



Rule Changes Effective July 1

As the Bulletin went to press, the last remaining step in the process governing rule changes was scheduled for May 9 with Commission final review and decision. Brokers should visit the Commission's Web site, www.ncrec.gov (Home/License Law and Rule Changes), for any updates and the full text of each revised rule.

Proposed rule changes to be effective July 1, 2014 are summarized below:

Real Estate Brokers - General Brokerage

Agency Agreements and Disclosure (A. 0104) – prohibits a broker who is selling property in which the broker has an interest from representing a buyer of the property, and further prohibits a broker who is listing property from purchasing the listed property unless the broker first discloses the conflict of interest to his principal and, if requested to do so by his principal prior to closing, terminates the listing agreement.

Broker-in-Charge (A. 0110) – deletes the requirements that brokers-in-charge complete the four-hour Broker-in-Charge Annual Review Course and the mandatory four-hour *Update Course* and, instead, requires completion of a new four-hour mandatory course, (See **Rule Changes**, page 6)

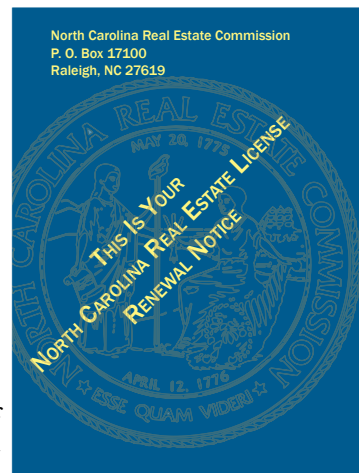
Commission Web Site

www.ncrec.gov will be down for maintenance July 1 and 2, 2014.

License Renewal Begins May 15; Save Time by Renewing Online

Reminder notices from the Real Estate Commission to renew your real estate license will reach you one of two ways: (1) if you elected to receive your *Real Estate Bulletin* by email, please look in your email "inbox" for your reminder or (2) if you are not receiving your *Bulletin* electronically, please look for it in your postal mailbox. It benefits you to act immediately when you receive your reminder to avoid a change in your license status on July 1. Simply go to www.ncrec.gov and log into your record to complete the renewal process.

There are two ways to renew your license: 1) for the most efficient way, go to the Commission's Web site on or after May 15 and log into your record using your personal identification number (PIN). Your PIN has been set as the last four digits of your Social Security number unless you have changed it; or 2) return the blue and white postcard with your check so that it reaches the Commission office prior to the June 30 deadline. Please reference your license number on your check.



NC Real Estate Broker
123 Any Street
Any Town, NC 27282

The license renewal fee is \$45 and may be paid online using Visa, MasterCard or Discover Card. You will receive a confirmation of renewal to print when you finish.

(See **Renewal**, page 11)

Sanctioned Brokers Attend New Commission Course

Attendance at a new Commission course, *Issues and Answers in North Carolina Real Estate Practice*, is being required of some brokers who have been sanctioned for violations of the Real Estate Law and Commission rules.

The four-hour course, given in the Commission offices, reviews selected issues which often result in violations of Law and rules. Taught by the Commission Regulatory Affairs Staff, the course covers topics relating to the specific infractions among the brokers attend-

ing. A newly developed text covering 15 topics is given to each broker along with a copy of the *Real Estate License Law and Commission Rules* and the *Real Estate Licensing in North Carolina* booklet.

Many brokers who have violated the Law or rules have done so unintentionally because of lack of knowledge. The course is designed to help these brokers avoid problems in the future.

The Commission has always emphasized education as the primary tool (See **New Course**, page 7)

REAL ESTATE BULLETIN

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

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EDUCATION AND LICENSING

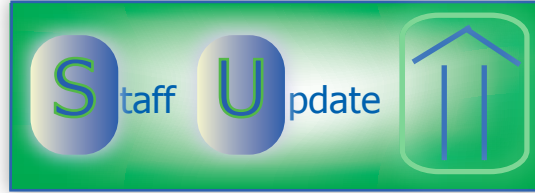
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Appearances

Miriam J. Baer, Executive Director, spoke to the Raleigh Regional Association of REALTORS® Government Affairs Committee.

Frederick A. Moreno, Deputy Legal Counsel, spoke to the Sanford Area Association of REALTORS®.

Jean A. Wolinski-Hobbs, Consumer Protection Officer, spoke to the Highland-Cashiers Board of REALTORS®, the Lexington/Davidson County Association of REALTORS®, and the Jacksonville Board of REALTORS®.

Glenn M. Wylie, Consumer Protection Officer, spoke to the Mountain Lakes Board of REALTORS®, the Small

Brokers Council of the Raleigh Regional Association of REALTORS®, and to the Union County Association of REALTORS®.

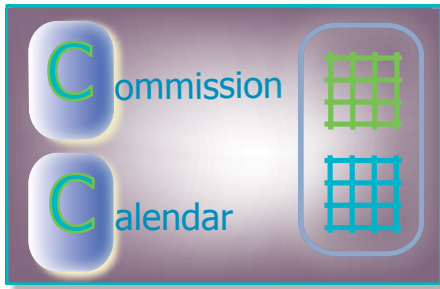
Peter B. Myers, Information Officer, spoke to Coldwell Banker HPW in Cary, Fonville Morisey Realty in Durham, the Greensboro Regional REALTOR® Association, the Relocation Seminar of THC Inc. in Charlotte, the Surry Regional Association of REALTORS® in Mount Airy, and the Yancey Mitchell Board of REALTORS®.

Elizabeth W. Penney, Information Officer, spoke to the High Point Board of REALTORS®.



130 Years of Service

Six members of the Real Estate Commission staff recently received anniversary awards with service to the Commission totaling 130 years. They are, left to right, Bradford A. Cox, Information Services Specialist, five years; Anita R. Burt, Education/Examination Officer, 25 years; Vickie R. Crouse, Technology Administrator, 35 years; Mary Frances Whitley, Director of Administration, 35 years; Brenda K. Hollings, Information Services Officer, 25 years; and Peter B. Myers, Information Officer, five years.



June 18
 July 16
 (Beaufort)
 August 13
 September 10
 October 15

All meetings, unless otherwise noted, begin at 9:00 a.m. and are held in Raleigh in the Commission's Conference Room at 1313 Navaho Drive (27609). Occasionally, circumstances necessitate changes in meeting times and locations.

Commission Speakers Available

Real Estate Commission staff members are available to speak to your local board, office, or special group. You can request a presentation relating to a specific subject or a general discussion on topics of interest to those attending.

To schedule a speaker, call Janet Thoren at (919) 875-3700, Ext. 112, or submit the "Request for Program Presenter" form available on the Commission's Web site, www.ncrec.gov. Please allow at least four weeks prior to your group's meeting.

COURSE SCHEDULES

Broker-in-Charge and Basic Trust Account Procedures Courses

Please see the Commission Web site, www.ncrec.gov,
under Course Registration,
for locations, dates, and times.

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

Asheville	August 13-14	Holiday Inn East/Blue Ridge Parkway
Concord	July 14-15 August 18-19	Hilton Garden Inn, Concord
Greensboro	July 29-30	Deep River Event Center
Raleigh	July 9-10 August 6-7	McKimmon Center
Wilmington	July 21-22	Best Western Coastline Center

Basic Trust Account Procedures Course

Raleigh	July 16, 9 a.m. - 1 p.m. August 19, 9 a.m. - 1 p.m. September 17, 9 a.m. - 1 p.m. October 22, 9 a.m. - 1 p.m.	Real Estate Commission Office
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See Commission Web site to confirm course dates.

(Real estate brokers must conduct their business in accordance with a growing body of laws and rules. The Commission's Web site enables compliance with many of these legal requirements by providing timely, convenient access to the information that is essential to a property manager's business. Certain violations of laws and rules arise frequently in property management, including the handling of tenant security deposits. This article discusses how you can use the Commission's Web site to properly manage this aspect of your business.)

Using the Web for Handling as a Resource Residential Tenant Security Deposits

firms, or corporations engaged in the business of renting or managing residential dwelling units, excluding single rooms, on a weekly, monthly or annual basis.

A landlord asks you to serve as a rental agent, a buyer wants to acquire a rental property, a prospective tenant seeks a rental, an owner of rental property is interested in selling – each situation can involve the care and handling of tenant security deposits, if only to give your client information about what is required.

How do you as a busy, always-pressed-for-time, real estate broker remain informed and current on this important aspect of your brokerage business? How can you accurately and consistently serve the needs of your clients?

North Carolina state law, which governs the use of tenant security deposits, and Commission rules are your primary sources of information. You can maintain the key elements of each for quick, easy reference on your computer and through your mobile devices.

One key document you will want to obtain is the [Tenant Security Deposit Act](#), (Chapter 42 of the North Carolina General Statutes, Article 6). Access it directly with the link (if you are reading this from a digital file) or through the Commission Web site, (Home page: Publications/Bulletins (2007-2014)/May 2014). Alternatively, you can find all of the North Carolina General Statutes at www.ncleg.net. Once you have the link on your computer or mobile device, you may want to save it and the links that follow in this article in one convenient location for future access.

The Tenant Security Deposit Act consists of seven sections, summarized as follows:

§ 42-50. DEPOSITS FROM THE TENANT.

The deposits must be placed in an insured North Carolina bank unless the landlord provides the tenant with a bond.

§ 42-51. PERMITTED USES OF THE DEPOSIT.

There are eight permitted uses by a landlord including nonpayment of rent, damage to premises, damages for non-fulfillment of rental period, unpaid bills that become a lien against the property, costs of re-renting after a breach, costs of tenant property removal, court costs and certain fees defined in § 42-46 (part of the Residential Rental Agreements Act). In addition, this section also defines the amount of the deposit that can be charged by a landlord depending upon the length of the tenancy.

§ 42-52. LANDLORD'S OBLIGATIONS.

The landlord must itemize and refund any remaining deposit within prescribed times (30 or 60 days, depending upon the circumstances).

§ 42-53. PET DEPOSITS.

An additional fee may be charged for pets kept by the tenant on the premises.

§ 42-54. TRANSFER OF DWELLING UNITS.

When a landlord's interest in the property is terminated "whether by sale, assignment, death, appointment of receiver or otherwise..." the landlord must transfer the deposit to the new owner, or return the balance to the tenant, after making any lawful deductions and giving notice to the tenant.

§ 42-55. REMEDIES.

The tenant is given legal standing to pursue specific remedies if the landlord fails to comply with the law relating to security deposits.

§ 42-56. APPLICATION OF ARTICLE.

The article applies to all persons,

Commission rules specify acceptable methods of handling and accounting for trust money, including tenant security deposits. If a North Carolina brokerage firm is holding the funds of others (whether deposits, rents, homeowner association money, or other funds), the broker must keep records in compliance with three Commission rules, all located in Chapter 58 of the North Carolina Administrative Code, Title 21, Occupational Licensing Boards and Commissions, Subchapter 58A – Real Estate Commission. These three provisions are [A. 0116](#) (Handling of Trust Money), [A. 0117](#) (Accounting for Trust Money), and [A. 0118](#) (Trust Money Belonging to Property Owners' Associations).

Commission rules can be accessed through the links above or through the Commission Web site (Home page: Resources/Law/Rules – a portal to the Office of Administrative Hearings Web site). They can be saved as PDFs, HTML (text readable in your Internet browser) or DOC files (Word format).

The Tenant Security Deposit Act and the three Commission rules form the essential core of what you need to know and understand about this topic. A variety of other Commission resources provides further elaboration.

There is a complete description of trust accounting requirements through the Commission's Web site in [Handling, Accounting of Trust Money Now Explained in Three New Rules](#) from the May 2013 *Real Estate Bulletin*. Each rule is summarized in the article and there is a separate outline of the types of records which must be kept. For example, a tenant security deposit check should be noted in a journal, a property transaction ledger, and a bank statement, and the bank deposit ticket and a copy of the deposit check should be retained as well among the records.

Continued

Commission Resources/Links Tenant Security Deposits

Tenant Security Deposit Act	Tenant Security Deposits Act
Commission Trust Account Rules	A. 0116, A. 0117, A. 0118
May 2013 <i>Real Estate Bulletin</i>	Handling, Accounting of Trust Money Now Explained in Three New Rules
Video	Residential Tenant Security Deposits
2009-10 <i>Update Course</i>	Selected Property Management Issues, 2009-10 Update Course
Commission brochure	Questions and Answers on: Tenant Security Deposits
Commission brochure	Questions and Answers on: Renting Residential Real Estate
October 2011 <i>Real Estate Bulletin</i>	Requirements to Remember in the Landlord Tenant Act
February 2014 <i>Real Estate Bulletin</i>	New Brokers-in-Charge Should Review Trust Accounts When Taking Control
Commission brochure	Questions and Answers on: N.C. Military Personnel Residential Lease Termination
May 2013 <i>Real Estate Bulletin</i>	Special Landlord and Tenant Laws for Military Personnel

One of the latest Commission videos, [Residential Tenant Security Deposits](#), supplements these materials with discussion of security deposit limits, deposit requirements such as notification to tenant of the bank location, record-keeping in journals and ledgers, and permitted uses of the deposit.

[Selected Property Management Issues, 2009-10 Update Course](#) (Home page/Publications/Update BICAR Topics) and the Commission brochure, [Questions and Answers on: Tenant Security Deposits](#), provide an expanded explanation of tenant security deposits. The latter, available free from the Commission, is written primarily for tenants and elaborates on the Act. For example, the brochure addresses the effect on a tenant security deposit including when property is vacated early, the tenant is unable to pay rent, or the property is transferred

to new management or a new owner.

A companion brochure, [Questions and Answers on: Renting Residential Real Estate](#), covers various aspects of the topic primarily for the consumer. It also references the handling of a tenant security deposit including when a property is rented with several occupants and one leaves.

[Requirements to Remember in the Landlord Tenant Act](#) from the October 2011 *Real Estate Bulletin* discusses specific points in the Act including security deposit accounting and the voiding of a landlord's rights in the case of willful failure of a landlord to comply with the deposit, bond, or notice requirements of the Tenant Security Act.

An article in the February 2014 *Real Estate Bulletin*, [New Brokers-in-Charge Should Review Trust Accounts When Taking Control](#), suggests that new brokers-in-charge examine ledgers to determine

the nature of funds on deposit such as tenant security deposits and to check to see that copies of checks have been retained.

A new Commission brochure, [Questions and Answers on: N.C. Military Personnel Residential Lease Termination](#), and an article, [Special Landlord and Tenant Laws for Military Personnel](#), in the May 2013 *Real Estate Bulletin*, address special provisions in the law for military personnel, for example, when a lease is terminated early due to change of duty station or other reasons.

All of the above mentioned laws, rules and publications may be copied to brokers' computers, or links maintained on mobile devices. For convenient access, they can be maintained in a separate folder and shared as the need may arise with clients, prospective tenants, and landlords.

Reminder

License renewals: May 15 - June 30

Renew Now!

www.ncrec.gov

Rule Changes

(Continued from page 1)

known as the “Broker-in-Charge Update Course”, and a four-hour CE elective course in order to retain broker-in-charge eligibility. The rule change will combine the old BICAR course and the *Update Course* into a single four-hour course, allowing brokers-in-charge to take an elective CE course to fulfill the mandatory eight-hour CE requirement.

Residential Property and Owners’ Association Disclosure Statement (A .0114) - clarifies question #24 on the form to inquire whether, based upon the seller’s knowledge, the property is in violation of any local zoning ordinances, restrictive covenants, building code requirements, or other land-use restrictions, and eliminates the reference to notice from a government agency about those restrictions.

Real Estate Brokers - Examinations

Cheating and Related Misconduct (A .0404) - clarifies the rule prohibiting cheating and certain other misconduct in connection with the licensing examination to prohibit applicants from engaging in specified activities when taking a license examination and to add forfeiture of examination and application fees as possible consequences for a violation of the Rule in addition to dismissal from an examination, invalidation of examination score, and denial of a real estate license and disciplinary action if an applicant has been issued a license.

Real Estate Brokers - Licensing

License Renewal; Penalty for Operating While License Expires (A .0503) – requires that brokers apply for renewal using an electronic application on the Commission’s Web site or by calling the Commission’s office and that brokers provide the Commission with their e-mail address if they have one. Further, brokers are permitted to designate their e-mail address as private, thereby exempting the addresses from

disclosure as a public record.

Real Estate Brokers - Mandatory Continuing Education

Continuing Education Requirement (A .1702) – revision provides that four of the eight hours of continuing education required of brokers each year shall consist of the *Update Course*, except that brokers-in-charge shall complete the “Broker-in-Charge Update Course” prescribed in the proposed amendment to A .0110.

Extensions of Time to Complete Continuing Education (A .1709) –a request for extension of time to complete CE must be made by a broker on active status and submitted not later than June 10 of the license year for which the extension is sought.

Real Estate Prelicensing Education - Schools

Withdrawal or Denial of Approval (C .0105) –lowers the threshold below which the Commission may take formal disciplinary action in response to the substandard performance of a school’s or instructor’s students taking the license examination for the first time from 70% to 50% for any two of the previous five annual reporting periods; lowers the substandard performance threshold for a school’s first-time examination candidates from 70% to 50% for that portion of the rule authorizing the Commission to discipline a school for failing to provide a requested plan for corrective action.

Real Estate Prelicensing Education – Prelicensing and Postlicensing Instructors:

Denial or Withdrawal of Approval (C .0608) –lowers the threshold below which the Commission may take formal disciplinary action against the prelicensing and postlicensing instructor in response to the substandard performance of the instructor’s first-time examination candidates from 70% to 50% for any two of the previous five annual re-

porting periods; lowers the substandard performance threshold for an instructor’s first-time examination candidates from 70% to 50% for that portion of the rule authorizing the Commission to discipline an instructor for failing to provide a requested plan for corrective action.

Real Estate Continuing Education – Update Course Instructors:

Application and Criteria for Original Approval (E .0203) –requires *Update Course* instructor applicants to take the Commission’s *Update Instructor Seminar* for the license year in which the applicant’s approval would be effective prior to approval being issued. If the applicant fails to take the seminar within six months after filing the application for approval, the application will be cancelled.

Broker Numbers

As of April 1, 2014, there are 93,337 brokers licensed by the Real Estate Commission in the following categories:

Active Brokers 57,041

(Active Provisional Brokers 3,715)

Inactive Brokers 25,606

(Inactive Provisional Brokers 4,307)

Firms 10,690



The Use of Audio/Video Equipment During Showings

By Frederick A. Moreno, Deputy Legal Counsel

It seems that listing agents are being asked more frequently these days if sellers can keep some video or audio equipment “on” while their property is being shown.

Types of video or audio equipment include laptop computers, tape recorders, baby monitors, camcorders, and “nanny cams”. The reasons that sellers give is that they want to protect their property and valuables from theft or destruction, or that they just want to hear what the potential buyers are saying about their house. A person who chooses to use such equipment must be very careful not to violate State or Federal law.

In 1968, the Federal government passed the Omnibus Crime Control and Safe Streets Act (“Omnibus Act”). Title III of this act speaks to wire and electronic communications and the interception of oral communications. The purpose of this Act is to protect an individual’s right to privacy. Federal statute 18 USC § 2511 makes it unlawful for anyone to “intentionally intercept...any wire, oral, or electronic communication.” Notice how the statute says nothing about “recording.” That is because the statute prohibits the interception of oral communication whether it is recorded or not. This is a criminal statute, and a violation could result in a fine and up to 5 years in prison. There are some exceptions listed in the statute, but they mostly pertain to law enforcement. However, a person will not be in violation of this statute if State law allows them to hear an oral communication, when a party to the conversation has consented.

So, let’s take a look at what North Carolina law says. General Statutes §§ 15A-286, et al. make up the Electronic Surveillance Act and reference and contain many of the same provisions found in the Federal Omnibus Act. This is a criminal statute, a violation of which is a class H felony. North Carolina also allows for a person, whose communication was intercepted, to sue the violator

and get \$100 per day for the violation, punitive damages, litigation costs, and attorney’s fees. The statute only makes this a violation when one party to the communication has not consented.

Example 1: If you wanted to record a conversation between you and someone else, this generally would be allowed since you are a party to the communication and have consented to it being recorded. Even so, talk to your attorney before recording conversations.

Example 2: If your seller wanted to record a conversation between a potential buyer and their agent, this would not be allowed as the seller is not a party to that communication and the parties have not consented.

In 2002, the North Carolina Court of Appeals handed down a decision on the issues in Kroh v. Kroh. This was a case in which a married couple was separated and the wife decided to hide a video camera in the home to try and gather evidence for the divorce proceedings. The Court interpreted both the North Carolina and Federal laws discussed above and determined that the videotaping of the husband “did not violate the Electronic Surveillance Act unless such videotaping also included an audio recording”. Kroh v. Kroh, 152 N.C. App. 147 (2002).

What does this all mean? These laws speak to oral or electronic communications and not video surveillance. Therefore, if you have a client who is adamant about placing a surveillance device in their home, advise them to ensure there is no audio turned on. They must also still be careful as to placement of the device (i.e. living room as opposed to bathroom) so as not to violate a person’s privacy. They should not use non-recording audio devices such as baby monitors or walkie-talkies to try to figure out what people are saying about their property. As mentioned above, the fact that the devices do not record anything is immaterial. Violations of these laws are criminal

and could land you or your client in jail and facing a hefty civil penalty.

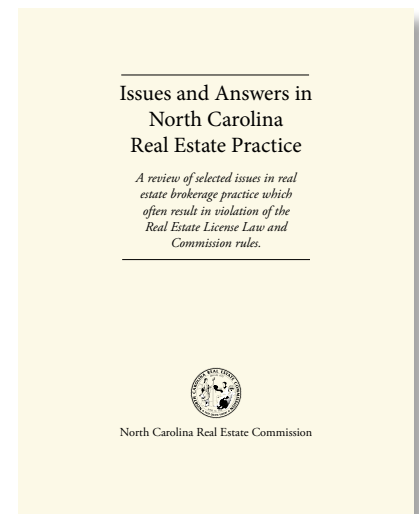
Finally, the Commission recommends not using any device in the home as a means of trying to gain information on potential buyers or their agents. Such an attempt to gain potentially confidential information about a buyer would most likely be considered inappropriate at best, and has the potential to result in criminal or civil liability. Should you have any questions regarding this, please call the Commission at 919-875-3700.

New Course

(Continued from page 1)

in regulating the North Carolina real estate brokerage industry. Commonly, brokers who have been sanctioned are required to take one or more courses as a condition when a disciplinary action is approved by the Commission. The required education, when completed, usually earns the broker a reduction in the length and/or level of the sanction.

Topics available for instruction include agency basics, broker compensation, broker-in-charge responsibilities, brokers selling/leasing their own property, conflict of interest, cooperation with the Commission, criminal convictions and disciplinary actions, improper conduct, material facts, mortgage fraud issues, property management basics, real estate license issues, requirement to provide certain documentation, and trust account issues.



Instructor Development Key Topic At 2014 Spring Educator's Conference

By Pamela R. Rorie, Continuing Education Officer

An eager crowd of real estate instructors, school officials and publisher representatives attended the 2014 Real Estate Educators Conference in Raleigh on March 17-18 at the Hilton North Raleigh/Midtown. The Commission-sponsored meeting drew 170 participants from across the state.

Miriam Baer, Commission Executive Director, kicked off the conference with a "Commission Update" in which she gave an overview of the past year's activities and initiatives accomplished by its staff. Baer noted the new Commission Web site, proposed changes in educational requirements for brokers-in-charge who may now take an elective course as part of their annual continuing education requirement, and a library of new videos to inform and instruct brokers and consumers.

Bruce Moyer, the Commission's new Director of Education and Licensing, addressed the Conference for the first time. He succeeds Larry Outlaw, who retired effective March 1, after 35 years of service.

A demonstration of the Commission's newly re-designed Web site was

presented by Jake Gore, the Commission's Network Administrator. Gore emphasized the site's improved search capabilities and the structure of the new Home page from which visitors can more easily navigate to other areas of the site.

A highlight of the first morning session was the Instructor Development Workshop conducted by Vicki Ferneyhough, DREI. Ferneyhough provided instructor attendees with various strategies and suggestions for teaching all types of adult learners. She stressed the importance of learning new instructional methods, staying current in the profession, and constant self-evaluation in order to obtain superior results as an instructor.

During the first day's luncheon, the North Carolina Real Estate Educators Association (NCREEA) held its spring meeting, officiated by President Brian Pate. Immediate Past President Kim Stotesbury conducted the annual awards presentation, which included this year an "Emeritus Award" presented to former Commission Director of Education and Licensing Larry Outlaw for his outstanding contributions to real estate education.

The Association presented its "Program of the Year" award to Dr. Deborah Long for her continuing education elective course, *From Heaven to Hell: Air, Surface and Subsurface Rights.*, and its "Educator of the Year" award to Tom Mangum, Vice President and Director of the HPW Real Estate School.



Tom Mangum receives the Billie J. Mercer Excellence in Education Award from Commission Chairman Everett "Vic" Knight.

Mangum was also the recipient of the Commission's Billie J. Mercer Excellence in Education Award, presented by Commission Chairman Everett "Vic" Knight. The award is given annually in memory of former Commission member and chairperson, Billie Mercer, who was especially dedicated to the cause of real estate education. The names of all award winners are engraved on the Mercer Award cup that is displayed in the Commission's lobby. Commission members Cindy Chandler and George Bell were also in attendance for the award presentation.

The afternoon session began with NCREEA President Brian Pate giving a demonstration of NCREEA's improved website. New Commission Education and Licensing Director Bruce Moyer then discussed changes and improvements within the Division.

The first day's program concluded with the popular "Legal Issues, Hot Topics and Open Forum" segment featuring the Commission's Director of Regulatory Affairs Janet Thoren, Assistant Director Charlene Moody, and Deputy Legal Counsel Fred Moreno.

Continued



Vicki Ferneyhough

They discussed various legal topics including a case law update, and answered many questions from conference attendees.

Anita Burt, Education & Examination Officer opened day two of the conference with a Pre- and Postlicensing Education Update, in which she discussed proposed amendments to several rules impacting the pre- and postlicensing programs, and also recognized instructors and schools exhibiting superior exam performance during the previous license year. Dr. Lawrence J. Fabrey, Senior Vice President of Psychometrics at AMP (Applied Measurement Professionals, Inc.), discussed the examination development process as well as how North Carolina exam candidates compare with candidates nation-wide.

Pamela Rorie, Continuing Education Officer spoke to the group about various proposed rule amendments affecting the Continuing Education Program, and reminded CE instructors and sponsors of upcoming responsibilities and deadlines.



Larry Outlaw, former Commission Director of Education and Licensing, received the NCREEA “Emeritus Award”; Dr. Deborah Long received the NCREEA “Program of the Year” Award. Kim Stotesbury, NCREEA Immediate Past President, presented the awards.

Legal Education Officer Tricia Moylan discussed with participants a summary of the remaining proposed amendments to Commission Rules, and informed attendees of the proposed topics for the 2014-2015 *Update* course.

The conference concluded with a very informative and highly entertaining presentation by Matt Davies and Len Elder, DREI on “Technology in the

Classroom.”

The Commission thanks North Carolina’s real estate educators for their continued interest and support, and congratulates Larry Outlaw, Tom Mangum, and Deborah Long for their achievements.

Three New Commission Videos

Check out the three newest additions to the Commission [Video Library](#) on its Web site, www.ncrec.gov:

[Spot Audits](#) - describes the process of reviewing brokerage firm trust accounting in unannounced visits.

[North Carolina Residential Tenant Security Act](#) - outlines the basic requirements of the Act, which may be accessed with this link and scrolling down to § 42-50. (For more on this subject, see pages 4 and 5 of this issue of the *Real Estate Bulletin*)

[What Brokers, Buyers and Sellers Need to Know About Fracking](#) - This video supplements an article, [Fracking: What Every Agent Needs to Know](#), in the October 2012 *Real Estate Bulletin*



What is Common Knowledge?

By Stephen L. Fussell, Senior Consumer Protection Officer

One of the most frequent types of complaints the Commission receives from consumers alleges that material facts were omitted or misrepresented. As you know, a material fact is any information that would affect a reasonable person's decision to buy, sell or lease. Brokers are required to disclose material facts to all interested parties. Moreover, a broker representing the owner of a property offered for sale or lease has an added duty to discover as well as disclose material facts.

When investigating a complaint in which it is alleged that a broker omitted or misrepresented a material fact, the Commission assesses what the broker knew or reasonably should have known about the fact in question. To determine what a broker actually knew, we review transaction documents and written communications and interview persons involved either directly or indirectly with the transaction.

To determine what a broker reasonably should have known, we examine public records and ascertain whether the broker has taken relevant courses or has had access to publications, such as the Commission's *Real Estate Bulletin*, that would have educated the broker on the topic in question. We also consider

whether the material fact was common knowledge.

What is common knowledge? It is knowledge that is widely or generally known to everyone or nearly everyone in a community. For example, it is common knowledge in the real estate brokerage community that a person must obtain a real estate license from the Real Estate Commission and maintain the license on current, active status in order to engage in real estate brokerage activities and be eligible to receive compensation for those activities.

In order to acquire common knowledge, brokers should thoroughly familiarize themselves with the area(s) in which they work. This may be accomplished by reading local newspapers, watching local TV news, conducting online research, attending continuing education courses, talking to other local brokers, etc. In other words, a broker should become an expert on his or her market area. This is important for all transactions, especially those in which the parties are not familiar with the area and brokers become the primary source of information.

Brokers who receive opportunities to handle transactions outside of their areas of expertise should either partner

with or refer the opportunities to brokers with knowledge and experience in such areas. Brokers who undertake to handle transactions in unfamiliar areas will be held responsible for any adverse consequences that arise as a result of ignorance and/or incompetence. North Carolina General Statute §93A-6(a)(8) authorizes the Commission to pursue disciplinary action against a broker who is unworthy or incompetent and acts in a manner which endangers the public.

Brokers cannot use common knowledge as a defense for omitting material facts. In other words, a broker cannot claim that a prospective buyer or tenant should have known about a material fact in an attempt to relieve the broker of his or her duty to disclose it. Brokers must disclose all material facts including those considered common knowledge. For the protection of the broker and all parties, it is best to make such disclosures in writing.

Prospective buyers, sellers, landlords and tenants depend upon their agents to inform and guide them in making good decisions. Brokers can only accomplish this if they acquire and then share relevant knowledge with their clients and customers. Brokers should therefore strive to be aware of common knowledge as well as all other property-specific and area-specific knowledge necessary to carry out their duties effectively.

Examples of Common Knowledge

- A plan by the North Carolina Department of Transportation ("NCDOT") to construct or widen a roadway that has been publicized on the NCDOT's website (www.ncdot.gov/projects/), in local newspapers, and/or on local TV;
- A city's plan to annex an area which will double the annexed area's property taxes and which has caused much debate in public hearings and in local media;
- The fact that when a strong Nor'easter hits some coastal communities, there is increased risk of beach erosion causing loss of dunes, street flooding, and damage to ocean-front homes;
- The fact that a storm drainage system in a neighborhood is inadequate to handle the abundance of storm water produced by thunderstorms causing widespread flooding when the citizens in the neighborhood have filed a highly-publicized lawsuit against the city to get the city to take corrective action;
- The designation of a large commercial property as a Superfund site by the Environmental Protection Agency along with significant publicity that no cleanup efforts have been undertaken; and
- The location of a train station through which loud freight trains routinely pass during the early hours of the morning, where local residents have complained publicly for many years.

RENEWAL

(Continued from page 1)

While logging in to renew your license, take a moment to review your email address or addresses. NCGS 93A-4(b2) now allows you to designate your email address as PRIVATE, meaning it will not be disseminated to anyone and will be used exclusively for communication from the Commission to you, or PUBLIC, meaning it will be provided upon request to the public, including CE course sponsors and others. You may, of course, provide both a public and private email address. You may make this selection upon logging into your record.

The Commission updates all broker license records on July 1. Your record will be updated to reflect your status as expired if your renewal fee is not received by the deadline. (Because of the records updating procedure and annual maintenance, the Commission's Web

site will be down on July 1 and 2.)

Expired licenses may be reinstated with payment of a \$55 fee (this fee includes your \$45 license renewal) between July 1 and December 31. Failure to reinstate by December 31 will result in your having to file a new application and fee and obtain a background report.

Your Email Address: Public or Private?

You now have the option to designate your email address or addresses on file with the Commission as "public" or "private for Commission use". Your "private" email address will be used by the Commission to communicate with you, and will not be disseminated to anyone. Your "public" email will be provided on request to others such as schools to send you CE information.

To make your selection, log in to and update your record.

In addition you may be required to take additional education and/or pass the license examination.

You may renew your license even if your continuing education requirements are not complete. Keep in mind, however, that all CE - the mandatory eight hours consisting of the Update Course and one elective - must be com-

pleted by June 10 to retain your license on active status. If you have not completed your CE by June 10, your license will be renewed on "inactive" status.

If you are a broker-in-charge or broker-in-charge eligible, in addition to the Update, you must take the Broker-in-Charge Annual Review course by June 10. Otherwise, you will lose your BIC eligibility. Brokers-in-charge are also responsible for ensuring that licensees under their supervision have renewed their licenses and completed the proper continuing education.

Rule A. 0110 requires that a broker-in-charge who loses BIC status or eligibility must 1) first have a license on active status; 2) meet the experience requirements for designation; and 3) take the 12-hour Broker-in-Charge Course before re-designation. (This course cannot be used as an elective to meet the requirement for active status.)

Reminder

License renewals: May 15 - June 30

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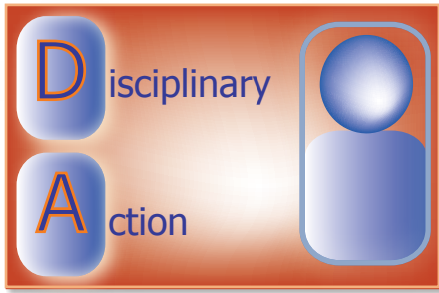
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Penalties for violations of the Real Estate License Law and Commission rules vary depending upon the particular facts and circumstances present in each case. Due to space limitations in the Bulletin, a complete description of such facts cannot be reported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

NANCY B. BRADY (Pinnacle) – The Commission accepted the voluntary surrender of the broker license of Ms. Brady for a period of five years effective March 19, 2014. The Commission dismissed without prejudice allegations that Ms. Brady violated provisions of the Real Estate Law and Commission rules. Ms. Brady neither admitted nor denied misconduct.

MICHAEL KENNETH BROOKS (Charlotte) – By Consent, the Commission revoked the broker license of Mr. Brooks effective March 19, 2014. The Commission found that Mr. Brooks, acting as property manager for clients of his own sole proprietorship, failed to designate himself as broker-in-charge; that Mr. Brooks managed several properties without the knowledge or consent of the broker-in-charge of the firm with which he was affiliated; that Mr. Brooks failed to maintain trust accounts for security deposits and rents he collected while managing properties through his sole proprietorship; and that Mr. Brooks failed to respond to multiple letters of inquiries from the Commission.

LYNETTE MARIE GAVALIER (Chapel Hill) – By Consent, the Commission reprimanded Ms. Gavalier effective February 1, 2014. The Commission found that Ms. Gavalier listed a property and mistakenly advertised it on her Web site with photos of a neighboring subdivision's amenities, which included an indoor lap pool and a fitness area; that a buyer who was out of the country during negotiations, but was present for the closing, closed on the property; that the amenities for the property subdivision did not include an indoor pool and the exercise area was

different than the one represented on her Web site.

RONALD CLIFFORD HALSTEAD (Murphy) – By Consent, the Commission suspended the broker license of Mr. Halstead for a period of six months effective February 1, 2014.



One month of the suspension was active with the remainder stayed for a probationary period of five months. The Commission found that Mr. Halstead, acting as a dual agent in a real estate transaction, failed to inform the closing attorney or lender that the buyers had signed a separate promissory note to pay the seller a sum of money in addition to the property sales price; and that the separate promissory note was not reflected on the HUD-1 settlement statement.

FREDERICK P. HILTZ (Charlotte) – By Consent, the Commission suspended the broker license of Mr. Hiltz for a period of two years effective April 1, 2014. The Commission then stayed the suspension for a probationary period of three years. The Commission found that Mr. Hiltz, acting as broker-in-

charge of a property management firm, managed a homeowners' association and was authorized by the association to initiate foreclosure proceedings against an owner for non-payment of dues; that Mr. Hiltz discovered recording issues which could prevent the mortgage deed of trust from attaching to the subject property and that Mr. Hiltz failed to disclose this fact to his client, leading the association to approve Mr. Hiltz's request to bid on the property on his own behalf; and that Mr. Hiltz directed the foreclosure attorney to issue revenue stamps indicating that the property had been purchased at full market value of \$50,000 when it had actually been purchased for \$10,000. The Commission also found that Mr. Hiltz reimbursed the association's foreclosure attorney fees in 2010 following the sale but did not pay the \$8,663 dues owed by the foreclosed owner until January 2012.

HILTZ MANAGEMENT CO. INC. (Charlotte) - By Consent, the Commission suspended the firm license of Hiltz Management Co. for a period of two years effective April 1, 2014. The Commission then stayed the suspension for a probationary period of three years. The Commission found that the broker-in-charge of Hiltz Management Co., a property management firm, managed a homeowners' association and was authorized by the association to initiate foreclosure proceedings against an owner for non-payment of dues; that the firm's broker-in-charge discovered recording issues which could prevent the mortgage deed of trust from attaching to the subject property and that the firm's broker-in-charge failed to disclose this fact to his client, leading the association to

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Licensees Must Report Convictions

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

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

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

approve the firm's broker-in-charge's request to bid on the property on his own behalf; and that the firm's broker-in-charge directed the foreclosure attorney to issue revenue stamps indicating that the property had been purchased at full market value of \$50,000 when it had actually been purchased for \$10,000. The Commission also found that the firm's broker-in-charge reimbursed the association's foreclosure attorney fees in 2010 following the sale but did not pay the \$8,663 dues owed by the foreclosed owner until January 2012.

STANLEY BERNARD JONES (Raleigh) – Following a hearing, the Commission suspended the broker license of Mr. Jones for a period of two years effective September 24, 2013. Three months of the suspension were active with the remainder stayed through the end of the suspension period on certain conditions to be satisfied by June 1, 2014. The Commission found that Mr. Jones failed to retain adequate trust account records and failed to safeguard trust monies in his possession; that Mr. Jones performed activities constituting the unauthorized practice of law, including the creation and amendment of a real estate contract; that Mr. Jones commingled his principal's money with

his own and failed to deposit money he received in a fiduciary capacity into a trust account; that Mr. Jones failed to obtain a written property management agreement with his landlord client; that Mr. Jones advertised properties for lease as a provisional broker without the consent of his BIC; that Mr. Jones failed to retain records of rental transactions; and that Mr. Jones operated a sole proprietorship without designating a BIC.

ASHLEY PARKER LANCE (Charlotte) – By Consent, the Commission suspended the broker license of Ms. Lance for a period of two years effective April 1, 2014. The Commission then stayed the suspension on certain conditions. The Commission found that Ms. Lance, acting as an associate broker of her real estate brokerage firm and under the direct supervision and orders of her broker-in-charge, met with clients without providing or reviewing the *Working With Real Estate Agents* brochure. The Commission also found that Ms. Lance utilized form lease with option to purchase contracts that violate North Carolina law and Commission rules.

PETER C. MACE (Pinehurst) – By Consent, the Commission suspended the broker license of Mr. Mace for a period of six months effective April 1, 2014. The Commission then stayed the suspension on certain conditions. The Commission found that Mr. Mace, acting as a real estate developer and real estate broker, failed to disclose material facts related to the sale of residential property in which he had an ownership interest.

NANCY BRADY REALTY, INC. (Pinnacle) - The Commission accepted the voluntary surrender of the broker license of Nancy Brady Realty for a period of five years effective March 14, 2014. The Commission dismissed without prejudice allegations that Nancy Brady Realty violated provisions of the Real Estate Law and Commission rules. Nancy Brady Realty neither admitted nor denied misconduct.

PEARTREE PROPERTY MANAGEMENT (Elizabeth City) – The Commission accepted the permanent surrender of the firm license of Peartree Property Management effective April 16, 2014. The Commission dismissed without prejudice allegations that Peartree Property Management violated provisions of the Real Estate Law and Commission rules. Peartree Property Management neither admitted nor denied misconduct.

RENTAL PROPERTY MANAGEMENT, INC. (Wilson) – By Consent, the Commission suspended the firm license of Rental Property Management for a period of three years effective March 1, 2014. The Commission then stayed the suspension for a probationary period of three years on certain conditions. The Commission found that the broker license of Rental Property Management went on inactive status in July 2011 and the firm continued operating without a designated broker-in-charge and qualifying broker until March 2012; that the Commission conducted an audit of the firm's trust accounts and found a shortage of \$21,300 in the tenant security deposit account and \$11,800 in the rental accounts; that the firm failed to maintain rents and tenant

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security deposits in a trust account; that the firm failed to maintain trust account records in compliance with the Real Estate License Law and Commission rules; that the firm engaged in deficit spending; and that in March 2013, the firm again engaged in brokerage services without a designated broker-in-charge or qualifying broker after its qualifying broker and broker-in-charge left the company.

MARIO ROBERTO RUIZ-CEA (Kernersville) – By Consent, the Commission reprimanded Mr. Ruiz-Cea effective March 1, 2014. The Commission found that Mr. Ruiz-Cea represented a buyer client in a real estate transaction, but failed to enter into a written buyer agency agreement with his buyer client; that Mr. Ruiz-Cea failed to provide his client with the *Working With Real Estate Agents* brochure; that in April 2013, Mr. Ruiz-Cea submitted an offer to purchase on behalf of his buyer client for a property, the seller responded with a counter offer, and Mr. Ruiz-Cea affirmed his buyer client's acceptance without first obtaining his client's signature on the contract.

DEBRA C. SWAIN (Elizabeth City) – The Commission accepted the permanent surrender of the broker license of Ms. Swain effective April 16, 2014. The Commission dismissed without prejudice allegations that Ms. Swain violated provisions of the Real Estate Law and Commission rules. Ms. Swain neither admitted nor denied misconduct.

CRAIG STEVEN STURDIVANT (Sanford) – By Consent, the Commission suspended the broker license of Mr. Sturdivant for a period of six

months effective March 1, 2014. The Commission then stayed the suspension on certain conditions. The Commission found that Mr. Sturdivant acted as the president of a real estate brokerage and property management firm; that a buyer entered into a 20-year contract for deed in July 2008 to purchase a

property from the firm; that the buyer paid the firm a \$10,000 down payment and \$1,000 monthly payments; that the lender foreclosed on the property in July 2011; and that another agent in the firm continued to collect the monthly payments from the buyer until January 2012.

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