds to the new property management company, issued rental proceeds checks to clients from an account not designated as trust or escrow, and refused to produce trust account and transaction records upon the request of a Commission representative.



LILLIE F. BYRD (Clinton) – By Consent, the Commission suspended the broker license of Ms. Byrd for a period of six months effective December 1, 2012. One month of the suspension was active, ending December 31, 2012. The Commission found that Ms. Byrd owns a residential property which she advertised for rent; that a potential tenant, an African-American woman, inquired about renting the property for a short time and was informed that the property was already rented and unavailable; that immediately thereafter an individual of Caucasian race inquired about the status of the property, and Ms. Byrd advised the individual that it was available for rent and arranged to show the individual the home. The

Commission also found that the African-American woman believed that she was discriminated against because of race, that Ms. Byrd contended that her decision to deny the rental to the African-American woman was due to the undesirable, short term of the requested tenancy, and that Ms. Byrd and the African-American woman reached a conciliatory agreement through the North Carolina Human Relations Commission, without either party admitting any wrongdoing.

CAROLINA COUNTRY REALTY, INC. (Fairview) – By Consent, the Commission revoked the firm license of Carolina Country effective November 14, 2012. The Commission found that Carolina Country's trust accounts were in substantial noncompliance with Commission rules and that client funds from the trust accounts were misappropriated for the personal benefit of a principal of the firm.

ROBIN M. CRABEL (Littleton) – By Consent, the Commission revoked the broker license of Ms. Crabel effective January 1, 2013. The Commission found that Ms. Crabel, acting as broker-in-charge of a real estate brokerage firm, used trust monies for personal expenses and collected insurance premiums from vacation tenants without actually purchasing the insurance as represented.

CROWN REALTY GROUP, LLC (Charlotte) - By Consent, the Commission revoked the firm license of Crown Realty Group effective January 10, 2013. The Commission found
(Continued)

that Crown Realty Group, a real estate brokerage firm engaged in property management, failed to make timely accountings or forward rental proceeds to its landlord client. The Commission also found that Crown Realty Group, after the landlord client terminated their property management agreement, failed to return tenant security deposits or forward the funds to the new property management company, issued rental proceeds checks to clients from an account not designated as trust or escrow, and refused to produce trust account and transaction records upon the request of a Commission representative.

GREENPOINT REALTY, LLC (Charlotte) - By Consent, the Commission revoked the firm license of Greenpoint Realty effective February 1, 2013. The Commission found that Greenpoint Realty failed to maintain the firm's trust account records in compliance with Commission rules, failed to perform reconciliation and had a negative bank balance in the firm's trust account. The Commission also found that Greenpoint Realty failed to remit owner proceeds and tenant security deposits, sent multiple NSF checks to parties, and allowed unlicensed individuals to perform property management without supervision.

SANDI MICHELLE KEHOE (Jacksonville) - By Consent, the Commission revoked the broker license of Ms. Kehoe effective December 12, 2012. The Commission found that Ms. Kehoe, while representing various clients as a listing agent, forged the signatures on at least two listing agreement extensions without the knowledge or consent of her seller-clients and continued to market the properties following the actual expiration of the listings. The Commission noted that no monetary damage was caused by Ms. Kehoe's conduct.

JO ANNE RILEY LOMBARDO (Greensboro) - By Consent, the

Commission suspended the broker license of Ms. Lombardo for a period of nine months effective December 1, 2012. Three months of the suspension were active with the remainder stayed for a probationary period of six months. The Commission found that Ms. Lombardo, acting as listing agent for the sale of a condominium unit,

Licensees Must Report Convictions

Commission Rule A.0113 requires any licensee who is convicted of a misdemeanor or felony or who has disciplinary action taken against him or her by any occupational licensing board to file a report with the Real Estate Commission.

The reporting requirement includes convictions for driving while impaired ("DWI"). The report must be filed within sixty (60) days of the final judgment or board action.

If you have questions about this rule, please call the Commission's Legal Division at 919-875-3700 for more information.

failed to discover and disclose that the North Carolina Department of Transportation planned to build a freeway within several feet of the property with no plans for a buffer wall and that the property would lose trees and overflow parking to the freeway project. The Commission also found that the buyer, after closing, learned that the property would soon be affected by the construction of the six-lane "Urban Loop" Freeway.

DONALD MORROW (Kure Beach) - By Consent, the Commission suspended the broker license of Mr. Morrow for a period of one year effective August 1, 2012. The Commission found that Mr. Morrow engaged in real estate investment with an unlicensed individual through entering into contracts for the sale of property with no earnest money de-

posits, then assigning the contracts to purchasers for a fee. The Commission also found that Mr. Morrow identified his unlicensed LLC as listing agent on a contract even though he had never entered into a listing agreement with the seller and listed himself as selling agent on another form although he had no buyer agency agreement with the buyer. The Commission finally found Mr. Morrow is not a licensed attorney but prepared legal filings for sellers including letters of administration and a surety bond.

ON LAKE GASTON ASSOCIATES, INC. (Littleton) - By Consent, the Commission revoked the firm license of On Lake Gaston Associates effective February 1, 2013. The Commission found that the broker-in-charge of On Lake Gaston Associates used trust monies for personal expenses and collected insurance premiums from vacation tenants without actually purchasing the insurance as represented.

JOHN DUNCAN POWERS, JR. (Fayetteville) - The Commission accepted the voluntary surrender of the broker license of Mr. Powers for a period of two years effective December 13, 2012. The Commission dismissed without prejudice allegations that Mr. Powers violated provisions of the Real Estate License Law and Commission rules. Mr. Powers neither admitted nor denied misconduct.

DONNA BEAVER PRICE (Fayetteville) - By Consent, the Commission suspended the broker license of Ms. Price for a period of two months effective January 1, 2013. The Commission found that Ms. Price maintained trust accounts she assumed after purchasing another firm and that a Commission audit of the trust accounts revealed a shortage in the rental account, an overage in the security deposit account, and a failure by Ms. Price to reconcile monthly the bank statements to the ledger or journal of
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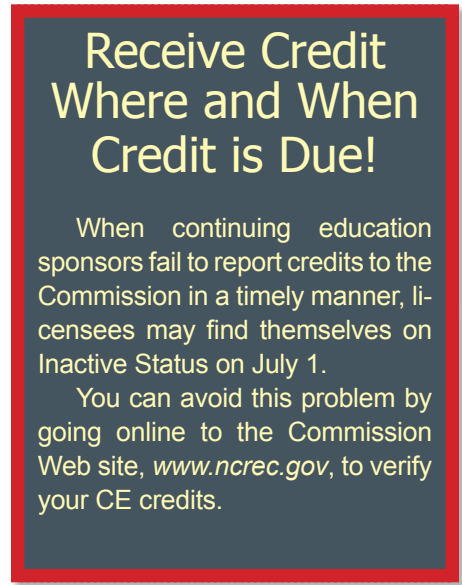
the rental account. The Commission also found that Ms. Price was managing rental properties without written agreements with the owners and was managing a homeowners' association without a written agreement, instead using the authority to manage the properties and the homeowners' association granted to the former firm that she acquired.

ALFRED SAMUELS (Huntersville) – By Consent, the Commission permanently revoked the broker license of Mr. Samuels effective December 12, 2012. The Commission found that Mr. Samuels, who was also licensed as a mortgage broker by the North Carolina Commissioner of Banks, participated in a series of transactions between 2005 and 2008 in which he acted as a promoter and mortgage broker in a scheme with a builder to sell houses by offering hidden kickbacks to buyers and promoters who recruited buyers. The Commission further found that Mr. Samuels, in February 2012, pled guilty to a Bill of Information in the United States District Court to conspiracy to commit mortgage fraud and money laundering conspiracy.

CAROL A. SCHAUBERT (Hickory) – By Consent, the Commission suspended the broker license of Ms. Schaubert for a period of three years effective October 1, 2012. One month of the suspension was active with the remainder stayed for a probationary period ending October 31, 2017. The Commission found that Ms. Schaubert, when visiting a client at the client's home, removed medication prescribed for the client by the client's doctor and consumed some of the medication. The Commission also found that Ms. Schaubert was charged in district court with and pled guilty to one count of misdemeanor larceny; that Ms. Schaubert was ordered to complete 16 hours of drug and alcohol education courses of the NC Substance Abuse Services; and that Ms. Schaubert received a deferred prosecu-

tion with the criminal charges to be dismissed with the completion of the required terms.

SUSAN D. SEAY (Kitty Hawk) – The Commission accepted the voluntary surrender of the broker license of Ms. Seay for a period of two years ef-



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When continuing education sponsors fail to report credits to the Commission in a timely manner, licensees may find themselves on Inactive Status on July 1.

You can avoid this problem by going online to the Commission Web site, www.ncrec.gov, to verify your CE credits.

fective November 1, 2012. The Commission dismissed without prejudice allegations that Ms. Seay violated provisions of the Real Estate License Law and Commission rules. Ms. Seay neither admitted nor denied misconduct.

STEPHEN M. SERVAIS (Fairview) – By Consent, the Commission revoked the broker license of Mr. Servais effective November 14, 2012. The Commission found that Mr. Servais's trust accounts were in substantial noncompliance with Commission rules and that Mr. Servais paid various personal expenses and otherwise misappropriated trust funds for his personal benefit.

SHANTA SETTY (Clemmons) – By Consent, the Commission suspended the broker license of Ms. Setty for a period of three months effective January 1, 2013. The Commission then stayed the suspension upon certain conditions. The Commission found that Ms. Setty listed and sold lots in a subdivision and failed to pro-

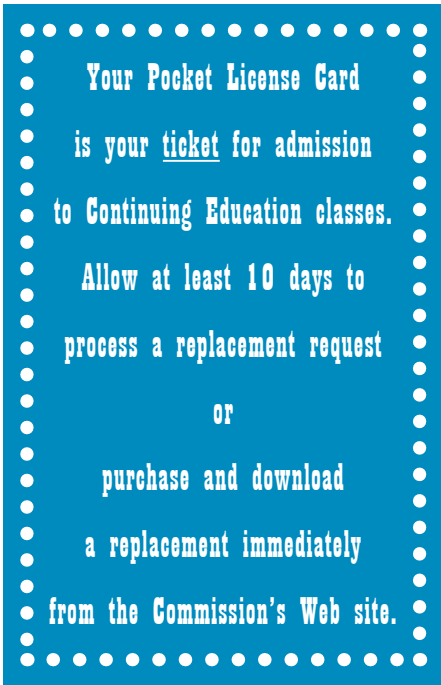
vide purchasers with the subdivision street disclosure statement required by law, which would have disclosed that the streets had not been accepted to be maintained by the North Carolina Department of Transportation (NCDOT). The Commission noted that a Home Owners Association of the subdivision now has responsibility for the subdivision roads, but has applied to the NCDOT to dedicate the roads to the state and have the state maintain said roads.

ARTHUR SKILLMAN, III (Fayetteville) – The Commission suspended the broker license of Mr. Skillman for 24 months effective December 1, 2011. The Commission found that Mr. Skillman told a prospective buyer that Mr. Skillman would use the buyer's money to acquire real property for the buyer, but did not use the money to acquire real property; that Mr. Skillman failed to account to the buyer for the money; that Mr. Skillman failed to account to the buyer in two real estate transactions for the money received from the buyer to purchase real property and failed to communicate with the buyer about the progress and outcomes of the transactions Mr. Skillman undertook in the buyer's behalf; and that Mr. Skillman failed to make his trust account records available for inspection by the Commission and failed to respond to Commission correspondence.

SOUTHEASTERN PROPERTY MANGEMENT, INC. (Reidsville) – By Consent, the Commission reprimanded Southeastern Property Management effective September 1, 2012. The Commission found that the Southeastern Property Management engaged in deficit spending in the amount of \$14,600 out of liabilities of \$35,000. The Commission also found that the firm'd checks failed to consistently identify the purpose of the disbursements or reference to property/owner ledgers and in their journals. The Commission noted that
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Southeastern Property Management has refunded the accounts and has instituted procedures to bar deficit spending.

BENJAMIN JOHN VILOSKI (Oak Island) – The Commission permanently revoked the broker license of Mr. Viloski effective December 13, 2012. The Commission found that Mr. Viloski, who was also a licensed North Carolina attorney, was convicted in a U.S. District Court of New York of nine out of 20 criminal charges and was later sentenced and ordered committed to federal prison to serve 60 months of imprisonment per guilty count, to be served concurrently. The Commission also found

that the North Carolina State Bar entered an Order of Disbarment against Mr. Viloski after Mr. Viloski admitted in writing to allegations made in a Civil Complaint against him by the North Carolina State Bar.

JACQUELINE W. WORSHAM (Greensboro) – By Consent, the Commission reprimanded Ms. Worsham effective November 14, 2012. The Commission found that Ms. Worsham, acting as broker-in-charge of a property management firm, failed

to supervise agents and maintain trust accounts in compliance with Commission rules. The Commission also found that the firm, without Ms. Worsham's knowledge, charged numerous clients inflated fees by altering or increasing the amount billed on maintenance invoices for work performed on client rental properties, and that the inflated or altered invoices were billed to clients without their knowledge or permission.

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