



Incentive Disclosure

Commission Reviews Compensation Rule

When market conditions make it more difficult to sell real estate, sellers sometimes offer incentives to real estate agents to promote the sale of their properties.

These “compensation incentives” may be in the form of cash, vacations, or other prizes. They are in addition to the sales commission or compensation the agent would otherwise receive from the sale and are usually given after the sale closes. They are especially popular among homebuilders to focus attention on their properties.

Real estate agents are permitted to receive compensation incentives so long as they are fully disclosed to their clients.

Responding to recent reports that some buyers are not being properly informed that their agents are being offered these special incentives, the Real Estate Commission formed an advisory committee consisting of real estate brokers, builders and consumer representatives to assist it in determining whether changes in its rules are needed to reasonably assure that real estate purchasers and sellers are properly informed of any
(See **Incentive**, page 9)

Commission Initiates Audits of Experience

If you advised the Commission that you had the necessary experience in the real estate field to qualify for removal of “provisional” status from your broker license, you may be asked by the Commission to further certify that experience.

When North Carolina changed to a single license system on April 1, 2006,
(See **Random Audit**, page 8)

Cone, Malarney Appointed To Real Estate Commission

Governor Michael F. Easley has appointed Benjamin Cone, III, of Charlotte and Jeffery J. Malarney of Manteo to the North Carolina Real Estate Commission, it was announced by Phillip T. Fisher, Executive Director.

Cone is one of two public Commission members without affiliation with the real estate industry.

Chief Financial Officer of Uni-Screw, LLC, in Charlotte, he has held management positions in the textile and commercial furniture industries.

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

Malarney is General Counsel for Twiddy & Company and a Commander in the U.S. Navy Judge Advocate General's Corps (Res) and a prosecutor for the U.S. Navy Region Mid-Atlantic Trial Service Office (Res).

He is a member of the North Carolina Bar Association, the First Judicial District Bar Association, Chairman of the Board of Directors of the Outer Banks Chamber of Commerce, member



Cone



Malarney

of the North Carolina Vacation Rental Managers Association and a former Special Assistant U.S. Attorney.

He has been awarded the Navy Commendation Medal, Navy Achievement Medals, the Global War on Terrorism Medal, the Humanitarian Service Medal, National Defense Medals and overseas ribbon.

A graduate of Wake Forest School of Law, Malarney is married to the Honorable Amber D. Malarney, District Court Judge for the First Judicial District Court, and the father of two children, Cullen, 12, and Lainy, 11.



New Commission Members Sworn In

Secretary of State Elaine Marshall (fifth from left) swore into office new members Benjamin Cone, III, (right) and Jeffery J. Malarney (left). Other Commission members present were (l. to r.) Joe L. Hodge, Jr., Wanda J. Proffitt, Jerry A. Mannen, Jr., Vice Chair Marsha H. Jordan, Chairman Melvin L. “Skip” Alston, M. Rick Watts, and S. R. “Buddy” Rudd, Jr.

REAL ESTATE BULLETIN

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

NORTH CAROLINA REAL ESTATE COMMISSION

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Phillip T. Fisher

Editor

Robert L. Forshaw



People

Lisa R. McQuillen has assumed the position of Education/Licensing Officer in the Education and Licensing Division. Prior to joining the Commission, she was associated with Fonville Morisey Realty for over seven years.



McQuillen

She holds a BS in Business Administration and a MA in Special Education from West Virginia University.

Karissa B. Sluss has assumed the position of Legal Assistant in the Legal Division. She is a graduate of the University of North Carolina at Greensboro with a BS in Food Service Management and has completed the Paralegal Program at Meredith College.



Sluss

Matthew A. Wentz has assumed the position of License Application Analyst in the Education and Licensing Division. Prior to joining the Commission, he served for 29 years in law enforcement, retiring as a Major with the Cary Police Department. He holds a BA degree in Justice Studies and Public Policy from North Carolina Wesleyan College.



Wentz

To request a speaker from the Commission, please submit the "Request for Program Presenter" form available on the Commission's Web site, www.ncrec.state.nc.us.

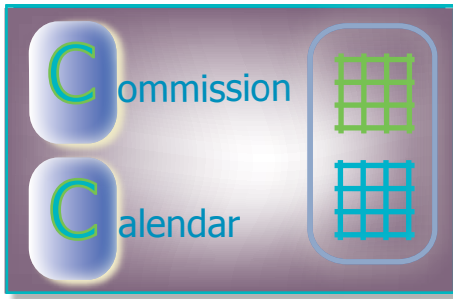
Awards

Thomas R. Miller, Legal Counsel and Director of Legal Services, has received the "Friend of BCAR" award from the Brunswick County Association of REALTORS® for his dedication to the industry and assistance with the organization's endeavors.

Appearances

Miriam J. Baer, Legal Counsel and Assistant Director of Legal Services, spoke to the Greensboro Regional REALTORS® Association and the Annual Property Management Seminar of the Fayetteville Association of REALTORS® on property management complaints.

Charlene D. Moody, Deputy Legal Counsel, spoke to the North Carolina Association of Consulting Foresters on the laws and rules governing real estate brokers who also engage in forestry consulting.



February 13
(Durham)
March 12
April 16
May 14

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.

Rule Changes Effective January 1

Several changes in Commission rules became effective January 1. The newly adopted changes include:

Agency Agreements and Disclosure

- A requirement that written agency agreements be signed.

Business Entities

- A provision that the Commission will not issue a license to a firm when

another firm is licensed under the same name or using the name as a trade name.

Broker-in-Charge

- A clarification that LLCs and other eligible entities organized solely for receipt of compensation which are treated as "Subchapter S Corporations" by the Internal Revenue Service are eligible for the same exemption from the

broker-in-charge requirement as corporations.

- A provision that brokers-in-charge who fail to take the BIC Course within the deadline are required to take the course before being re-designated as a broker-in-charge.

- A provision permitting former brokers-in-charge to remain eligible to serve as broker-in-charge if they continue
(See **Rules**, page 8)

COURSE SCHEDULES

This schedule provides locations, dates, and times for the courses indicated through June 2008. Register online at the Commission's website, www.ncrec.state.nc.us.

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

Asheville	March 18,19 May 8, 9	Holiday Inn East/Blue Ridge Parkway
Banner Elk	April 23, 24	Best Western Mountain Lodge
Charlotte	February 11, 12 March 11, 12 April 21, 22 May 6, 7 June 5, 6	Holiday Inn Airport
Greensboro	February 25, 26 May 27, 28	Clarion Hotel (formerly the Radisson)
Kill Devil Hills	April 29, 30	Ramada Plaza Resort
Raleigh	February 4, 5 March 3, 4 April 2, 3 May 5, 6 June 3, 4	McKimmon Conference Center
Wilmington	February 18, 19 May 19, 20	Coastline Inn & Convention Center

Basic Trust Account Procedures

Banner Elk	April 24, 9 a.m.-1 p.m.	Best Western Mountain Lodge
Charlotte	February 12, 9 a.m.-1 p.m. June 6, 9 a.m.-1 p.m.	Holiday Inn Airport
Raleigh	January 2, 1-5 p.m. March 5, 1-5 p.m. May 7, 1-5 p.m.	McKimmon Conference Center
Wilmington	May 20, 9 a.m.-1 p.m.	Coastline Inn & Convention Center

As a real estate agent licensed by the State of North Carolina, you are required under Real Estate Commission rules to review the con-

ent of the brochure, *Working With Real Estate Agents*, with a seller or buyer at the time of first substantial contact, and determine who you will represent in the transaction.

where, you can download a portable document file (pdf - for opening with Acrobat Reader) and email it as an attachment. You can then review the content with the client/customer so that an appropriate agency relationship may be established.

Do Not Fail to Review Agency With All Sellers and Buyers

Upon review of the form, check the "Disclosure of Subagency" box if it applies, and in any event, have the prospective buyer or seller sign the acknowledgement on the tear-off panel of the brochure. If the prospect refuses to sign it, document that fact on the panel. Keep the tear-off panel in the transaction file for three years.

The primary goals of this procedure are:

- to inform your seller or buyer of the available options for an agency relationship and, through that disclosure, to choose the most appropriate one;
- to prevent the communication of confidential information by the seller or buyer to the agent before a specific agency relationship has been established.

Working With Real Estate Agents may be purchased online at the Commission's website, www.ncrec.state.nc.us, or with an order form that can be mailed with a check or faxed with credit card information. The form may be printed from the website's Publications page and is also available in each issue of the Commission's newsletter, the *Real Estate Bulletin*.

You may substitute use of the printed brochure and card with materials available on the Commission's website: a *reproducible version* that can be printed using legal size (8 1/2" x 14") paper or *text* for both brochure and acknowl-

edgement card that can be copied and pasted into a word processing program. To quickly communicate content with a seller or buyer that resides else-

There is a substantial discussion of what is meant by "first substantial contact" in the *North Carolina Real Estate Manual*, the textbook written and published by the Real Estate Commission for required postlicensing education. (The 2008-2009 edition of the *Real Estate Manual* has just been published and may be ordered online at the Commission's website.)

In brief, the term is defined in the *Manual* as "the point in time when a customer, whether a prospective seller or buyer, begins to act as though an agency relationship exists..." or "...when the licensee begins to speak or act in such a way that a reasonable buyer or seller would believe that an agency relationship exists."

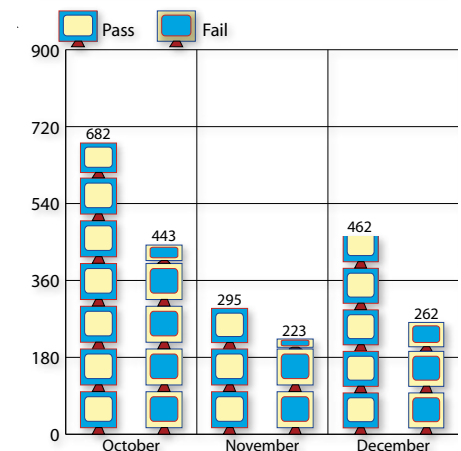
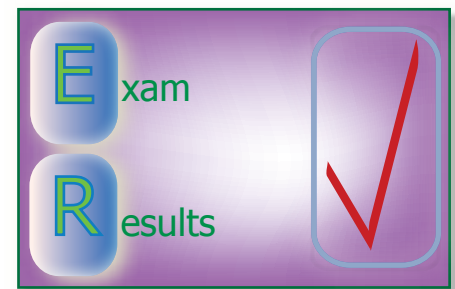
"First substantial contact" commonly (but not exclusively) occurs with sellers in a pre-listing meeting, with buyers in a meeting to define the parameters of a home search, and with owners marketing their own property (FSBO's) when approached by an agent for a buyer interested in the FSBO property. Disclosure should be made during or prior to these occasions, in order to avoid the possibility of obtaining confidential information before the prospect has been advised of the available agency relationships, and their consequences.

Agents can easily review with sellers the agency relationship options described in *Working With Real Estate Agents* at the time of listing. If the agent lists a property using the North Carolina Association of REALTORS' Form

101 (Listing Agreement)_Paragraph 7 concerning Agency Relationships states that the seller has received and reviewed a copy of the brochure, and requires the seller to authorize either "dual agency" (subject to the terms of an attached Dual Agency Addendum) or "exclusive representation at all times".

Agents working with buyers generally should review the *Working With Real Estate Agents* brochure **before** entering into a written agency agreement, as the first substantial contact is likely to occur very early in the relationship between the buyer and agent. Following a general rule of "sooner is better than later" is prudent.

Agents making an inquiry for a buyer about FSBO property should begin their conversation with the seller with a prompt review of the brochure so that the seller fully understands the consequences of working with the buyer and his agent without representation and/or entering into a fee agreement with the agent.



Rule Change Benefits Brokers-in-Charge

To expand real estate educational opportunities for persons serving as brokers-in-charge of real estate offices and to better assure that a cadre of qualified individuals is available to serve as brokers-in-charge, the Real Estate Commission recently amended its rules to enable brokers to become “broker-in-charge eligible.”

Prior to the January 1 rule change, a broker-in-charge who had any “break in service,” that is, any period when he or she was not actively managing an office, would be required to satisfy the initial experience and education requirements when he or she was redesignated a broker-in-charge. Under the new rule, however, a broker may become “broker-in-charge eligible” and may retain that status indefinitely, even during periods when he or she is *not* actively serving as broker-in-charge of a particular real estate office.

To become “broker-in-charge eligible,” a broker must either:

1. be designated on Commission records as a broker-in-charge as of January 1, 2008 and have satisfied all initial requirements to serve as a broker-in-charge; *or*

2. declare oneself a broker-in-charge on or after January 1, 2008 and satisfy the initial experience and education requirements (2 years full-time brokerage experience and 12 hour

Broker-in-Charge Course).

Once a broker has designated himself or herself as a broker-in-charge and satisfied the initial requirements, that broker may retain his or her broker-in-charge eligibility indefinitely thereafter by continually maintaining his or her broker license on *active status* and by taking the *Broker-in-Charge Annual Review* course each year beginning the license year after the license year when the broker was designated a broker-in-charge. For example, a broker who declares himself or herself as a broker-in-charge in March 2008 will first be required to take the *Broker-in-Charge Annual Review* course during the July 2008-June 2009 license year and continuing each year thereafter. **A broker’s “broker-in-charge eligibility” will be terminated if the broker does not complete the *Broker-in-Charge Annual Review* course (and the mandatory *Real Estate Update* course) each year or the broker loses his or her license for any reason, e.g., failure to renew, license suspended, etc..**

If your broker-in-charge eligibility is terminated, then to be redesignated a broker-in-charge you must:

1. have an active license and demonstrate that you have at least two years full-time (or equivalent part-time) real estate brokerage experience within

the past five years;

2. take the 12-hour *Broker-in-Charge Course* (or, if you have taken the 12-hour *Broker-in-Charge Course* within the past three years, you may instead take the 4 hour *Broker-in-Charge Annual Review Course*); and

3. submit a properly completed *Broker-in-Charge Declaration* form to the Commission.

However, so long as a broker remains “broker-in-charge eligible,” he or she may have periods when he or she is not actively managing an office, but may then be redeclared broker-in-charge of a particular office by simply submitting a properly completed *Broker-in-Charge Declaration* form to the Commission and will not be required to take the 12-hour *Broker-in-Charge Course*.

Brokers-in-charge who neither live in North Carolina nor manage an office located within North Carolina are not required to take any of the special broker-in-charge education. However, if such a broker-in-charge subsequently moves to North Carolina or becomes broker-in-charge of an office in North Carolina, then he or she will be required to take the special broker-in-charge education.

BIC Must Be ‘Eligible’ To Take BICAR

Only brokers who are designated on the Real Estate Commission’s records as “broker-in-charge eligible” may take the *Broker-in-Charge Annual Review Course (BICAR)*. To verify your eligibility, brokers who are broker-in-charge eligible may download a “Statement of Broker-in-Charge Eligibility” from the Commission’s website, www.ncrec.state.nc.us, to give to the course provider. *BICAR* must be taken every license year after the license year in which a broker is designated a broker-in-charge in order to remain broker-in-charge eligible.

Note that as of January 1, 2008, licensees who are *not* “broker-in-charge eligible” according to the Commission’s records will *not receive any continuing education credit* if they take the *BIC Annual Review* course on or after January 1, 2008.

BICAR Focuses on Agency Rule

The 2007-2008 *Broker-in-Charge Annual Review* course focuses on the broker-in-charge’s obligation to oversee adherence to the Commission’s agency disclosure and agreements rule (Rule A.0104) by all associated agents.

Brokers-in-charge should be aware that they may be subject to disciplinary action if agents under their supervision fail to timely disclose agency relationships and obtain written agency agreements.

The course reviews the history of Rule A.0104, the genesis of disclosure requirements. It then proceeds to explain the rules: agency disclosure requirements in all sales transactions, determination and establishment of an agency relationship *before* beginning to work with a consumer in *any* transaction, and the latest point by which that express agency agreement must be in writing. Fact situations are presented throughout the materials to assist brokers-in-charge in applying the rule.

The course materials are designed to eliminate confusion about how brokers-in-charge and their associated agents are expected to comply with the rule. It is hoped that the materials will serve as a primer on agency requirements and will be used by brokers both as a reference and in training their associated agents.

April 1, 2008 Deadlines

License Type	Requirement
Provisional Broker (PB9) ¹	Complete at a minimum the second 30-hour postlicensing course. All 90 hours must be completed by April 1, 2009.
Provisional Broker PBT ²	Complete the 24-hour Broker Transition Course or certify four years of brokerage experience within the past six (up to April 1, 2008).
Nonresident	Either comply with the above requirements according to your License Type, or complete equivalent education in another state, or obtain a broker license in another state.

¹PB9 - Initially licensed as a salesperson between October 1, 2005 and March 31, 2006 and converted to "provisional" broker status on April 1, 2006.

²PBT - Initially licensed as a salesperson before October 1, 2005 and converted to "provisional" broker status on April 1, 2006.

FREE PUBLICATIONS

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- Fair Housing _____
- Tenant Security Deposits _____
- Condos and Townhouses _____
- Residential Subdivisions and Planned Communities _____
- Purchasing Coastal Real Estate in North Carolina _____
- Renting Residential Real Estate _____

Trato Con Agentes de Bienes Raíces (Working With Real Estate Agents)

Preguntas y Respuestas sobre: (Questions and Answers On:)

- Vivienda Justa
(Fair Housing) _____
- El Depósito de Seguridad del Inquilino
(Tenant Security Deposits) _____
- Alquiler de Inmuebles para Viviendo
(Renting Residential Real Estate) _____

Real Estate Licensing in North Carolina (Contains license application)

Residential Property Disclosure Statement (Please limit request to one copy; duplicate as needed. **Also available on the Commission's web site.**)

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Safety Guide Revised



The North Carolina Real Estate Agent Safety Guide has undergone review and revision, including a new front cover design.

The booklet is published as a cooperative venture of the North Carolina Association of REALTORS® Real Estate Safety Council and the Real Estate Commission.

It is recommended by the Safety Council that every real estate firm implement a formal safety program. The Safety Guide is a resource for the design of such programs.

Orders for the 20-page booklet may be placed online at the Commission's website, www.ncrec.nc.us, or by printed forms available on the website and on page 7 of this *Bulletin*.

PURCHASE PUBLICATIONS

Publication	Quantity Requested	Totals
Residential Square Footage Guidelines (\$.65 per copy)	_____	\$ _____
Working With Real Estate Agents (\$.25 per copy)	_____	\$ _____
Questions and Answers on:		
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Earnest Money Deposits (\$.25 per copy)	_____	\$ _____
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Offer and Acceptance (\$.25 per copy)	_____	\$ _____
Owning Vacation Rental Property (\$.25 per copy)	_____	\$ _____
Broker-in-Charge Guide (\$10 per copy)	_____	\$ _____
North Carolina Real Estate License Law and Commission Rules (\$3.00 per copy)	_____	\$ _____
Real Estate Agent Safety Guide (\$.25 per copy)	_____	\$ _____
Amount Enclosed		\$ _____

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Please allow 7 days from receipt of payment for delivery.

Recently the Commission created an Incentive Disclosure Advisory Committee charged with determining whether changes in Commission rules are needed to reasonably assure that real estate purchasers and sellers are properly

Compensation Issues: How to Handle Them

informed of any compensation received by or offered to their real estate agents from another party to the transaction.

In addition to concerns about disclosure of compensation to agents, Commission staff regularly receive inquiries about a variety of other scenarios. Here are a few do's and don'ts related to compensation issues:

If you are acting as a buyer agent in a transaction:

- DON'T negotiate with the seller or builder to increase the amount of agency compensation being offered without the knowledge and consent of your buyer client. As a buyer agent, it is your duty to represent your buyer client to the best of your ability. This means getting your client the property they want at the lowest cost to them.

- DON'T take a larger commission with the understanding that you will "kick back" or "rebate" a portion of the commission to the buyer after closing. ALL COMMISSION REBATES TO BUYERS MUST BE DISCLOSED TO THE LENDER IN THE TRANSACTION AND MUST BE SHOWN ON THE CLOSING STATEMENT. If the lender won't allow it on the closing statement, the rebate CANNOT be made outside the closing.

- DO disclose to your buyers that any commission rebate you have agreed to is SUBJECT TO LENDER APPROVAL and MUST be shown on the closing statement. Again, if the lender will not allow the rebate to be shown on the closing statement, it CANNOT be paid to the buyer. Lenders often permit certain percentages of the purchase price to be offered as incentives to buyers. Once they have met the defined percentage, a buyer is not permitted to receive further incentives in the

transaction under the loan as approved. Buyers should be alerted up front that they will only receive such a rebate if the lender allows it. Because it will affect the lender's calculation of loan-to-value ratio for buyers' loans, the lender may not permit the buyer to receive the rebate.

Regardless of who you represent:

- DON'T allow a charitable group, church or school to advertise that you will donate a portion of each commission you receive to that group as an incentive for buyers or sellers to work with you. You may not pay incentives to unlicensed persons or firms, including charities, to help you obtain business. You MAY advertise that you regularly contribute to a church or charity or other organization.

- DO disclose to your clients that you will receive a referral fee if you are referring clients to another agent and you

Rules

(Continued from page 3)

ue taking the *Broker-in-Charge Annual Review* (BICAR) course every year and remain on active status.

- A clarification of continuing education requirements for nonresident brokers and nonresident BICs.

Residential Property Disclosure Statement

- A revision of the statement to require sellers to disclose whether the road that serves the property is maintained publicly or privately and to require sellers to disclose whether proper

Random Audit

(Continued from page one)

resident salespersons and nonresident salespersons licensed before October 1, 2005 became "provisional brokers". To remove the "provisional" status from their license, they could either take the 24-hour *Broker Transition Course* or certify that they had four years of full-time experience within the past six years.

Licensees who certified experience

have or will ask to be paid a fee. Referral fees must be agreed to by the agents involved in advance of the referral.

- DON'T advertise your commission in such a way as to indicate there is any industry standard. Commissions are always negotiable between the firm and its clients.

- DON'T pay rebates, incentives, or referral fees to unlicensed persons or entities who are not buyers or sellers in the transaction.

- DO pay agents licensed in another state BUT NOT IN NORTH CAROLINA referral fees or real estate commissions after verifying licensure ONLY if the out-of-state licensee did not enter North Carolina at any time to take part in any aspect of the transaction in question. If an out-of-state licensee enters the state to show or list a property, or participate in any way in the transaction, they cannot be compensated.

Licensees with questions about these issues are encouraged to contact the Commission's Legal Staff for clarification.

building permitting has been obtained for additions and improvements.

License Date Reinstatement

- A provision that the license date for a licensee who obtains the reinstatement of an expired license is the date of reinstatement.

Website Advertising

- A requirement that brokers' websites identify the broker and his or her firm in a clear and conspicuous manner.

"Shopping Offers"

- A new rule prohibiting brokers from disclosing the price and material terms of an offer to a competing buyer.

to the Commission are now being audited to verify their experience by listing transactions in which they have participated or having their current and/or former broker(s)-in-charge certify their experience.

If the properly completed form(s) are received in the Commission office by February 6, the Commission will notify the audited licensee by March 1 of the results of their evaluation.

Incentive Disclosure

(Continued from page 1)

compensation received by or offered to their agents from another party to the transaction.

The members of the Commission's *Incentive Disclosure Advisory Committee* were Kimberly D. Alston (Greensboro), William C. Bass (Asheville), Cindy S. Chandler (Charlotte), Tony H. Jarrett (Greensboro), C. Nash Lindsey, III (Fayetteville), P. Robert Measamer, Jr. (Fayetteville), Hampton Pitts (Raleigh), Page Robertson (Wilmington), James H. Sears (Gates), Grady F. Watkins, Jr. (Holden Beach), and Assistant Attorney General Harriet Worley. Special Deputy Attorney General Thomas R. Miller served as advisor to the committee and Executive Director Fisher facilitated the discussions.

After reviewing and discussing the relevant issues, the committee determined that proper disclosure of incentives of more than nominal value requires:

1. That the disclosure be in writing and preferably accompanied by an

oral explanation of the incentive arrangement, that it be prominent, and that it be acknowledged by the agent's clients; but if the client fails to acknowledge the written disclosure, the broker may proceed with the transaction after noting this in his or her transaction records.

2. That the value of the incentive be disclosed and, if other than cash, a description of the incentive item and its monetary value stated.

3. That the disclosure by the agent be timely; i.e., preferably while showing properties for which an incentive is being offered, but in no event later than the making of the buyer's offer to purchase such properties.

The committee then concluded that, since the current Commission rule on disclosing the receipt of sales incentives does not require that the disclosure be made in writing nor does it address the timing or content of the disclosure, the rule should be amended to incorporate the disclosure elements it identified.

At its December meeting, after discussing the committee's report and rec-

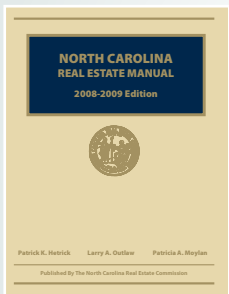
ommendations, the Real Estate Commission initiated rulemaking to consider amending its Rule A.0109 governing the disclosure of compensation incentives. A rulemaking hearing will be held in the Conference Room of the Commission's Raleigh office on April 16 beginning at 10:00 a.m. during which the Commission will receive comments from interested persons concerning the proposed rule including any written comments received prior to the hearing. A complete copy of the proposed rule and the *Incentive Disclosure Advisory Committee* report is available on the Commission's website, www.ncrec.state.nc.us.

Pending action by the Commission on the proposed rule change, licensees are reminded that they are required by current Commission rules to fully disclose to their clients any compensation incentive they are offered and that federal law requires them to report on the HUD-1 form their "total sales/broker's commission" including any compensation incentives.

New 2008-09 Real Estate Manual Available - Place Orders Online

The *North Carolina Real Estate Manual, 2008-2009 Edition* is now available to purchase.

The *Manual* is the required text for the three thirty-hour postlicensing courses which most provisional brokers must take, as well as for the 24-hour Broker Transition Course which will be offered through March 31, 2008.



In addition to significant revisions in the chapter on "Financial Legislation and Practices", the new *Manual* contains discussion of changes to the new Offer to Purchase and Contract form which is also the subject of the 2007-2008 *Real Estate Update Course*.

The *North Carolina Real Estate Manual* continues to be a comprehensive guide to real estate law and brokerage practices in North Carolina. It covers everything from basic real property law, taxation, valuation, land use, agency relationships and agreements, basic contract law principles and sales contracts, landlord-tenant law, fair housing, property management and commercial brokerage practices, among other topics.

To purchase the *Manual*, place your order online at the Real Estate Commission's website, www.ncrec.state.nc.us, or use the order form on page 10 of this *Bulletin*.

Commercial Broker Search Now Available Online

If you hold a North Carolina Non-Resident Limited Commercial License, or you are searching for someone who does, you can access valuable information on the Commission's website, www.ncrec.state.nc.us.

Click on "Licensee Search" and then "Non-Resident Limited" on the home page. In the designated fields on the page that opens, type in your name or the name of the licensee you wish to find.

The record will show license name, firm name, address, license number, license status, and last renewal date.

If you have a question about your record, please contact Information Services at the Commission.



Examining Your Bookkeeper's Trust Account Bank Reconciliation

By Emmet R. Wood, Director, Audits and Investigations

What are some of the things that a Broker-in-Charge can do to check the bank reconciliation performed by your company's trust account bookkeeper? Reconciling the ending balance shown on your trust account bank statement to the corresponding balance on the trust account journal or check stubs (bank reconciliation) is a procedure required by the Commission. You need the following items:

- Current month's bank statement
- Journal showing the current month's transactions
- Last month's bank reconciliation

The most important procedure that you can do is to have each bank statement delivered directly to you not the bookkeeper. Open that bank statement and examine the checks for valid payors and valid endorsements. Look for online banking transfers to unfamiliar bank accounts. Then, give the bank statement to the bookkeeper. Just receiving the bank statement before the bookkeeper is an internal accounting control that will help to deter a trust account embezzlement.

Next, perform the following procedures:

- 1 Compare the trust account ending bank statement balance to the beginning balance on the current month's bank reconciliation. They should agree. Place the mark "@" to show that you have compared the two balances and that they agree.
- 2 Check the math on the current month's reconciliation and, if it is correct, mark it with "@".
- 3 Verify that the deposits-in-transit shown on the prior month's bank reconciliation cleared on the current month's trust account bank statement. **If someone has taken trust money out of the trust account, they may try to hide the embezzlement by recording false deposits-in-transit and thus inflating the cash on the bank reconciliation.**
- 4 Verify that the deposits-in-transit shown on the current month's bank reconciliation appear on the Journal near the end of the month but not on the bank statement. **If you have a deposit in transit that is dated more than three days before the end of the month, some trust monies may not have been deposited within the time frame required by the Commission.**
- 5 Compare the debits/withdrawals on the bank statement to the outstanding checks on the prior month's bank reconciliation and the current month's journal. Show that each debit/withdrawal on the bank statement agrees in amount and check # (if applicable) with the corresponding disbursement shown on the journal by marking each disbursement on the journal with "t". The disbursements not marked with a "t" should agree with the check #s and amounts on the outstanding checks on the current month's reconciliation. **If there is a debit/withdrawal on the bank statement that also appears on the current month's bank reconciliation as an outstanding check, the books may not be in balance with the bank. If there are unmarked disbursements on the journal that do not appear as outstanding checks on the current month's bank reconciliation, cash on the bank reconciliation has been inflated and there may be an embezzlement.**

Just by checking the bank reconciliation on a monthly basis, you are putting into place some internal controls to help safeguard the funds in your trust account. If you are not comfortable checking the bank reconciliation, consider hiring an accountant outside your company to assist you with the process.



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

BARBARA M. BASKERVILLE (Asheville) - By Consent, the Commission suspended the broker license of Ms. Baskerville for a period of one year effective December 1, 2007. The Commission then stayed the suspension under certain conditions. The Commission found that Ms. Baskerville pled guilty to failure to file state income tax returns. The Commission noted that Ms. Baskerville reported the conviction as required and is in compliance with the court order in that matter. Ms. Baskerville neither admitted nor denied the Commission's findings and conclusions.

KENNETH C. BAUCOM (Greensboro) - By Consent, the Commission reprimanded Mr. Baucum effective November 1, 2007. The Commission found that Mr. Baucum, qualifying broker and broker-in-charge of a rental property management firm, failed to maintain the firm's trust account records in compliance with Commission rules by using software that did not generate a clear audit trail. The Commission noted that no funds were missing and no consumers were harmed as a result of Mr. Baucum's conduct and the firm's trust accounting software was brought into compliance with Commission rules.

KELVIN A. BELL (Durham) - The Commission permanently revoked the broker license of Mr. Bell effective October 3, 2007. The Commission found that Mr. Bell, acting as a buyer agent for a client in the purchase of a lot and a modular home, failed to discuss agency, failed to enter into a written agency agreement with his client, and failed to provide his customer with a "Working With Real Estate Agents" brochure. The Commission also found that Mr. Bell

failed to deposit his client's \$5,000 deposit into a trust or escrow account and instead converted the money to his own use. Finally, the Commission found that Mr. Bell failed to complete the home as promised, failed to refund the deposit as promised, and failed to properly account for the monies.



ALLISON F. BERNHART (Wilmington) - By Consent, the Commission suspended the broker license of Ms. Bernhart for a period of 12 months effective December 1, 2007 on certain conditions. One month of the suspension was active with the remainder stayed for a probationary period of one year. The Commission found that Ms. Bernhart failed to disclose to buyers of her home that repairs made before its sale and while she was still in residence were inadequate.

YVONNE D. BLEDSOE (Hope Mills) - The Commission revoked the broker license of Ms. Bledsoe effective November 19, 2007. The Commission found that Ms. Bledsoe, as a listing agent and, in some cases, as a dual agent representing buyers in certain transactions in which her construction companies built

homes on lots owned by the companies, failed to pay subcontractors employed by her in the construction of the properties, and failed to disclose to buyers that she had not paid the subcontractors or that her failure to pay could result in liens against the properties.

BROWNING REALTY, INC. (Garner) - By Consent, the Commission suspended the firm license of Browning Realty for a period of one year effective November 1, 2007. The Commission then stayed the suspension for a probationary period of one year on certain conditions. The Commission found that Browning Realty failed to indicate in the MLS system that the seller contributed approximately \$8,300 in buyer concessions. The Commission also found that Browning Realty created and backdated agency contracts and agency disclosure forms for transaction files in which it had no such forms at the time of contact by the Commission.

ROBERT L. BROWNING (Garner) - By Consent, the Commission suspended the broker license of Mr. Browning for a period of one year effective November 1, 2007. Six months of the suspension are active with the remainder stayed for a probationary period of one year on certain conditions. The Commission found that in 2001 Mr. Browning failed to indicate in the MLS system that the seller contributed approximately \$8,300 in buyer concessions. The Commission also found that Mr. Browning created and backdated agency contracts and agency disclosure forms for transaction files in which it had no such forms at the time of contact by the Commission.

(See **Disciplinary Action**, page 13)

Disciplinary Action

(Continued from page 12)

PHYLLIS K. COLE (Corolla) – By Consent, the Commission suspended the broker license of Ms. Cole for a period of 36 months effective October 24, 2007. Ninety days of the suspension were active with the remainder stayed for a probationary period on certain conditions. The Commission found that Ms. Cole was convicted on July 27, 2006 of five counts of failure to pay her State income taxes from 2000-2005 and was ordered to pay restitution, a fine and costs, and sentenced to 45 days in custody, suspended for 36 months probation. The Commission noted that Ms. Cole entered into a payment plan with the Department of Revenue to repay the taxes.

DOUGLAS J. MILLSAPS REALTY, INC. (Cornelius) – By Consent, the Commission accepted the voluntary surrender of the firm license of Douglas J. Millsaps Realty for a period of three years effective December 1, 2007. The Commission dismissed without prejudice allegations that Douglas J. Millsaps Realty had violated the Real Estate License Law and Commission rules. Douglas J. Millsaps Realty neither admitted nor denied misconduct.

SHARON PHILLIPS EMORY (Creedmoor) – By Consent, the Commission revoked the broker license of Ms. Emory effective October 11, 2007. The Commission found that Ms. Emory, on or about July 23, 2007, pleaded guilty to and was convicted of a number of counts of obtaining property by false pretense.

CLAYTON RAY EVANS - (Raleigh) The Commission revoked the broker license of Mr. Evans effective August 29, 2007. The Commission found that Mr. Evans, qualifying broker of a real estate brokerage firm, managed a residential rental property and failed to disclose to the owner material information regarding the property, failed to account for or remit to the owner monies received, and failed to provide timely and complete

accountings to his client. The Commission also found that Mr. Evans failed to make trust account records available for inspection by the Commission.

TERRY FETHERSON (Charlotte) – By Consent, the Commission revoked the broker license of Ms. Fetherson effective February 1, 2008. The Commission found that Ms. Fetherson, as a buyer's

Licensees Must Report Convictions

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

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

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

agent in a transaction, agreed to allow an unlicensed third party to provide the down payment to her buyer without disclosing this on the settlement statement or to the lender and agreed that the third party would be reimbursed after closing from funds paid to her as a bonus. The Commission noted that the closing attorney and Ms. Fetherson's broker-in-charge refused to pay the third party after closing.

RICHARD H. FORREST (Southmont) – By Consent, the Commission suspended the broker license of Mr. Forrest for a period of one year effective January 1, 2008. The Commission then stayed the suspension for a probationary period of one year under certain conditions. The Commission found that Mr. Forrest, while licensed as a salesperson,

received commissions directly from a builder and failed to turn these commissions over to his broker-in-charge. The Commission also found that in 2003 Mr. Forrest collected a \$2,000 earnest money deposit from a client and deposited the buyer's money directly into his personal account. The Commission further found that Mr. Forrest stated that he did not receive a commission when, in fact, the buyer in that transaction paid Mr. Forrest a \$3,000 cash commission; failed to give his buyer client an agency brochure; and failed to have a written buyer agency agreement with the buyer as required. Finally, the Commission found that Mr. Forrest removed a competitor's "for sale" sign from the yard of a home on three separate occasions.

GERRY G. FOSTER (Wake Forest) – The Commission accepted the voluntary surrender of Mr. Foster's broker license for a period of three years effective November 8, 2007. The Commission dismissed without prejudice allegations that Mr. Foster violated provisions of the Real Estate License Law and Commission rules. Mr. Foster neither admitted nor denied misconduct.

SHARON ANN GABBERT (Santford) – By Consent, the Commission revoked the broker license of Ms. Gabbert effective November 1, 2007. The Commission found that Ms. Gabbert, acting as bookkeeper and rental manager for a real estate brokerage firm, converted to her own use more than \$6,000 in client funds which had been entrusted to the firm as cash rent payments.

MICHAEL W. GIBSON – (Greenville) – By Consent, the Commission suspended the broker license of Mr. Gibson for a period of 60 days effective January 1, 2008. The Commission then stayed the suspension for a probationary period. The Commission found that Mr. Gibson, qualifying broker of a firm that provided property management services, failed to put trust account safeguards in place to prevent an unlicensed employee from embezzling rents. The Commission
(See **Disciplinary Action**, page 14)

Disciplinary Action

(Continued from page 13)

noted that the firm's trust accounts were generally in compliance and in balance.

JAMES F. HAMBY (Jacksonville) – By Consent, the Commission suspended the broker license of Mr. Hamby for a period of one year effective July 1, 2007. Four months of the suspension were active with the remainder stayed on certain conditions. The Commission found that Mr. Hamby failed to report multiple misdemeanor convictions to the Commission within 60 days of the final judgment.

NORMA CURTIS HARLESS (Lenoir) – By Consent, the Commission suspended the broker license of Ms. Harless for a period of six months effective December 1, 2007. The Commission found that Ms. Harless, a licensed appraiser, prepared three appraisals in 2002 of the same property, determining three different values for the property ranging from \$198,000 to \$239,000, and appraised the property as if an addition had been completed when it had not. The Commission also found that effective December 1, 2004, the North Carolina Appraisal Board suspended Ms. Harless' appraisal license for six months, ordering her to complete additional continuing education before the license would be reinstated. The Commission noted that Ms. Harless surrendered her appraisal license to the North Carolina Appraisal Board in a separate case.

BILLY RAY JOHNSON (Salisbury) – By Consent, the Commission revoked the broker license of Mr. Johnson effective October 11, 2007. The Commission found that Mr. Johnson pled guilty to three counts of conspiracy, mail fraud and money laundering in connection with a series of commercial and residential real estate transactions designed with the intent to defraud various lenders by creating false down payments and other false information material to the lenders in their process of approving the loans.

WILLIE CAROL JUSTICE (Goldsboro) – By Consent, the Commission suspended the broker license of Mr. Justice for a period of 24 months effective November 1, 2007. The Commission found that Mr. Justice, acting as a dual agent, was aware of payments from the seller's proceeds at closing to third parties

Receive Credit Where and When Credit is Due!

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

You can avoid this problem by going online to the Commission website, www.ncrec.state.nc.us, to verify your CE credits.

Similarly, if you completed your CE online, verify that your sponsor submitted your affidavit to the Commission in time for your CE record to be updated.

with whom the seller had no contractual obligation, which were characterized as loan payoffs. The Commission also found that Mr. Justice was aware that the settlement statement did not reflect the actual transaction of the parties. Mr. Justice neither admitted nor denied the findings and conclusions of the Commission but, nevertheless, accepted the suspension of his broker license.

RICHARD D. MEADOR (Henderson) – The Commission revoked the broker license of Mr. Meador effective December 1, 2007. The Commission found that Mr. Meador, acting as a mobile home salesman associated with a real estate broker, conspired between 1999 and 2002 with the broker to encourage and assist purchasers of mobile homes and land to make false statements to lenders to induce them to provide mortgage financing. The Commission also found that in 2006, Mr. Meador pleaded guilty in U.S. District

Court to a charge of conspiracy to commit money laundering and was sentenced to 53 months in prison, followed by three years of supervised release, and ordered to pay \$1,270,299 in restitution to identified victims.

DOUGLAS J. MILLSAPS (Cornelius) – By Consent, the Commission revoked the broker license of Mr. Millsaps effective December 1, 2007. The Commission found that Mr. Millsaps purchased three properties in January, February and March of 2004 and misrepresented to each of the lenders in the three transactions that it was his intention to owner-occupy each property.

PONCE DE LEON MOODY (Raleigh) – The Commission revoked the broker license of Mr. Moody effective December 3, 2007. The Commission found that Mr. Moody represented when he obtained a salesperson license in 1990 that he had not been convicted of a criminal offense when in fact he had been convicted of writing a worthless check. The Commission also found that Mr. Moody, while licensed, was convicted of writing worthless checks on a closed account, obtaining money by false pretenses, two counts of "Simple Worthless Check", and two counts of misdemeanor larceny and that he failed to report to the Commission certain of the convictions and also the surrender of his insurance license to the North Carolina Department of Insurance.

ROBERT PARGA (Wilmington) – By Consent, the Commission suspended the broker license of Mr. Parga for a period of one year effective December 1, 2007. The Commission then stayed the suspension for a probationary period of one year and ordered him to withdraw a firm license application until the probationary term is complete. The Commission found that Mr. Parga was convicted in 2005 of the misdemeanor of violating a domestic violence order and failed to report the conviction. The Commission also found that on October 26, 2006, Mr. Parga pled guilty to misdemeanor (See **Disciplinary Action**, page 15)

Disciplinary Action

(Continued from page 14)

stalking and to another violation of a domestic violence order and was sentenced to six months intensive probation for each conviction.

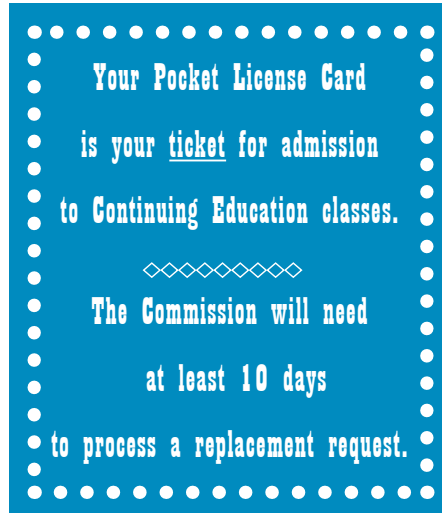
MARY E. PARKS (Jackson) – By Consent, the Commission suspended the broker license of Ms. Parks for a period of one year effective December 1, 2007. The Commission then stayed the suspension for a probationary period of 31 months. The Commission found that Ms. Parks acted as a buyer agent and drafted an offer to purchase and contract involving owner financing of \$17,550, which was to be forgiven after the buyer made one payment. The Commission also found that Ms. Parks failed to adequately complete a Seller Financing Addendum and failed to produce her transaction file when requested by the Commission.

PINNACLE PROPERTY MANAGEMENT OF NC., INC. (Greenville) – By Consent, the Commission reprimanded Pinnacle Property Management effective January 1, 2008. The Commission found that Pinnacle Property Management failed to suspend an unlicensed employee or to put trust account safeguards in place to prevent an unlicensed employee from embezzling rents. The Commission noted that Pinnacle Property Management's trust accounts were generally in compliance and in balance.

PREFERRED REALTY & ASSOCIATES (Raleigh) – The Commission revoked the firm license of Preferred Realty effective August 29, 2007. The Commission found that Preferred Realty managed a residential rental property and failed to disclose to the owner material information regarding the property, failed to account for or remit to the owner monies received, and failed to provide timely and complete accountings to his client. The Commission also found that Preferred Realty failed to make trust ac-

count records available for inspection by the Commission.

CAROLINE R. PURCELL (Concord) – By Consent, the Commission suspended the broker license of Ms. Purcell for a period of one year effective June



14, 2007. Effective December 1, 2007, upon reinstatement of her driving privileges, the Commission stayed the suspension and placed Ms. Purcell on probation for the remainder of the one-year period. The Commission found that Ms. Purcell was convicted of *Driving While Impaired* ((DWI) in 2006 and placed on probation for 18 months after a seven day active term, and that her driving privileges were revoked for one year. The Commission further found that this was Ms. Purcell's fourth DWI since 1985. The Commission noted that Ms. Purcell reported the conviction within 60 days, and cooperated with the Commission's inquiry.

GREGORY C. SKIPPER (Oak Island) – By Consent, the Commission suspended the broker license of Mr. Skipper for a period of two years effective August 1, 2007. Three months of the suspension were active with the remainder stayed for a probationary period. The Commission found that Mr. Skipper pleaded guilty on August 29, 2005 in U.S. District Court to conspiracy to possess a controlled substance. The Commission noted that no client or customer of Mr. Skipper was

harmed by or put at risk by Mr. Skipper's conduct.

CAROLYN B. SMITH (Cornelius) – By Consent, the Commission suspended the broker license of Ms. Smith for a period of one year effective January 1, 2008. The Commission then stayed the suspension for a probationary period of one year on certain conditions. The Commission found that Ms. Smith, as broker-in-charge of a real estate brokerage firm, failed to ensure that the firm's bank accounts were designated trust or escrow, failed to ensure that deposit tickets, ledgers and checks sufficiently identified the required transaction details, failed to maintain a personal funds ledger, and failed to perform trial balances and reconciliations, resulting in an approximate \$2,000 shortage in the trust account. The Commission noted that the shortage was immediately replaced into the account.

RICHARD L. VAN TASSEL, II (Apex) – By Consent, the Commission suspended the broker license of Mr. Van Tassel for a period of one year effective July 1, 2007. Four months of the suspension were active with the remainder stayed for a probationary term under certain conditions. The Commission found that Mr. Van Tassel, a builder, sold a new construction home and misrepresented the home as having four bedrooms when it had only a three-bedroom septic permit; misrepresented that he would do an upgrade of siding when he was already required to do so pursuant to a civil settlement, and failed to disclose that the home had been built to the maximum impervious footprint allowance so that no addition such as a patio would be possible.

DENA WAGER-FORD (Hope Mills) – The Commission revoked the broker license of Ms. Wager-Ford effective November 15, 2007. The Commission found that Ms. Wager-Ford misrepresented to sellers in an Installment Land Sale Contract for her purchase of their home that she would complete the purchase. (See **Disciplinary Action**, page 16)

Disciplinary Action

(Continued from page 15)

chase within six months when she did not. The Commission also found that Ms. Wager-Ford made a false promise of a character likely to influence, persuade or induce, induced the sellers to sign an agreement requiring them to violate the terms of their mortgage, and refused to provide records and information when requested to do so by the Commission.

WADE H. WATERS, JR. (Washington) – The Commission revoked the broker license of Mr. Waters effective October 3, 2007. The Commission found that Mr. Waters failed to report certain criminal convictions in 2001 and 2005 to the Commission as required by Commission rules. The Commission also found that Mr. Waters listed a vacant lot and failed to specifically identify the property that was the subject of the listing and advertised the property in the local MLS as having a “Perc Test” document on file when no such document existed. The Commission further found that Mr. Waters incorrectly identified the street address for the property and failed to disclose to the buyers that the sellers were denied a septic permit and the buyers were thus unable to build on the lot.

JASON W. WRIGHT (Charlotte) – By Consent, the Commission perma-

Safety Tip

Safety Tip #6 - DON'T MAKE PERSONAL MARKETING TOO PERSONAL

- *Your marketing materials should be polished and professional.*
- *Limit the amount of personal information you share.*
- *Use office number and have your calls forwarded to your cell phone.*
- *Use your office address, rather than your home address.*

Reprinted from the North Carolina Real Estate Agent Safety Guide.



New Year's Resolutions For Brokers-in-Charge

I resolve to:

- *Be certain that records of brokers affiliated with my office are accurate and complete.*
- *Review the continuing education records of all brokers in time for completion of necessary courses.*
- *See that all provisional brokers are in compliance with Commission rules relating to postlicensing education.*
- *Notify the Commission within 10 days of broker address changes.*

nently revoked the broker license of Mr. Wright effective December 1, 2007. The Commission found that Mr. Wright purchased two properties and received concessions outside closing in each transaction exceeding the amounts permitted by the lenders. The Commission also found that the incentives were not disclosed on the closing statement or to the lenders in the transactions.

XAVIER L. WEST (Fayetteville) – The Commission revoked the broker license of Mr. West effective November 13, 2007. The Commission found that Mr. West, broker-in-charge of his own

firm and acting as property manager for a fourplex rental building, submitted false management statements to the owner indicating that expenses had been paid when they had not, failed to account for and remit money belonging to his client within a reasonable time, failed to maintain in a trust account all monies received by him in his capacity as a real estate licensee, neglected his duties in the handling of funds, failed to make records available to the Commission when directed to do so, and failed to perform his duties as broker-in-charge by failing to maintain trust account records.

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Estate Commission
P. O. Box 17100
Raleigh, NC 27619-7100

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