



# REAL ESTATE BULLETIN

Volume 39 • May 2008 • Number 1

## Renewal Reminder Postcards in Mail

### It's Time to Renew Your License; Deadline June 30 - Renew Online

Watch for your real estate license renewal reminder postcard's arrival in the mail about the same time as this issue of the *Bulletin*. It will look just like the one pictured below.

You must renew by Monday, June 30, at 5 p.m. Mailed renewals must be *received* by the Real Estate Commission (not postmarked) by that date.

To take this annual task off of your "to-do" list quickly, renew online at the Commission's website, [www.ncrec.state.nc.us](http://www.ncrec.state.nc.us). Just login and go to Renew/Reinstate and enter your license number and PIN (personal identification number). Unless you have changed your PIN, it will be the last four digits of your Social Security number.

The process takes about two minutes compared with considerably longer to renew by mail.

Be sure to have your Visa or MasterCard ready to charge the \$40 fee. You will receive confirmation that your renewal is being processed by the Commission. While online, update your email, fax and residence address, if needed.

Also, while online, check your continuing education credit information to make sure it has been properly posted. Allow 15 days following your class for any credits to be reflected. If you do not have the required CE credits for the license period when you renew and your license is on active status, your license status will be changed to "inactive" effective July 1.



## Pocket Cards Available Online

You may now purchase and print replacement Pocket Cards online at the Commission's website, [www.ncrec.state.nc.us](http://www.ncrec.state.nc.us).

To obtain a duplicate card, login at the website. Click on "Pocket Card" on the Broker Main Menu. The fee of \$5 may be charged using MasterCard or Visa.

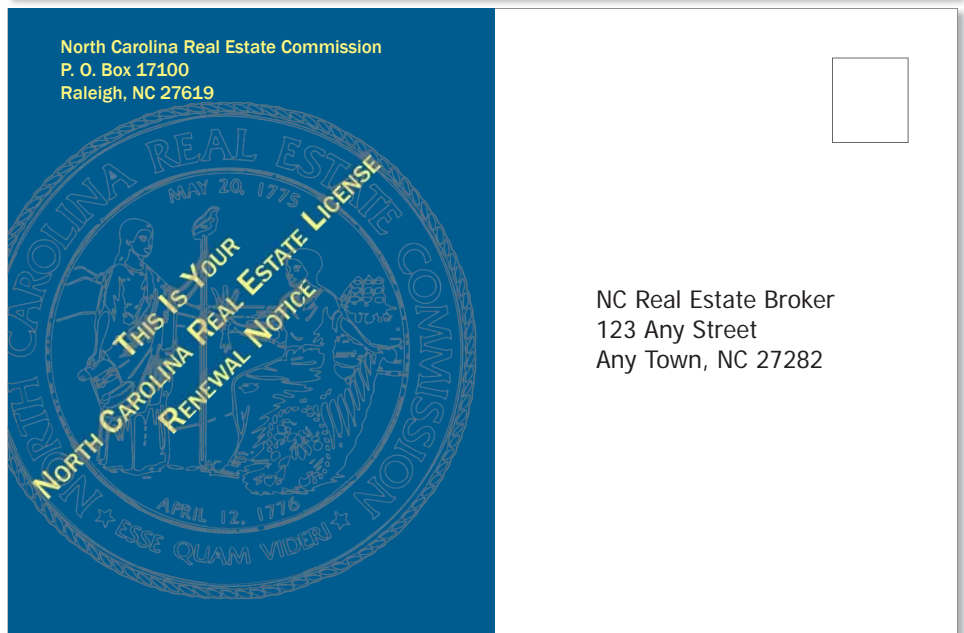
You must have your pocket card with you when conducting real estate brokerage business and produce it as proof of licensure whenever requested.

The qualifying broker of a firm must produce the firm's renewal pocket card upon request as proof of licensure.

## New Nonresident CE Rule Effective January 1, 2008

See Page 4

## Watch for this renewal reminder!





*To request a speaker from the Commission, please submit the "Request for Program Presenter" form available on the Commission's website, [www.ncrec.state.nc.us](http://www.ncrec.state.nc.us).*

## People

**Juanita G. Bridges** has assumed the position of Information Specialist in the Administration Division. She is a graduate of North Carolina Central University with a BS in Family and Consumer Sciences.



**Tiffany D. Bryant** has assumed the position of Information Specialist in the Administration Division. She served for eight years with the U.S. Air Force, is a graduate of East Carolina University with a BS in Child Development and Family Relations and will graduate from the Meredith College Paralegal program in May.



**Samantha A. Morgan** has assumed the position of Administrative Specialist in the Education and Licensing Division. She is a graduate of UNC Chapel Hill with a BA in Psychology and will graduate from National University with an MA in Human Behavior this summer.



## Appearances

**Miriam J. Baer**, Assistant Director of Legal Services, spoke to the Winston-Salem Regional Association of REALTORS® on short sales and to military attorneys at Seymour Johnson Air Force Base on real estate contracts.

**Janet B. Thoren**, Chief Deputy Legal Counsel, spoke to the North Carolina Conference of District Attorneys Legal Update Seminar on the new Mortgage Fraud Act.

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June 18  
 July 16  
 Greensboro  
 August 13  
 September 17  
 October 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.*

## New Address and Fax Number To Purchase Commission Publications

The Commission has a new service provider to fulfill orders for purchased publications. Avoid delays of as long as two weeks when mailing or faxing orders by updating your address and phone records as follows: Commission Publications, P. O. Box 28151, Raleigh NC 27611 or fax to 866-867-3746. New order forms for free and purchased publications are available on pages 6 and 7 of this issue of the Bulletin. Print or download from the Publications page on the Commission website, [www.ncrec.state.nc.us](http://www.ncrec.state.nc.us). Online order forms provide the fastest method.

## COURSE SCHEDULES

This schedule provides locations, dates, and times for the courses indicated through December, 2008. Register online at the Commission's website, [www.ncrec.state.nc.us](http://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	July 10, 11 September 17, 18	☐ — — ☐	Holiday Inn East/Blue Ridge Parkway
Banner Elk	October 22, 23		Best Western Mountain Lodge
Charlotte	July 14, 15 August 26, 27 September 15, 16 October 14, 15 November 18, 19	Some dates tentative at press time.	Holiday Inn Airport
Greensboro	August 11, 12 November 24, 25	Confirm dates and times at the Commission website.	Clarion Hotel (formerly the Radisson)
Kill Devil Hills	September 23, 24		Ramada Plaza Resort
Raleigh	July 7, 8 August 4, 5 September 8, 9 October 6, 7 November 5, 6 December 8, 9		McKimmon Conference Center
Wilmington	August 19, 20 October 27, 28	☐ — — ☐	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	July 1, 1-5 p.m. September 9, 1-5 p.m. November 4, 1-5 p.m.	McKimmon Conference Center
Wilmington	May 20, 9 a.m.-1 p.m.	Coastline Inn & Convention Center

# Staff Commended for Efforts In Fighting Mortgage Fraud

Senior Auditor/Investigator Gary R. Caddell has received the commendations of the Department of Housing and Urban Development and the Internal Revenue Service for his valuable assistance in investigating a highly profiled mortgage fraud case.

Michael V. Powell, Special Agent in Charge of the Southeast Region of HUD's Office of Inspector General-Investigations, and Charles E. Hunter, Special Agent in Charge with the Criminal Investigation Section of the IRS, cited Caddell's assistance in letters to Commission Executive Director Phillip T. Fisher.

The case, according to Agent Powell, "involved a complex money-laundering

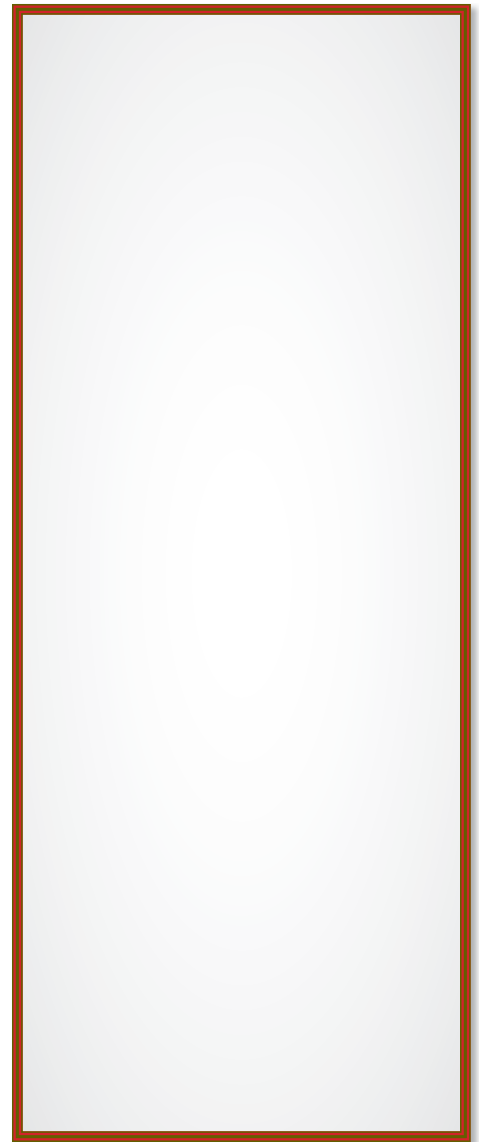
scheme of over \$40 million dollars in fraudulent loans."

In December, the Commission commended Chief Deputy Legal Counsel Janet Thoren and Chief Auditor/Investigator Mike Gray for the training they have received and expertise acquired in the area of mortgage loan fraud and for their special efforts in addressing this serious threat to the economy of our state and nation.

Thoren and Gray are the Commission staff members most directly involved in assisting other state and federal law enforcement agencies with investigating and prosecuting persons engaged in mortgage fraud.



Senior Auditor/Investigator Gary R. Caddell (l.) receives a plaque from HUD Office of Inspector General-Investigations Special Agent Mark Heinbach commending him for valuable assistance in investigating a high profile mortgage fraud case. Commission members present were (l. to r.) Jerry A. Mannen, Jr., Vice Chair Marsha H. Jordan, Joe L. Hodge, Jr., Chairman Melvin L. "Skip" Alston, Benjamin Cone, III, Matthew J. "Rick" Watts, and S. R. "Buddy" Rudd, Jr.



## Search for NC Lead Inspectors

Search for North Carolina Certified Lead-Based Paint Professionals by city or name at the website of the North Carolina Health Hazards Control Unit (HHCU), [www.epi.state.nc.us](http://www.epi.state.nc.us).

The agency is responsible for the Lead-Based Paint Hazard Management Program, which includes certifications and training. There are links to state and federal websites, including the U.S. Environmental Protection Agency (EPA), publisher of the lead paint disclosure booklet.

Also available on the HHCU website is information about asbestos, including demolition, removal/renovations and Do's and Don'ts for the Homeowner.



**A**fter listing a property for sale, you receive an offer from a prospective buyer. Then, before you're able to present the offer to your seller-client, a second and third offer arrive with all of the buyers and their agents impatiently waiting for answers.

While handling multiple offers requires more diplomacy than handling a single offer, from a business standpoint there is really little room for complaint here. You have an attractive listing, which has a good chance of selling quickly, and your marketing efforts are paying off, which should please the seller.

However, there is plenty of room for problems if you don't handle the intense demand for your listing with diligence and fairness to all – your seller-client and the prospective purchasers.

Here are some guidelines to hang on your wall and refer to when multiple offers come your way:

- **Do Not Shop Offers** – Effective July 1, a new Commission rule prohibits shopping offers unless permitted by the offering party, typically, the buyer. All buyers must be treated fairly, honestly and equally. Disclosing terms of an offer to other buyers gives those receiving the information an unfair advantage over the buyer whose competing offer is disclosed. Thus, it is not in the interest of most buyers to allow disclosure of their offers.

- **Present All Offers** – Abiding by those three words will serve you well and help keep you in compliance with Real Estate Commission rules. You must present each offer immediately or as soon as you are able. Every offer must be presented to the seller within five days of execution. Presenting an offer means delivering the offer or transmitting a copy of it to the seller. Simply speaking with the seller by telephone about an offer is not sufficient to satisfy

the delivery requirement in the Commission's rules.

- **An Offer to Purchase is NOT a Contract** – There is no contract until all parties agree to its written terms, sign their names to express that agree-

ment and communicate acceptance to the offering party. Until then, you have nothing more than a stack of offers – not a stack of contracts – any one of which could appeal to your seller-client. Do not advise a buyer or buyer agent that the seller has accepted the offer until the seller has signed

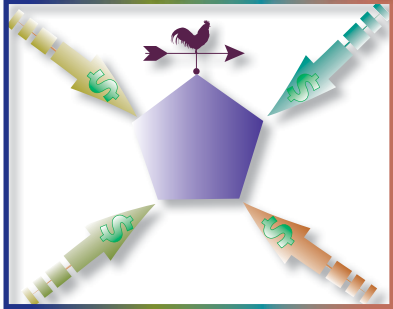
the offer. A seller who orally expresses a willingness to accept an offer has not yet accepted the offer and has no legal obligation to do so. Thus, no contract has been formed. Do not change the MLS status of a property to “under contract” until a contract has been formed as this would be a misrepresentation of a material fact and a disservice to your seller-client.

- **Advise Your Seller-Client** – Some clients are more knowledgeable about real estate matters than others. Make the appropriate assessment with your client of all offers, explaining, if need be, the differences in the various terms and conditions, how they would affect the sale of the property and the steps necessary to form a contract.

- **Communicate With All Prospective Purchasers** – Inform all buyers or buyer agents that you have received multiple offers. If your seller client does not find any offer acceptable, communicate equally with all prospective purchasers either through their agents or directly depending upon your relationship. Advise all who have made an offer that they may submit their best offer, if they choose to do so, or stand by their original offer. With the seller's permission, you may outline any terms the seller would consider.

- **No First-Come, First-Served** – The timing of receipt by you of an

## How to Handle



## Multiple Offers

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### New Rule Effective July 1

## Shopping Offers Prohibited

A new rule - A.0115 Disclosure of Offers Prohibited – takes effect July 1:

The rule prohibits you from disclosing the price or other material terms in a party's offer to purchase, sell, lease, rent, or to option real property to a competing party without the express authority of the offering party.

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Offer to Purchase is not a consideration in assigning any priority to one offer over another. Until an offer is accepted by your seller-client, all offers must be treated equally and presented. When one is accepted, your client may be willing to negotiate another as a “backup”. Of course, this would require agreement by the second buyer and would require special language indicating that the backup contract has no legal standing unless and until the primary contract is terminated, such as the language contained in the NC REALTORS® Backup Contract Addendum.

To fully enjoy the time when multiple offers stream in for one of your listings, heed the advice above and take the time to manage the selling process fairly and efficiently for all concerned.



# 2008-2009 Update Course Highlights

## Important Material Facts to Disclose

A discussion of “material facts” and of the Commission’s position as to certain key “facts” that must be disclosed will be the primary topic of the 2008-2009 *Update Course*.

Additionally, you will review some of the new NCAR form changes (particularly those affecting the Offer to Purchase) and discuss due diligence in discovering information about a property.

You must complete the four-hour *Update Course* and a four-hour elective

to fulfill your continuing education requirements for the license year.

For dates and locations, click on Continuing Education on the Commission’s website, [www.ncrec.state.nc.us](http://www.ncrec.state.nc.us), and then click on “CE Courses Schedule”.

Other topics to be covered in the course include:

- Review of new Commission rules effective July 1, 2008 (See page 5 of this *Real Estate Bulletin* for the article on “How to Handle Multiple Offers” and reference to the new

rule effective July 1 concerning “Shopping Offers”);

- How to maintain a current and active license;
- Explanation of the term “broker-in-charge eligible”.



### FREE PUBLICATIONS

Quantity  
Requested

Questions and Answers on:

- 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.)**

#### How To Order:

Mail, fax or email this form to the Real Estate Commission.

#### Online:

[www.ncrec.state.nc.us](http://www.ncrec.state.nc.us)

Select the publication icon on the home page. Complete the online form.

#### Mail to:

NC Real Estate Commission  
ATTN: Publications  
P. O. Box 17100  
Raleigh, NC 27619-7100

#### Fax

1-919-877-4227

**This form  
for free  
publications  
only.**

NAME \_\_\_\_\_

ADDRESS \_\_\_\_\_

CITY/STATE/ZIP \_\_\_\_\_

Telephone \_\_\_\_\_

Email \_\_\_\_\_

Please allow 7 days from receipt of order for delivery.





An enthusiastic crowd of just over 250 instructors, school officials, authors and publisher representatives attended the 2008 Real Estate Educators Conference held in Raleigh on April 14-15, 2008.

This year's number of participants breaks all previous attendance records for the Commission-sponsored event.

Highlights of the first day's program included a presentation by instructor Tony Hawkins of Durham Technical Community College on Creating an Effective Adult Learning Environment, and a discussion of the criminal record report requirement, including suggestions for obtaining the report in a timely fashion, by Ann Lane of Carolina Investigative Research, Inc.

"Update" sessions on prelicensing education, postlicensing education, and continuing education were conducted by Lisa McQuillen, Education & Licensing Officer, and Pamela Rorie, Continuing Education Officer. These sessions addressed matters of particular interest and importance to instructors, such as revisions to education rules, overall school and instructor performance, and current trends in real estate education and licensing.

During the first day's luncheon, the North Carolina Real Estate Educators Association (NCREEA) held its spring meeting and traditional awards presentation under the capable direction of President Roy Faron of J. Y. Monk Real Estate School. The Association presented its "Program of the Year" award to Payton Warren for his book, *Insurance for Consumer Protection: What Every*

*Agent Should Know*, and its "Educator of the Year" award to Lois Branning of Rowan-Cabarrus Community College.

Also during the luncheon, Commission Chairperson Melvin "Skip" Alston



*Commission Chairman Melvin L. "Skip" Alston presents the Billie J. Mercer Excellence in Education Award to Lois Branning.*

presented the Commission's Billie J. Mercer Excellence in Education Award to NCREEA's Educator of the Year, Lois Branning. This award is presented annually in memory of former Commission member and chairperson, Billie Mercer, who was especially dedicated to the cause of real estate education. The name of each year's award winner is engraved on the Mercer Award cup that

is displayed in the Commission's lobby. Commission members Marsha Jordan and S. R. "Buddy" Rudd, Jr. were also in attendance for the presentation.

Following the luncheon, participants were delighted to hear from the Commission's Legal Education Officer, Tricia Moylan, who reviewed the finer points of Agency with the group. The first day's program concluded with two "break-out" sessions each tailored for a different audience.

On the second day, Scott Iden of Countrywide Mortgage explained the history of the "mortgage industry meltdown" and discussed current lending trends, after which the Commission's Chief Deputy Legal Counsel, Janet Thoren gave an informative presentation on Mortgage Fraud, including a discussion of the new North Carolina Mortgage Fraud Act. The conference finale was a presentation by Miriam Baer, Legal Counsel and Assistant Director of Legal Services, who covered such topics as inspection options and due diligence with the standard residential sales contract form, "shopping" offers, and material facts. The day concluded with an Open Forum in which participants had a brief opportunity to ask questions of the Commission's legal experts: Ms. Baer, Ms. Moylan, and Ms. Thoren.

The Commission thanks North Carolina's real estate educators for their continued support, and congratulates Lois Branning and Payton Warren for their achievements.



*Real Estate Educators Conference attendance breaks all previous records.*





## 80 Years of Service and Experience

Nine members of the Real Estate Commission staff received awards recently for lengths of service ranging from five to 20 years. Commission Chairman Melvin L. "Skip" Alston (back row, second from right) presented the awards to (front row, l. to r.) Auditor/Investigator M. Spier Holloman, five years; Information/Imaging Specialist Patricia L. Street, five years; Senior Licensing Specialist Wanda E. Johnson, 15 years; Technology Specialist Diana L. Carnes, five years; Assistant Director of Legal Services Miriam J. Baer, 20 years; (back row, l. to r.) Administrative Specialist LaToya S. Simms, five years; Executive Assistant Susan M. Tysor, 10 years; Auditor/Investigator Bart H. Allen, five years; and Chief Deputy Legal Counsel Janet B. Thoren, 10 years.

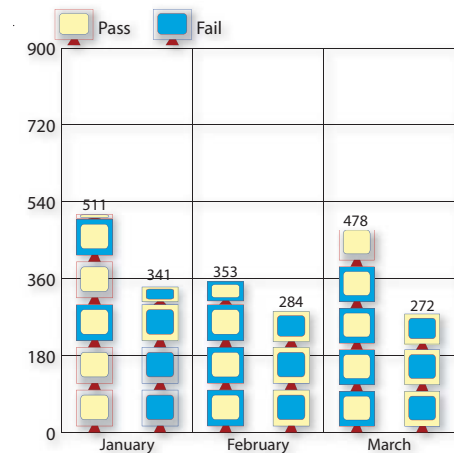
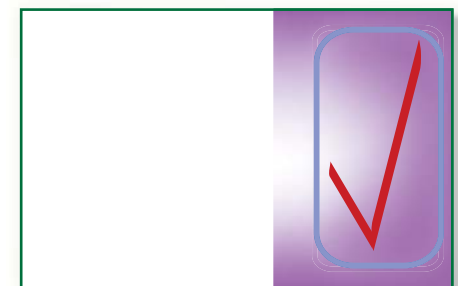
BIC Reports Licensee As Deceased; Licensee Calls Commission

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## Applications for Licensure by Examination

The chart shows the number of applications received by the Commission in each calendar year since 2002 and the average per month in each of those years. The monthly average for the first three months of 2008 is below the average for 2007.







## Examining Your Bookkeeper's Trust Account Trial Balance

By *Emmet R. Wood, Director, Audits and Investigations*

Part of the trust account records reconciliation is to prepare a trial balance of funds on deposit in the trust account. What is a trial balance? It is simply a list of all funds in the trust or escrow account and the identification of the owners of those funds. The trial balance must identify each ledger and show the ledger balances as of the date of the trial balance.

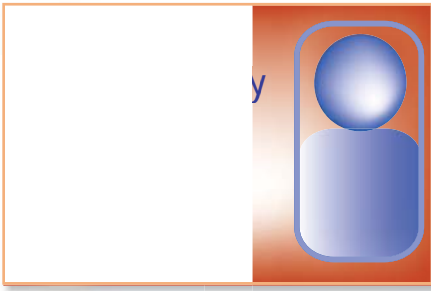
What are some of the things that a Broker-in-Charge should check on a trial balance? Let say you receive the following trial balance from your bookkeeper:

**Your Realty Company, Inc.  
Trial Balance as of May 31, 200X**

Property	Owner	Amount
	Your Realty Company Funds	\$500.00
1362 Main Street	Clay	\$2,500.00
143 North Boulevard	Howard	\$500.00
2500 Johnson Street	Ward	\$1,000.00
1601 Queen Street	Walker	- \$500.00
	Total	\$3,000.00

### The Broker-in-Charge should be:

(1)	Checking the math	You will note that the total of the ledger balances is \$4,000 not \$3,000. A bookkeeper whose trust account books are out of balance may very well try and hide being out of balance with a math error.
(2)	Comparing the total of the trial balance to the reconciled bank balance.	The total of the trial balance (\$4,000) should agree with the reconciled bank balance as of the same date shown on the bank reconciliation. If the reconciled bank balance is \$3,000 there may be a shortage in the trust account.
(3)	Looking to see if there is a line item for personal funds.	If some company funds are deposited into the trust account, there should be a line item on the trial balance for the company funds. In this example, your will note that there are \$500 in company funds on deposit in the trust account. This, of course, would most likely be a violation of the Rules because you are only allowed to deposit and maintain \$100 in personal funds or such other amount as may be required to cover bank charges.
(4)	Looking for negative balances on the trial balance	Negative balances may be an indication of a shortage. Remember that disbursements on a particular owner not property must not exceed the money on deposit in the trust account.
(5)	Comparing trial balance to the ledger cards for agreement.	There should be a ledger card to support each balance on the trial balance. Compare the balance shown on the trial balance for each ledger to the ledger card balance as of the same date. They should equal.
(6)	Comparing supporting documentation to the trial balance.	Obtain all sales contracts where the earnest money deposit is held by your company and trace the amount and address to the trial balance. Compare security deposits amounts shown on rental leases to the trial balance.



*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.*

**ANGEL ASSOCIATES, INC.** (Kernersville) – By Consent, the Commission reprimanded Angel Associates effective March 1, 2008. The Commission found that Angel Associates, a real estate brokerage firm providing homeowner association management services, failed to enter into formal management agreements for those services, failed to designate accounts as trust or escrow accounts, and failed to perform monthly reconciliations, keep ledgers or maintain deposit or check information as required by Commission rules. The Commission also found that Angel Associates failed to timely provide the associations with a periodic accounting of the monies maintained for them when requested to do so. The Commission noted that no shortages or overages were found in the accounts.

**GEORGE N. ANGEL** (Kernersville) – By Consent, the Commission suspended the broker license of Mr. Angel for a period of one year effective March 1, 2008. The Commission then stayed the suspension for a probationary period of one year. The Commission found that Mr. Angel, qualifying broker and broker-in-charge of a real estate brokerage firm providing homeowner association management services, failed to enter into formal management agreements for those services, failed to designate accounts as trust or escrow accounts, and failed to perform monthly reconciliations, keep ledgers or maintain deposit and check information as required by Commission rules. The Commission also found that Mr. Angel failed to timely provide the associations with a periodic accounting of the monies maintained for them when requested to do so. The Commission noted that no shortages or overages were found in the accounts.

**CARROLL C. ANDERSON** (Wadesboro) – By Consent, the Commission suspended the broker license of Ms. Anderson for a period of two years effective November 15, 2007. Three months of the suspension were active with the remainder stayed for a probationary period of 21 months. The Commission found



that Ms. Anderson, broker-in-charge of her sole proprietorship failed to adequately review closing statements and contracts while acting as listing agent in 2000 and 2001 for several properties whose sales involved purchase money second notes and payments to third parties for non-existent improvements. The Commission also found that Ms. Anderson, acting as listing agent for the sale of a commercial property in 2002, represented to the buyer that the property had all required certificates, gasoline tanks and restaurant equipment, when, in fact, the prior business had closed and the buyers were unable to operate the business without making considerable improvements to the property before the required permits and certificates could be issued. Finally, the Commission found that in 2004 an employee of Ms. Anderson embezzled approximately

\$4,000 in cash from rental receipts and that Ms. Anderson had failed to balance and reconcile monthly either of her two trust accounts. The Commission noted that the employee repaid the funds and Ms. Anderson has subsequently had her trust accounts audited and reconciled and instituted new procedures including third party audits to put the accounts in order.

**LEAH GAIL AUTRY** (Southport) – By Consent, the Commission suspended the broker license of Ms. Autry for a period of 30 days effective April 1, 2008. The Commission found that Ms. Autry in 2005 prepared and signed a quitclaim deed conveying an interest in property she knew she did not have in order to assist the grantee in attempting to claim title to the property.

**JOSEPH E. BARLOW** (Shelby) – By Consent, the Commission suspended the broker license of Mr. Barlow for a period of one year effective January 17, 2008. Ninety days of the suspension were active with the remainder stayed for a probationary period of nine months. The Commission found that Mr. Barlow failed to disclose prior misdemeanor convictions relating to driving and alcohol in a passenger area on his 1998 license application. The Commission also found that Mr. Barlow was subsequently convicted in Georgia of offenses for driving while impaired and did not report certain of the convictions in a timely fashion.

**JAMES K. BARNHILL** (Charlotte) – By Consent, the Commission revoked the broker license of Mr. Barnhill effective February 1, 2008. The Commission found that Mr. Barnhill, during (See **Disciplinary Action**, page 13)



## Disciplinary Action

(Continued from page 12)

2004-2007, as a rental agent, did not deposit rents and security deposits for his landlord clients in trust accounts or account for and remit them promptly. The Commission also found that Mr. Barnhill did not make his trust account records available for inspection by the Commission.

### ANAELNY ALONZO BARRERA

(Burlington) – The Commission accepted the voluntary surrender of the broker license of Ms. Barrera effective February 18, 2008 for an indefinite term. The Commission dismissed without prejudice allegations that Ms. Barrera violated provisions of the Real Estate License Law and Commission rules. Ms. Barrera neither admitted nor denied misconduct.

**TROY D. BILEK** (Matthews) – By Consent, the Commission suspended the broker license of Mr. Bilek for a period of two years effective April 1, 2008. One year of the suspension is to be active with the remainder stayed for a probationary period of two years under certain conditions. The Commission found that during 2003 and 2004 Mr. Bilek, a salesperson at the time, represented the buyers in the purchase of a property and then listed the property for sale for a significantly higher price. Mr. Bilek told the buyer agent that the property value increase was due largely to improvements made by the seller. In fact, the improvements had been made prior to the purchase of the property by the sellers.

**JAMES R. BOYD** (Washington) – The Commission accepted the voluntary surrender of the broker of license of Mr. Boyd for a period of one year effective April 1, 2008. The Commission dismissed without prejudice allegations that Mr. Boyd violated provisions of the Real Estate License Law and Commission rules. Mr. Boyd neither admitted nor denied misconduct.

**ROGER B. BYRD** (Raleigh) – By Consent, the Commission suspended

the broker license of Mr. Byrd for a period of six months effective May 1, 2008. The Commission found that Mr. Byrd was accused in four cases by the State of North Carolina of rigging bids in foreclosure auctions and judicial sales of real estate in order to depress the prices realized in those sales for Mr. Byrd's and his client's or confederate's benefit. The Commission also found that in each case



the court found a factual basis for the State's allegations, and that one or more of the respondents consented to the imposition of an injunction preventing him from future violations of the laws, and that in one case Mr. Byrd consented to pay compensatory damages and costs to the State of North Carolina. Mr. Byrd neither admitted nor denied the Commission's findings and conclusions.

**VICTOR G. BYRD** (Raleigh) - By Consent, the Commission suspended the broker license of Mr. Byrd for a period of 12 months effective May 1, 2008. The Commission found that Mr. Byrd was accused in four cases by the State of North Carolina of rigging bids in foreclosure auctions and judicial sales of real estate in order to depress the prices realized in those sales for Mr. Byrd's and

his client's or confederate's benefit. The Commission also found that in each case the court found a factual basis for the State's allegations and that one or more of the respondents consented to the imposition of an injunction preventing him from future violations of the laws, and that in one case Mr. Byrd consented to pay in excess of \$69,000 in compensatory damages and costs to the State of North Carolina. Mr. Byrd neither admitted nor denied the Commission's findings and conclusions.

**DWIGHT D. COX** (Durham) – By Consent, the Commission revoked the broker license of Mr. Cox effective May 1, 2008. The Commission found that Mr. Cox in 2004 and 2005 assisted a buyer to obtain a residence by purchasing the as is property and making a false promise to the lender that he would occupy it as his own dwelling and subsequently reselling it to the buyer to whom he secretly loaned the down payment without informing the buyer's lender and without reporting the transaction on the closing statement. The Commission also found that Mr. Cox, in August and November 2007, failed to respond to two letters of inquiry from the Commission's Legal Division in connection with a complaint on a separate matter.

**JAMES D. DUNKLE** (Harbinger) – By Consent, the Commission suspended the broker license of Mr. Dunkle for a period of one year effective April 1, 2008. Six months of the suspension are active with the remainder stayed for a probationary period of six months on certain conditions. The Commission found that Mr. Dunkle was convicted on or about August 20, 2007 of *Driving While Impaired*, and was also convicted of *DWI* prior to being licensed as a real estate agent, in 1998 and again in 2002. The Commission noted that Mr. Dunkle disclosed the first two convictions in his license application and timely reported the 2007 conviction.

**JOHN M. DWELLE, JR.** (Charlotte) – By Consent, the Commission (See **Disciplinary Action**, page 14)

## Disciplinary Action

(Continued from page 13)

reprimanded Mr. Dwelle effective March 1, 2008. The Commission found that Mr. Dwelle, who conducts property management services through his licensed firm, failed to fully disclose that repair services for clients' properties would be performed by a company he owned. The Commission also found that Mr. Dwelle failed to maintain trust account records in accordance with Commission rules and had an overage in the trust account. The Commission noted that Mr. Dwelle altered his management agreement to disclose his ownership of the company providing repair services.

**DWELLE REALTY COMPANY, INC.** (Charlotte) – By Consent, the Commission reprimanded Dwelle Realty Company effective March 1, 2008. The Commission found that Dwelle Realty Company, a property management firm, failed to fully disclose that repair services for clients' properties would be performed by a company owned by the firm's broker-in-charge. The Commission also found that Dwelle Realty Company failed to maintain trust account records in accordance with Commission rules and had an overage in the trust account. The Commission noted that Dwelle Realty Company altered its management agreement to disclose the broker-in-charge's ownership of the company providing repair services.

**FAYETTEVILLE'S PROPERTY CENTER, LLC** (Fayetteville) – By Consent, the Commission revoked the firm license of Fayetteville's Property Center effective March 1, 2008. The Commission found that Fayetteville's Property Center, acting as rental agent for owners of rental property, failed to deposit and maintain rents and deposit monies in a trust account, issued rent checks to landlord clients which were returned by the bank unpaid due to insufficient funds, and failed to keep complete and accurate trust account records in accordance with Commission rules.

**DENISON D. GARRETT** (Greenville) – The Commission accepted the permanent voluntary surrender of the broker license of Mr. Garrett effective February 1, 2008. The Commission dismissed without prejudice allegations that Mr. Garrett violated provisions of the Real Estate License Law and Commission rules. Mr. Garrett neither admitted nor denied misconduct.

### 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](http://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.

**AMY PATRICIA GILBERT** (Jacksonville) – The Commission revoked the broker license of Ms. Gilbert effective February 25, 2008. The Commission found that Ms. Gilbert, as broker-in-charge of a real estate brokerage firm, failed to maintain separately the funds of three property owner associations' dues, instead depositing those funds into the firm's rental trust account. The Commission also found that Ms. Gilbert converted trust money to her own use, failed to maintain and retain accurate records for the rental trust account, created false ledger accounts to record disbursements to her family members, and created false deposit entries to conceal her embezzlements. The Commission found further that Ms. Gilbert used trust money to pay the liabilities of the firm to other clients whose funds she embezzled, falsely inflated the balance, failed to perform

accurate monthly reconciliations, and created false bank statements and false computer-produced reports to conceal her embezzlements from the account. The Commission finally found that as of August 14, 2007, total liabilities of the firm's trust accounts exceeded deposits on hand by \$606,888.60, all due to the embezzlement of Ms. Gilbert.

**CHARLES RYAN HOLT** (Wilmington) – By Consent, the Commission revoked the broker license of Mr. Holt effective April 30, 2008. The Commission found that Mr. Holt, who owned and operated a corporation, failed to obtain a real estate license for the corporation while, through the corporation, acting as rental agent and broker for owners of residential real estate. The Commission also found that Mr. Holt failed to keep records that were adequate to safeguard monies collected for clients and their tenants and failed to create a clear audit trail, resulting in a trust account shortfall of not less than \$50,000.

**SHIRLEY A. KELLEY** (Charlotte) – By Consent, the Commission suspended the broker license of Ms. Kelley for a period of three months effective May 1, 2008. The Commission found that Ms. Kelley, broker-in-charge of a real estate brokerage firm, failed to adequately supervise agents under her supervision and failed to review closing statements and transactions records maintained by the firm.

**KENNETH PAUL METCALF** (Mars Hill) – The Commission accepted the voluntary surrender of the broker license of Mr. Metcalf for a period of three years effective April 17, 2008. The Commission dismissed without prejudice allegations that Mr. Metcalf violated provisions of the Real Estate License Law and Commission rules. Mr. Metcalf neither admitted nor denied misconduct.

**ROGER KEITH MOORE** (Highlands) – By Consent, the Commission revoked the broker license of Mr. Moore effective April 17, 2008. The Commission (See **Disciplinary Action**, page 15)

## Disciplinary Action

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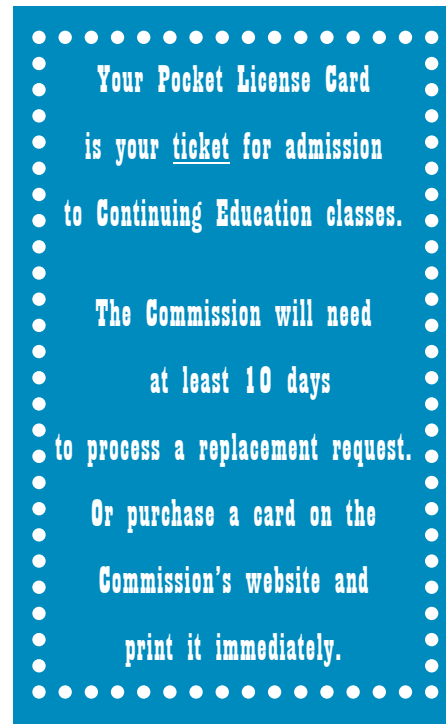
sion found that Mr. Moore, qualifying broker and broker-in-charge of a real estate brokerage firm, used earnest money deposits and other monies belonging to others without permission of the owners, converted funds entrusted to his care for his own use and benefit, and failed to safeguard the funds of others. The Commission also found that Mr. Moore was unable to account for and remit those monies promptly when called upon to do so, issued checks from a trust account with insufficient funds to pay the checks and had a shortfall in the trust account at the time of more than \$124,000.

**NANTAHALA REALTY COMPANY, INC.** (Highlands) - By Consent, the Commission revoked the firm license of Nantahala Realty Company effective April 17, 2008. The Commission found that Nantahala Realty Company failed to safeguard the funds of others in its possession and was unable to account for and remit those monies promptly when called upon to do so. The Commission also found that Nantahala Realty Company issued checks from a trust account with insufficient funds to pay the checks and had a shortfall in the trust account at the time of more than \$124,000.

**DARREN K. PHILLIPS** (Cary) – By Consent, the Commission revoked the broker license of Mr. Phillips effective May 1, 2008. The Commission found that Mr. Phillips was accused in four cases by the State of North Carolina of rigging bids in foreclosure auctions and judicial sales of real estate in order to depress the prices realized in those sales for Mr. Phillip's and his client's or confederate's benefit. The Commission also found the court found a factual basis in each case for the State's allegations and one or more of the Respondents consented to the imposition of an injunction preventing him from future violations of the laws, and that in one case Mr. Phillips consented to pay in excess of \$90,000 in compensatory damages and costs to the State of North Carolina. Mr. Phillips

neither admitted nor denied the Commission's findings and conclusions.

**KATHLEEN PRIMAVERA** (Rockwell) – By Consent, the Commission suspended the broker license of Ms. Primavera for a period of 12 months ef-



fective February 1, 2008. One month of the suspension was active with remainder stayed for a probationary period of two years. The Commission found that Ms. Primavera, as listing agent for a property, presented an offer to purchase to her clients, which they accepted, and in which it was recited that \$500 in earnest money had been received when this was not true at the time of acceptance. The Commission also found that Ms. Primavera, qualifying broker and broker-in-charge of a real estate brokerage firm, failed to reconcile the firm's trust account records to bank statements on a monthly basis and failed to make complete and proper notations on trust account checks.

**JEFFREY A. RAINES** (Yadkinville) – The Commission accepted the three-year voluntary surrender of the broker license of Mr. Raines effective May 1, 2008. The Commission dismissed without prejudice allegations that Mr. Raines violated the Real Estate License Law

and Commission rules. Mr. Raines neither admitted nor denied misconduct. **MYONG K. SILVERS** (Raleigh) – By Consent, the Commission suspended the broker license of Ms. Silvers for a period of 12 months effective February 1, 2008. One month of the suspension was active with the remainder stayed for a probationary period of 12 months. The Commission found that Ms. Silvers, in each of three transactions, received commission payments from the parties which were not reported on the closing statement prepared for the transactions. The Commission also found that, in two transactions, the purchase prices recorded on the closing statements did not correspond to the purchase prices reflected on the contracts in Ms. Silvers' files.

**JOY S. RHODES** (Holly Ridge) – By Consent, the Commission revoked the broker license of Ms. Rhodes effective April 17, 2008. The Commission found that Ms. Rhodes, broker-in-charge and qualifying broker of a real estate brokerage firm, failed to maintain all of the funds held for others in a trust account and failed to keep accurate journals and ledgers of the monies. The Commission also found that Ms. Rhodes failed to make accurate reconciliations of the records of trust monies with bank records and statements and created no clear audit trail showing ownership of the funds of others. The Commission also found that the funds of others exceeded the monies on deposit in the trust accounts.

**SAND DOLLAR REAL ESTATE, INC.** (Surf City) - By Consent, the Commission revoked the firm license of Sand Dollar Real Estate effective April 17, 2008. The Commission found that Sand Dollar failed to maintain all of the funds held for others in a trust account and failed to keep accurate journals and ledgers of the monies. The Commission also found that Sand Dollar failed to make accurate reconciliations of the records of trust monies with bank records and statements and created no clear audit trail showing ownership of the funds of others. The Commission also found that  
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## Disciplinary Action

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the funds of others exceeded the monies on deposit in the trust accounts.

**JAMES S. SMITH** (Long Beach) – By Consent, the Commission suspended the broker license of Mr. Smith for a period of two years effective February 18, 2008. One year of the suspension is to be active with the remainder stayed for a probationary period. The Commission found that Mr. Smith failed to disclose on his 1999 salesperson license application three 1984 misdemeanor convictions for carrying a concealed weapon, possession of beer/wine underage, and “drive after drink – provisional license”. The Commission also found that Mr. Smith, after he was licensed, failed to report to the Commission two 2005 misdemeanor convictions for *Possession of Marijuana up to ½ Ounce* and *Possession of Drug Paraphernalia*, for which Mr. Smith was sentenced to 45 days in prison, suspended for 24 months supervised probation.

**IRENE BULLOCK STATON** (Fayetteville) – By Consent, the Commission revoked the broker license of Ms. Staton effective March 1, 2008. The Commission found that Ms. Staton, acting as rental agent for owners of rental property, failed to deposit and maintain rents and deposit monies in a trust account, issued rent checks to landlord clients which were returned by the bank unpaid due to insufficient funds, and failed to keep complete and accurate trust account records in accordance with Commission rules.

**MARY H. THOMAS** (Cornelius) – By Consent, the Commission reprimanded Ms. Thomas effective April 1, 2008. The Commission found that Ms. Thomas, as qualifying broker and 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 information, failed to maintain a personal ledger, and failed

to perform trial balances and reconciliation properly, resulting in an approximately \$2,000 shortage in the trust account. The Commission noted that Ms. Thomas immediately deposited funds to remedy the shortage when it was discovered.

**MARCIA WILLIAMS** (York, SC) – By Consent, the Commission revoked the broker license of Ms. Williams effective January 17, 2008. The Commission found that Ms. Williams entered into an offer to purchase and contract with herself as the buyer and represented to the seller that she had deposited \$500 earnest money in her brokerage firm’s trust account when she had not done so and failed to inform her broker-in-charge that the transaction existed. The Commission also found that Ms. Williams went to a new firm where she participated in at least three transactions through closing without submitting any files to her broker-in-charge until she attempted to receive commissions.

*Safety Tip #7 - HAVE A BUDDY*  
*Know in advance who you are going to call when:*

- *Your instincts tell you to get help*
- *You’re just a little nervous*
- *You need help at an open house*

*Reprinted from the North Carolina Real Estate Agent Safety Guide.*

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