



New BPO Laws, Rules Adopted - Effective October 1, 2012

The North Carolina General Assembly recently enacted important amendments to both the Real Estate License Law and the Appraisers Act regarding the extent to which a broker may perform a broker price opinion (BPO) or comparative market analysis (CMA) for a fee. The Real Estate Commission has adopted temporary rules implementing the License Law changes, **effective October 1, 2012**.

The Primary Law Changes

A **“non-provisional” broker** whose license is in good standing and on active status may prepare a broker price opinion (BPO) or comparative market analysis (CMA) and charge and collect a fee for the opinion. The BPO may now be performed for a fee for a variety of persons and entities for a variety
(See BPO Laws, page 9)

Walter “Walt” F. Crayton, Jr. Appointed To Commission

Walter “Walt” F. Crayton, Jr., of New Bern has been appointed to the Commission by Governor Beverly E. Perdue. The appointment, as the *Bulletin* went to press, is for a three-year term through July 2015. He succeeds former Vice Chairman Alice L. Mosteller of Waynesville.

Everett “Vic” Knight Reappointed

Governor Beverly E. Perdue has reappointed Everett “Vic” Knight of Raleigh to the Real Estate Commission for a term ending in 2015. Knight has been a Commission member since 2009.

Benjamin Cone Re-elected Chairman; Everett Knight Elected Vice Chairman

Benjamin Cone III of Raleigh has been re-elected Chairman and Everett “Vic” Knight of Raleigh elected Vice Chairman of the North Carolina Real Estate Commission, it was announced by Miriam J. Baer, Executive Director. Knight succeeds former Vice Chairman Alice L. Mosteller of Waynesville for the remainder of the 2012-2013 term.

A member of the Commission since 2007, Chairman Cone is Managing Director of Milestone Partners, LLC, in Charlotte. He has held management positions in the textile and commercial furniture industries.

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

Knight, a licensed broker since 1984, is also a certified appraiser and the owner of Chapel Hill Appraisals and Consultants. He previously was broker/owner of Century 21 Vic Knight Realty



Cone



Knight

in Hillsborough for 10 years.

A native of Burlington, Knight graduated from North Carolina State University with a BS in Civil Engineering and worked internationally for Bechtel Corporation for several years. He was a licensed General Contractor in North Carolina.

Knight is currently a director of the National Association of REALTORS®,
(See Commission, page 7)

Property Disclosure Form Revised; Effective January 1, 2013

By Curtis E. Aldendifer, Associate Legal Council

The Residential Property and Owners’ Association Disclosure Statement has been revised to make it easier for users to complete.

Required for all properties placed on the market on or after January 1, 2013, the revised form replaces the current form’s use of lead-in and subordinate questions with 37 independent questions.

The first 31 questions of the new form, presented in a slightly different sequence, cover the conditions and characteristics of both the property and dwelling to be sold. The content of the questions remains essentially unchanged from the current form with the following exceptions:

- the date the dwelling was constructed, rather than the age of the structure;
- an expanded list of possible materials used to make the exterior walls;
- the date the roof was installed, rather than the age of the roof;
- if the fuel is stored in a tank, whether the tank is above or below ground, and whether it is leased or owned by the seller;
- a shared well included as a possible water supply source;
- whether the owner has knowledge of the number of rooms permitted for a septic system, and if so, the number

(See Disclosure, page 9)

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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Beverly E. Perdue, Governor

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Editor-In-Chief
Miriam J. Baer

Editor
Robert L. Forshaw



People

Charlie D. Moody has been named the Assistant Director of the Legal Division. She was formerly Chief Deputy Legal Counsel.

S. Adam Stallings has been named Chief Deputy Legal Counsel of the Legal Division. He was formerly Deputy Legal Counsel.

Appearances

Miriam J. Baer, Executive Director, spoke at the joint convention of the North Carolina Association of REALTORS® and the South Carolina Association of REALTORS®.

S. Adam Stallings, Chief Deputy Legal Counsel, spoke to the the Gaston Association of REALTORS® on broker price opinions, the Burke County Board of REALTORS®, and the Charlotte Regional REALTORS® Association.

Pamela M. Vesper, Senior Auditor/Investigator, spoke to the Raleigh Board of REALTORS®/Wake Property Management Council.

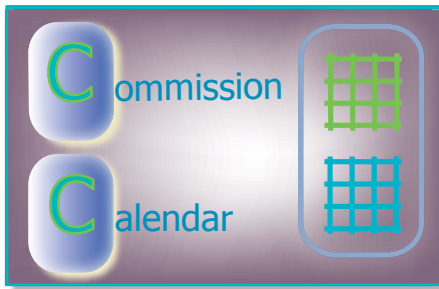
Peter B. Myers, Information Officer, spoke to the Lumberton Board of REALTORS®.

Glenn M. Wylie, Information Officer, spoke to the Apartment Association of North Carolina membership and to the Brunswick County Association of REALTORS®.

Commission Speakers Available

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

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



November 14
 December 12
 January 9
 February 6
 March 6

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

2013-14 Real Estate Manual To Be Published

The Commission's 2013-14 Real Estate Manual is projected to be published in January 2013. Updated content will include discussion of:

- new law and rules permitting non-provisional brokers to prepare a BPO for a fee;
- a major revision of the Mechanics' Lien Law; and
- use of the revised Residential Property and Owners' Association Disclosure Statement effective January 1, 2013.

The Manual will be available in printed form and in electronic forms as a CD-ROM and as a subscription on the Commission's Web site.

COURSE SCHEDULES

Broker-in-Charge and Basic Trust Account Procedures Courses

Please see the Commission Web site, www.ncrec.gov, under Course Registration, for locations, dates, and times from November 2012 thru June, 2013.

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

Asheville	December 4-5 February 20-21	Holiday Inn East/Blue Ridge Parkway
Concord	November 26-27 January 22-23 February 25-26	Hilton Garden Inn, Concord
Greensboro	December 10-11	Clarion Hotel
Raleigh	November 7-8 December 17-18 January 29-30 March 18-19	McKimmon Center
Wilmington	February 4-5	Coastline Convention Center

Basic Trust Account Procedures Course

Raleigh	November 6, 1 - 5 p.m. March 5, 1-5 p.m. June 5, 1-5 p.m.	McKimmon Center
Asheville	December 5, 9 a.m. - 1 p.m.	Holiday Inn East/Blue Ridge Parkway

See Commission Web site to confirm courses.

Unlicensed Assistants - Drawing the Line Between What They Can and Cannot Do

By Joan H. Floyd, Senior Consumer Protection Officer

There is a line between licensed and unlicensed in the world of real estate brokerage that requires the careful attention of brokers with unlicensed assistants who help them with their business and may work directly with buyers and sellers.

A complaint from a buyer or seller that the “broker” with whom they are working is not licensed as a broker is often followed by the actual broker explaining that the “broker” is really an unlicensed assistant.

The question then arises: Did the assistant cross the line between licensed and unlicensed when providing services requested by the client or the broker?

Because clients do not always know who is licensed in a brokerage office or precisely what rights a license confers, brokers should inform clients of the limits placed on their unlicensed assistants in providing services. Otherwise, there is considerable opportunity for confusion.

The best course of action is to explain matters to the client at the beginning of the relationship and, as an aid in doing that, provide the two lists below which draw that important line between what is allowable and what is not.

Unlicensed assistants MAY:

- Receive and forward phone calls, texts and emails to the employing broker or other licensees in a firm;
- Submit listings and changes to a MLS provider, but only if the listing or change is based upon data supplied by a broker;
- Assist a broker in compiling documents for closing;
- Research and obtain copies of documents in the public domain, such as the Registers of Deeds, Clerks of Court, or tax offices;
- Obtain keys for listed properties;
- Record and deposit trust monies under the close supervision of the office broker-in-charge (BIC);

- Type in offer to purchase, contract and lease forms with information provided by brokers;
- Check license renewal records and other personnel information pertaining to brokers at the direction of the BIC;
- Prepare commission checks and otherwise act as bookkeeper for the firm’s operating account under the close supervision of the BIC;
- Place “For Sale” or “For Rent” signs on property at the direction of a broker;
- Order and supervise routine and minor repairs at the direction of a broker;
- Act as a courier at the direction of a broker;
- Coordinate or confirm appointments between brokers and other persons;
- Schedule appointments for showing properties listed for sale or rent;
- Show rental properties managed by the broker to prospective tenants;
- Complete and execute preprinted form leases for rental property managed by the firm.
- Answer basic questions from prospective buyers and others about listed properties if the broker has provided the information in promotional materials.

Only licensed brokers MAY:

- Show properties for sale to prospective buyers;
- Answer questions from prospective buyers and others about listed properties.
- Offer opinions as to the seller’s or landlord’s intentions about a listed property;
- Solicit listings or management contracts from prospective clients;
- Prepare information to be placed in promotional material or advertisements for properties for sale or



Allan R. Dameron Award

Jeffrey J. Sellers, a third-year law student at Campbell University, received the 2012 Allan R. Dameron Legal Internship Award from Commission Chairman Benjamin Cone III. The Commission gives the award annually in memory of and tribute to former Commission Chairman Dameron for his dedicated service in protecting the interests of North Carolina real estate consumers.

lease;

- Discuss or explain listings, management agreements, offers, agency agreements, leases or other similar matters with persons outside the firm;
- Negotiate the amount of rent, earnest money deposits, due diligence fees or other contract provisions in connection with properties listed for sale or rent by the firm.

Finally, remember that if you are a broker-in-charge, you are responsible for all money being held in a trust account and the accuracy of all advertising. Brokers-in-charge should be closely supervising all actions in those areas, especially when those duties are performed by unlicensed persons.



Brokers Earn Scholarships

Outstanding achievement in REALTORS® Institute and Council of Residential Specialists courses earned three brokers Commission scholarships:

C. Lee Allen, Jr. of Albemarle received the Joe Schweidler Memorial Scholarship;

Tony G. Johnson of Greensboro the Blanton Little Memorial Scholarship; and

R. Lawrence Mahool of Charlotte the Phillip T. Fisher Scholarship.

Schweidler, Little and Fisher are former Executive Directors of the Commission. The North Carolina Real Estate Educational Foundation selected Allen and Johnson. The North Carolina Chapter of the National Association of REALTORS® Council of Residential Specialists chose Mahool.



Commission Chairman Benjamin Cone III and former Vice Chairman Alice L. Mosteller presented the annual scholarships to (l. to r.) Allen and Mahool at the August meeting. Johnson was not present.

Proposed Changes to Rules for 2013

The Commission has commenced rulemaking to reorganize and amend various rules. The specific text of each of the proposed changes is posted on the Commission's homepage under the heading "Rules." Following are the changes being considered (with the exception of two rules requiring only minor revisions):

General Brokerage

- **A. 0103 License Name and Address** – Move portions of Rule A. 0105 relating to business names and registration of assumed names into this rule, clarify that licensees doing business under assumed names must register with the register of deeds in each county where the licensee intends to do business, and update the rule concerning names of unlicensed, inactive, active and cancelled brokers in the name of a business.
- **A. 0105 Advertising** - Reorganize the paragraphs to make a more logical presentation.
- **A. 0107 Handling and Accounting of Funds** – Simplify and modernize the rule by separating it into three separate rules (A.0116, .0117, and .0118).
- **A. 0108 Retention of Records** – Adopt a permanent rule the temporary rule recently adopted requiring the retention of broker price opinions

and comparative market analyses. Clarify the length of time property management records must be kept after the management relationship ends. (See the BPO article in this issue of the *Bulletin* on page 1).

- **A. 0110 Broker-in-Charge** – clarify the requirement for sole proprietorships to have a broker-in-charge ("BIC"), require that multiple firms in the same location with one BIC maintain a delivery address that is the same as the address of the BIC, clarify the process by which a broker is designated a BIC, require a BIC who loses BIC-eligibility to take the 12 hour BIC course before being re-designated, and eliminate the requirement that a BIC provide a statement to the Commission about an affiliated broker's volume of work.

Licensing

- **A. 0503 License Renewal; Penalty for Operating While License Expired** – Change the annual renewal fee from \$40 to \$45.
- **A. 0504 Active and Inactive License Status** – Permit the submission of license activation forms online.
- **A. 0506 Provisional Broker to be Supervised by Broker** – Require only the BIC to notify the Commission of the affiliation of a broker with the BIC to facilitate online notification of the

affiliation to the Commission.

- **A. 0511 Licensing of Persons Licensed in Another Jurisdiction** – Delete obsolete provisions relating to reciprocity and clarify licensing requirements for persons licensed in other states.
- **A. 0616 Procedures for Requesting Hearings When Applicant's Character Is In Question** – Update the procedures for applicants with character issues to conform to recent changes in the Real Estate License Law relating to mental and emotional fitness.

Broker Price Opinions and Comparative Market Analyses

- **A. 02201 - .2202** – adopt as permanent rules the temporary rules recently adopted concerning broker price opinions and comparative market analyses.

Time Shares

- **B. 0102 Registration Fee and B.0103 Renewal of Time Share Project Registration** – standardize and increase certain timeshare registration fees.

Comments on any of these proposals are welcome.

With the passage of laws during the 2011-12 North Carolina legislative session regarding the regulation of hydraulic fracturing, also called “fracking”, knowing whether your client’s new purchase has had or will have mineral rights severed prior to closing is important for you to responsibly represent your client.

Under long-established principles of property law, the minerals in place underneath the surface of the earth, including oil and gas, can be owned separately from the surface of the property. Essentially, this means that minerals and mining rights can be created and transferred separately from the surface rights, and that those mineral rights constitute a separate and distinct property interest. As such, mineral rights can be transferred by a reservation in a deed, or by a direct grant, sale, or assignment of such rights, or by some other legal process just like the typical conveyance of a home.

Mineral deeds that convey the rights to all minerals may or may not specify the conveyance of oil and gas rights, in addition to the mineral rights. It is important to note that in North Carolina, a standard reservation of “mineral rights” in a deed, or a conveyance of “**mineral rights**” alone may not convey **oil and gas rights**. The ultimate determination of whether a plain “mineral

Note that in North Carolina, a standard reservation of “mineral rights”....may not convey oil and gas rights.

rights” conveyance alone would include oil and gas rights would be made by a court or other arbiter based upon the terms of the conveyance and the intent of the parties at the time of the conveyance. Therefore, to avoid any ambiguity, agreements to transfer oil and gas rights along with any mineral rights should and typically do describe with specificity what the parties mean to convey.

When oil and gas companies believe

Fracking: What Every Agent Needs to Know



*By S. Adam Stallings
Chief Deputy Legal Counsel*

deposits containing oil or gas may exist in an area, their employees or investors may approach private and public landowners with offers to lease such land for exploration and future mining. If a landowner decides to enter into a lease with a gas company, the company pays the landowner for the right to access and use the landowner’s land for exploration and extraction. Developers have sought to sever, or reserve, the mineral rights to a property before selling new construction homes. This means that the developer, and not the homeowner, has the right to lease its interest to gas companies and retain any benefits of the profits or possibly mine for the natural resources themselves.

Compensation

The main forms of compensation that are paid to landowners who enter into leases are bonus payments, royalties, and rentals. A bonus payment is a lump sum payment made to the landowner at the time the landowner executes the lease. Gas companies often negotiate bonus payments on a per

acreage basis. Royalties are a share of the production profits that may be paid when and if there is oil or gas production on the property. Lastly, “delay rentals” are rentals paid to the landowner to maintain the lease during the interim period before production begins. In some cases, delay rentals are included as part of the initial bonus payment. Gas leases, like other types of contracts, are unique to the parties negotiating the terms and can vary greatly.

The process of fracking begins with well construction by drilling hundreds to thousands of feet below the land surface. This vertical well can then extend out into lateral or horizontal sections, often stretching as far as one thousand to six thousand feet outward (more than a mile). Fluids, consisting primarily of water with chemical additives, are pumped down into the well at high pressure. This process will open or enlarge fractures in the shale rock - fractures that may extend several hundred feet away from the wellbore. If the mineral rights are severed from the land being purchased by your client, then natural gas could be extracted from beneath that lot in the future through fracking.

Pursuant to property laws, the owner of the mineral rights typically has the

If the mineral rights are severed from the land...then natural gas could be extracted from beneath that lot in the future through fracking.

right to use the surface of the property in such ways and to such an extent as is reasonably necessary to obtain the minerals under the ground. As such, in oil and gas extraction cases, the mineral rights owner’s interest is referred to as the “dominant” estate, and the surface of the land is deemed “servient” to the mineral owner’s right of use. Therefore, unless otherwise agreed upon, the mineral and gas rights owner may enter onto the land to explore for production, construct roads to the drill site, build pipelines, storage tanks, power stations, and other

Continued

structures, and perform other activities consistent with the owner's right to exercise its oil and gas rights. These substantial rights held by the owner of the subsurface mineral, oil, and gas rights demand that homebuyers understand fully what, if any, rights are severed from the land they seek to purchase.

With very few exceptions, state law now requires all sellers, even builders and sellers of new construction, to disclose in the sales contract the status of oil and gas rights regarding any property offered for sale. The limited exceptions deal primarily with transfers of property pursuant to court order or the administration of an estate, sales between co-owners of the property, and

These substantial rights held by the owner of the subsurface mineral, oil, and gas rights demand that homebuyers understand fully what, if any, rights are severed from the land they seek to purchase.

lease with option to purchase contracts where the lessee occupies the dwelling. Notably, parties negotiating a real estate sale cannot waive this oil and gas rights disclosure even if they agree not to complete a residential property disclosure statement pursuant to N.C. Gen. Stat. Chapter 47E.

Mandatory Language

To find the mandatory language that all real estate contracts must now include in boldface type, see N.C. Gen. Stat. § 47E-4(b2). The law requires the seller to answer three specific questions, and then obtain the buyers' initials to acknowledge the oil and gas disclosure as part of the real estate contract. The seller must answer the following:

1) whether the oil and gas rights were severed from the property by a previous owner;

2) whether the seller has personally severed such rights from the property in the past; and,

3) whether the seller intends to sever said rights from the property prior to transfer of title to the potential buyer.

All three questions must be answered "yes" or "no," except that question 1) may

be answered "no representation" by the seller.

Severance of mineral rights will also be disclosed in a deed in the chain of title of the property being sold. However, it is important to inform consumers about any severance or reservation of mineral rights at the time they are considering making an offer and going under contract for the purchase of the property. *Since the conveyance or severance of mineral rights is a material fact, it must be disclosed to potential buyers at or before the time a buyer makes an offer to purchase.* To ensure that you provide the best service for your clients, be diligent when reading all contracts to determine what the seller discloses as to the conveyance of mineral rights.

Commission

(Continued from page one)

a past president and member of the board of directors of the North Carolina Association of REALTORS®, and past president of the Chapel Hill Board of REALTORS® and the Triangle Multiple Listing Service. He is a Continuing Education Instructor for the Real Estate Commission and the North Carolina

FOR MORE INFORMATION...

In addition to the statutes identified herein, see the following resources utilized to draft this article for more information:

- Consumer Protection Division, "North Carolina Oil and Gas Study under Session Law 2011-276: Impacts on Landowners and Consumer Protection Issues." North Carolina Department of Justice, 2012. Retrieved from <http://www.ncdoj.gov>.
- Office of Water, "Hydraulic Fracturing Under the Safe Drinking Water Act." U.S. Environmental Protection Agency, 2012. Retrieved from <http://water.epa.gov/>.

Appraisal Board, and serves on the Board of Trustees of the Appraisal Foundation.

Knight has two daughters, "Krystle" Gray VanDeventer and "Victoria" Scarlet Knight and is a member of Hillsborough United Church of Christ.

New Commission Videos Available

New to the Commission Web site are four informative videos for licensees and consumers:

- Trust Accounting - how to administer earnest money deposits to protect the buyer and comply with Commission rules.
- Continuing Education Requirements - an overview of CE and how you can keep current in meeting your educational requirements.
- Real Estate License Requirements - explains how to obtain a North Carolina real estate license, step-by-step from initial application to examination to final receipt.
- License Renewal - know when and how to renew your real estate license each year.

Additional videos are planned on a variety of topics. Stay in touch with the Commission's Web site to see them as they are published.

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



2012 Changes to Real Estate License Law, Commission Rules

Following is a summary of changes to the Real Estate License Law and Commission rules during 2012:

Commission Rules

Residential Property Disclosure Form. The form has been modified for easier completion by users. (See the article in this issue of the *Bulletin*, beginning on page 1).

(Temporary Rules) **Broker Price Opinions/Comparative Market Analyses.** Non-provisional brokers may now prepare broker price opinions for fees. (See the article in this *Bulletin* beginning on page 1).

Real Estate License Law

Broker Price Opinions/Comparative Market Analyses (S521). See Session Law 521 on the General Assembly Web site and the article in this issue of the *Bulletin* on page 1.

Rental Property/Lithium Battery Smoke Alarms (S77). Provides that after December 31, 2012, landlords shall, when installing a new smoke alarm or replacing an existing smoke alarm, install a tamper resistant, ten-year lithium battery smoke alarm except in certain cases, and providing that landlords may deduct from the tenant security deposit damage to a smoke alarm or carbon monoxide alarm, as recommended by the Child Fatality Task Force.

Landlord Tenant Law Changes (H493). Amends the laws related to landlord tenant relationships including tenant appeals in evictions and abandoned property, and permitted uses of a tenant security deposit. Establishes a process whereby a landlord may remove from a residential dwelling unit tangible personal property belonging to a deceased tenant after filing an affidavit with the clerk of Court in the county in which the residential dwelling unit is located. Provides that a vacation rental agreement may include a cleaning fee, the amount of which shall be provided in the agreement, reasonably calculated to cover the costs of cleaning the residential property upon the termination

of the tenancy. (See the May 2012 issue of the *Bulletin* for a discussion of Fair Housing Law relating to tenant rights).

Severance of Mineral Rights Disclosure (S820). Requires almost all contracts for sale of residential properties on or after October 1, 2012, to include a disclosure explaining the severance of

mineral rights and disclosing whether the seller (1) has knowledge that mineral rights were severed from the property by a previous owner; (2) has previously severed the mineral rights from the property; and (3) intends to sever the mineral rights from the property prior to transfer of title to buyer. (See the article on "Fracking" in this issue of the *Bulletin* on page 6).

Schools and Instructors

Outstanding Examination Performance Records

July 1, 2011 - February 29, 2012

The North Carolina Real Estate Commission monitors applicant performance on the license examination and regularly reports this information to schools and instructors. In particular, the Commission uses information about the performance of applicants who are taking the licensing examination for the first time in order to assure that quality instruction is being provided in prelicensing courses by schools and instructors. The most recent performance record for each school can be found on the Commission's website at: <http://www.ncrec.gov/pdfs/schools/LicExamPerfRep.pdf>.

The overall examination performance for all first-time candidates on the real estate examination for the eight-month period July 1, 2011 through February 29, 2012 was 75%. The Commission would like to congratulate each of the following schools and instructors (with six or more students tested) for achieving an outstanding examination performance record of 85% or higher during the eight-month period immediately preceding implementation of the new two-part license examination. The Commission recognizes that to have students perform at such a level on the license examination requires a combination of high quality instruction and high course completion standards.

■ **School**

■ Allen Tate School of Real Estate, *Charlotte/Raleigh*; ■ Central Piedmont Community College, *Charlotte/Matthews/Huntersville*; ■ Coastal Carolina Real Estate Academy, *Wilmington*; ■ Cumbie and Trull School of Real Estate, *Asheville*; ■ Elliot Real Estate Academy, *Greensboro*; ■ Mingle School of Real Estate, *Charlotte/Cornelius*; ■ North Carolina Academy of Real Estate LLC, *Nags Head*; ■ Southwestern Community College, *Sylva*; ■ Superior School of Real Estate, *Charlotte/Concord/Cornelius/Greensboro/Morrisville/Pineville*; ■ Terry Farr Real Estate School, *Fayetteville*; ■ Triad Real Estate School, *Greensboro/Winston-Salem*.

■ **Instructor**

■ Oscar M. Agurs, *Charlotte*; ■ Gammel D. Bates, Jr., *Winston-Salem*; ■ Pascal S. Camak, *Pine Knoll Shores*; ■ Cheryl C. Crawford, *Mooreville*; ■ Barbara L. Crites, *Kill Devil Hills*; ■ Terry E. Farr, Sr., *Fayetteville*; ■ Victoria B. Ferneyhough, *Raleigh*; ■ William H. Gallagher, II, *Charlotte*; ■ Corean E. Hamlin, *Asheville*; ■ Robert N. Holt, *Franklin*; ■ Carolyn C. Lambert, *Charlotte*; ■ Teri J. Minnis, *Wilmington*; ■ Joseph D. Moore, Jr., *Greensboro*; ■ Rashad I. Phillips, *Charlotte*; ■ Dana S. Rhodes, *Charlotte*; ■ Lynda Sargent, *Wake Forest*; ■ Tim R. Terry, *Charlotte*; ■ William J. Trull Jr., *Asheville*; ■ Terry M. Wilson, *Davidson*; ■ Ben Wirtz, *Iron Station*.

BPO Laws

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of reasons, *not just for actual or prospective brokerage clients*. Note, however, that a **provisional broker** (i.e., a broker who has not completed all postlicensing courses and thereby removed his or her “provisional” status) may no longer perform a BPO or CMA **for a fee** for anyone. (The Appraisers Act previously allowed any real estate licensee to perform a CMA for a fee, but **only** for an actual or prospective client or for property involved in an employee relocation program.)

A broker who performs a BPO for a fee must provide the BPO **in writing**, estimating only the “**probable selling or leasing price**” of a property (not the “value” or “worth” of a property). The BPO must NOT be referred to as a “valuation” or “appraisal.” A broker may NOT prepare a BPO for an existing or potential lienholder (e.g., mortgage lender) where the BPO is to serve as the basis to determine the value of a property for the purpose of originating a mortgage loan, including first and second mortgages, refinances or equity lines of credit.

A “broker price opinion” and a “comparative market analysis” are defined as synonymous terms in both the Real Estate License Law and Appraisers Act.

Standards for Performing a BPO

The Commission’s rules set out the standards for performing BPOs and require that the broker:

- have knowledge of, and access to, market data in the subject property’s local area;
- exercise objective, independent judgment;
- inspect the subject property, unless the client expressly waives an inspection in writing;
- use methodology (analysis of comparable sales and/or income analysis) that is appropriate for the particular assignment;
- select comparable sold or leased properties and make necessary adjustments;

• include information about local market conditions and each method used in deriving the estimate of probable selling or leasing price; and

• explain the basis for any range in probable selling or leasing price when the higher figure exceeds the lower figure by more than ten percent.

Most of the standards addressed in the Commission rules for performing a BPO/CMA are *not new!* The Commission has for many years applied these standards to any CMA/BPO performed by a licensee, whether or not the CMA/BPO is performed for a fee, and these standards are required to be taught in prelicense and postlicense courses.

BPOs/CMAs Performed for NO FEE

Any broker (non-provisional or provisional) has always been permitted to perform a BPO/CMA for any party when NO FEE is charged, and this continues to be the case under the revised law and rules. Note that *the Commission does not consider compensation of a broker for general brokerage services under a brokerage agreement to constitute a “fee” under the BPO law*. Such services include the provision by a licensee of a CMA or BPO. Similarly, the possibility of entering into a brokerage agreement (and earning a brokerage fee) does not constitute a “fee” when a licensee performs a CMA/BPO for a *prospective* client without charging a fee for the CMA/BPO.

It is important for licensees to remember, however, that the Commission expects every CMA/BPO performed by a licensee to be performed in a competent manner and without any undisclosed conflict of interest, even if no fee is received for the CMA/BPO. Thus, as a practical matter, a licensee performing a CMA/BPO for no fee should still look to the standards described in the new Commission rules for guidance regarding the proper performance of a CMA/BPO.

Education on BPOs in Update Course, CE Electives and Real Estate Manual

The BPO law and rule changes are addressed in the current *Real Estate Update Course*, which licensees are urged

to take as soon as possible. The *Update* coverage does not, however, attempt to address *how to properly perform a BPO/CMA*. For instruction on the proper performance of BPOs/CMAs, licensees are urged to attend a CE elective course on this topic that has been updated to reflect the recent law/rule changes. Updated coverage of proper performance of BPOs/CMAs will also be included in the next edition (2013-14 edition) of the Commission’s *North Carolina Real Estate Manual* that will be available in January 2013. The complete law and rule changes may also be found on the Commission’s Web site at www.ncrec.gov.

Disclosure

(Continued from page one)

- of permitted rooms;
- problems with “appliances that may be included in the conveyance” rather than “built-in appliances;”
- “structural additions or other structural or mechanical changes” rather than “additions or other structural changes to the dwelling(s) to be conveyed;”
- whether the owner has “been notified by a governmental agency” regarding violations of zoning ordinances, restrictive covenants, or building codes, including the failure to obtain proper permits for changes or improvements.

The last 6 questions pertain to only those properties subject to a HOA, and remain essentially unchanged. As has been the case, the questions offer the options of answering “yes” or “no,” where appropriate, or “no representation.”

For those properties placed on the market prior to January 1, 2013 that require a corrected Disclosure Statement, the new form should be used to make any updates.

The form is available on the Forms page of the Commission’s Web site.



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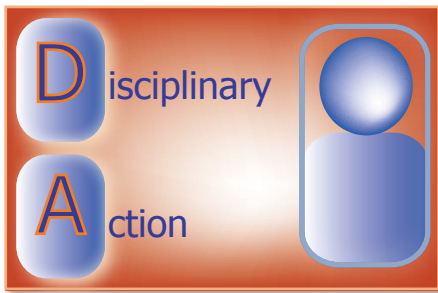
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STEPHANIE ANDREW (Reidsville) – By Consent, the Commission reprimanded Ms. Andrew effective September 1, 2012. The Commission found that Ms. Andrew, acting a broker-in-charge of a real estate brokerage firm, allowed the firm to engage in deficit spending in the amount of \$14,600 out of liabilities of \$35,000. The Commission also found that checks issued by Ms. Andrew failed to consistently identify the purpose of disbursements or reference to property/owner ledgers and that she failed to identify the purpose of disbursements in her journals. The Commission noted that Ms. Andrew and the firm have refunded the accounts and have instituted procedures to bar deficit spending.

CHERRI LYNN BATES (Apex) – By Consent, the Commission revoked the broker license of Ms. Bates effective August 8, 2012. The Commission found that in December 2011, Ms. Bates was charged in Wake County with embezzling rental proceeds from Wilson Property Management, Inc. The Commission also found that Ms. Bates pled guilty to embezzling \$26,435.01 in rental proceeds from Wilson Property Management and was sentenced to 60 months' probation and ordered to pay restitution in the amount of \$26,436.01.

JEFFERY A. BAXTER (Kitty Hawk) – By Consent, the Commission suspended the broker license of Mr. Baxter for a period of 12 months effective July 1, 2012. The Commission found that Mr. Baxter pled guilty in Currituck Superior Court to first-degree trespass on July 15, 2010. The Commission noted that Mr. Baxter reported the conviction appropriately to the Commission.

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.

RECCILLE D. BEAMON (Greensboro) – By Consent, the Commission reprimanded Ms. Beamon effective July 1, 2012. The Commission found that Ms. Beamon, acting as rental agent for a residential property, promised to lease the unit to an individual and received \$665 as a deposit, but failed to memorialize her agreement with the prospective tenant. The Commission also found that Ms. Beamon did not deposit the money



in a trust account, instead remitting it to the owner, and when a dispute arose as to the property's availability and the prospective tenant demanded a refund of the deposit, Ms. Beamon refused to either return or account for the deposit. The Commission finally found that Ms. Beamon had no written agency agreement with the owner of the property.

JASON BENTON (Knoxville, Tennessee) – By Consent, the Commission suspended the broker license of Mr. Benton for a period of six months effective May 1, 2012. The Commission found that Mr. Benton held a minority interest in a marketing organization which was an unlicensed entity and was an affiliate broker with a licensed real estate brokerage firm. Although Mr. Benton

intended to sign a contract as representative of the licensed entity to market and sell real estate in North Carolina, he actually contracted to receive commissions through the unlicensed company. Following a ruling by the Federal District Court, Mr. Benton was barred from collecting any commissions as the contract was void because it was a brokerage contract entered into by an unlicensed entity.

RAMONA G. BRINSON (Arapahoe) – By Consent, the Commission suspended the broker license of Ms. Brinson for a period of thirty-six months effective April 1, 2012. One month of the suspension was active with the remainder stayed for a probationary period beginning on May 1, 2012 and ending on March 31, 2019. The Commission found that Ms. Brinson was convicted of driving while intoxicated, Level 1, driving while license revoked, and two counts of making harassing phone calls. The Commission also found that Ms. Brinson was sentenced to a term of imprisonment of two years, suspended on condition that Ms. Brinson serve 30 days in jail followed by supervised probation for 36 months, and refrain from consuming alcohol and obtain treatment for alcohol abuse. Finally, the Commission found that Ms. Brinson's driver license was revoked because she had been convicted of three drinking and driving offenses in six years.

JAMES J. BURNS (Raleigh) – By Consent, the Commission reprimanded Mr. Burns effective August 8, 2012. The Commission found that Mr. Burns, acting as qualifying broker and broker-in-charge of a real estate brokerage firm, owned a residential property which was listed with his firm and advertised as having
(Continued)

ing four bedrooms and which he sold; that subsequent to the sale, the home was destroyed by fire; that during reconstruction, the buyer discovered that the local health department had permitted the home for three bedrooms, not four; and that, as a result, the buyer rebuilt the house with only three bedrooms rather than upgrade the septic system.

CAPE FEAR REALTY, LLC (Wilmington) – By Consent, the Commission suspended the firm license of Cape Fear Realty for a period of one year effective September 1, 2012. The Commission then stayed the suspension for a probationary period of two years ending August 31, 2014. The Commission found that between 2005 and 2008 Cape Fear Realty participated in a series of condominium sales transactions; that an unlicensed entity may have been paid for producing investor buyers of the condominium units; and that adequate disclosures may not have been made to the investor buyers concerning the value of the condominium units they were purchasing. The Commission noted that prior to and during the course of these transactions, Cape Fear Realty was represented by counsel and acting on the advice of counsel.

LAWRENCE L. DOMONKOS (Cornelius) – By Consent, the Commission suspended the broker license of Mr. Domonkos for a period of 12 months effective July 1, 2012. The Commission then stayed the suspension for a probationary period of 24 months ending June 30, 2014. The Commission found that Mr. Domonkos drafted a memorandum relating to a lot-purchase contract which provided that if the seller failed to purchase a tract of land adjoining the subdivision where the lot was located, the seller would repurchase the lot from the buyer; that, relying on the memorandum, the buyer purchased the lot; that the seller subsequently did not purchase the other tract; and that when the buyer demanded that the seller buy the lot back, the seller repudiated the memorandum. The Commission also found that Mr. Domonkos, who acted as seller's agent, was not li-

censed as an attorney and that the memorandum purporting to secure the parties' rights which Mr. Domonkos prepared was not a pre-printed contract form. The Commission noted that Mr. Domonkos has offered to refund to the buyer the commission Mr. Domonkos received.

NATHALIE HENRIETTE DUEZ (Wrightsville Beach) – By Consent,

Licensees Must Report Convictions

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

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

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

the Commission suspended the broker license of Ms. Duez for a period of six months effective May 9, 2012. The Commission found that Ms. Duez was convicted on June 29, 2011 for Impaired Driving, level 2, and placed on probation for 12 months, and on November 21, 2011 was convicted for Resisting a Public Officer and Intoxicated and Disruptive and was placed on unsupervised probation for 12 months and ordered to pay a fine and costs of court. The Commission noted that both convictions were timely reported to the Commission as required by Commission rule. The Commission also found that the Commission had suspended the broker license of Ms. Duez for three months in April 2009 and placed Ms. Duez on probation for 21 months for her conviction for Impaired Driving Level 2 and for failure to respond to Letters of Inquiry.

RICHARD D. EVANS (Fayetteville) – The Commission accepted the permanent voluntary surrender of the broker license of Mr. Evans effective August 22, 2012. The Commission dismissed without prejudice allegations that the Mr. Evans violated provisions of the Real Estate License Law and Commission rules. Mr. Evans neither admitted nor denied misconduct.

BRIAN D. FULTON (Jacksonville) – Following a hearing, the Commission revoked the broker license of Mr. Fulton effective August 30, 2012. The Commission found that Mr. Fulton, acting as qualifying broker and broker-in-charge of a licensed real estate brokerage firm and as property manager of a condominium development, failed to respond to multiple Letters of Inquiry from the Commission during 2011 and 2012 on two separate matters. The Commission also found that Mr. Fulton failed to account for or remit monies coming into his possession which belonged to others.

HASTY REALTY, INC. (Laurinburg) – By Consent, the Commission reprimanded Hasty Realty effective August 1, 2012. The Commission found that Hasty Realty managed property for a landlord-client and received excess rent payments from a tenant, but failed to credit the tenant with the overpayments and filed an inaccurate 1099 for its landlord-client. The Commission also found that Hasty Realty failed to maintain trust accounts and agency agreements in accordance with Commission rules, failed to perform reconciliations for over three years, and had an \$8,000 overage in the sales trust account. The Commission noted that Hasty Realty revised the inaccurate 1099 and repaid the landlord-client for the overpayments the client had to refund to the tenant.

MICHAEL ELMER HORTON (Hendersonville) – The Commission accepted the permanent voluntary surrender of the broker license of Mr. Horton effective August 22, 2012. The Commission dismissed without prejudice allegations
(Continued)

tions that Mr. Horton violated provisions of the Real Estate License Law and Commission rules. Mr. Horton neither admitted nor denied misconduct.

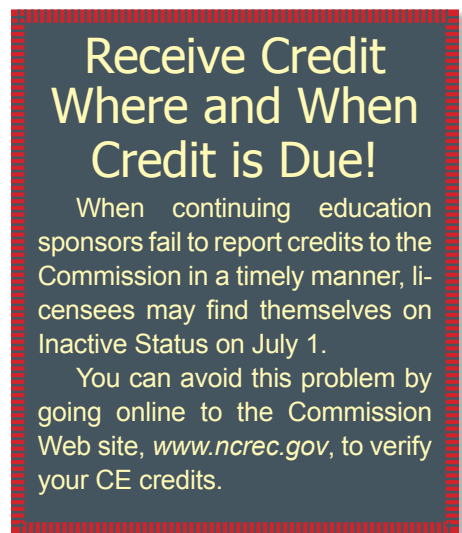
RODNEY HYSON, SR. (Bald Head Island) - By Consent, the Commission suspended the broker license of Mr. Hyson for a period of one year effective September 1, 2012. The Commission then stayed the suspension for a probationary period of two years ending August 31, 2014. The Commission found that between 2005 and 2008 Mr. Hyson participated between in a series of condominium sales transactions; that an unlicensed entity may have been paid for producing investor buyers of the condominium units; and that adequate disclosures may not have been made to the investor buyers concerning the value of the condominium units they were purchasing. The Commission noted that prior to and during the course of these transactions, Mr. Hyson was represented by counsel and acting on the advice of counsel.

RODNEY JAMES HYSON, JR. (Bald Head Island) - By Consent, the Commission suspended the broker license of Mr. Hyson for a period of one year effective September 1, 2012. The Commission then stayed the suspension for a probationary period of two years ending August 31, 2014. The Commission found that between 2005 and 2008 Mr. Hyson participated between in a series of condominium sales transactions; that an unlicensed entity may have been paid for producing investor buyers of the condominium units; and that adequate disclosures may not have been made to the investor buyers concerning the value of the condominium units they were purchasing. The Commission noted that prior to and during the course of these transactions, Mr. Hyson was represented by counsel and acting on the advice of counsel.

INNSPIRED MANAGEMENT, INC. (Hendersonville) - The Commission accepted the permanent voluntary surrender of the firm license of Inn-

spired Management effective August 22, 2012. The Commission dismissed without prejudice allegations that Innspired Management violated provisions of the Real Estate License Law and Commission rules. Innspired Management neither admitted nor denied misconduct.

MARLIN MAURICE JACKSON (Raleigh) - By Consent, the Commission suspended the broker license of Mr.



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Jackson for a period of three months effective May 15, 2012. The Commission found that Mr. Jackson, a property manager for apartments, submitted a Criminal Conviction Disciplinary Action Reporting Form indicating that he had been convicted on January 14, 2011, of Possession of Marijuana stemming from an incident that occurred on November 18, 2010, and was given a suspended sentence of 45 days, placed on probation for 18 months, and ordered to pay a fine and to complete 100 hours of community service.

VAN M. JOHNSON (Charlotte) - By Consent, the Commission suspended the broker license of Mr. Johnson for a period of two years effective August 1, 2012. The Commission then stayed the suspension for a probationary period of three years ending August 1, 2015. The Commission found that Mr. Johnson, while his license was inactive, formed a company which has never been licensed by the Commission as a real estate broker and which operated as a tenant lo-

cator service to procure tenants, prepare leases, and collect security deposits for his personal properties and for other property owners. The Commission also found that Mr. Johnson failed to execute written agency agreements with landlord-clients and that the unlicensed firm retained security deposits as its compensation and required its landlord clients to refund tenant security deposits from their own personal funds. The Commission further found that Mr. Johnson failed to hold tenant security deposits in a trust or escrow account and that Mr. Johnson's and the unlicensed firm's lease contracts required tenants to pay fees in violation of North Carolina General Statutes. Finally, the Commission found that Mr. Johnson failed to report a 2010 conviction for injury to real property and resisting a public officer.

BRUCE M. MANEY (Sneads Ferry) - The Commission accepted the voluntary surrender of the broker license of Mr. Maney for a period of one year effective August 8, 2012. The Commission dismissed without prejudice allegations that Mr. Maney violated provisions of the Real Estate License Law and Commission rules. Mr. Maney neither admitted nor denied misconduct.

SOPHIA ELIZABETH MATTHEWS (Huntersville) - The Commission accepted the voluntary surrender of the broker license of Ms. Matthews for a period of three years effective August 8, 2012. The Commission dismissed without prejudice allegations that Ms. Matthews violated provisions of the Real Estate License Law and Commission rules. Ms. Matthews neither admitted nor denied misconduct.

JAMES R. MCCOOK, JR. (Laurinburg) - By Consent, the Commission reprimanded Mr. McCook effective August 1, 2012. The Commission found that Mr. McCook, as broker-in-charge of a real estate brokerage firm, managed property for a landlord-client and received excess rent payments from a tenant but failed to credit the tenant
(Continued)

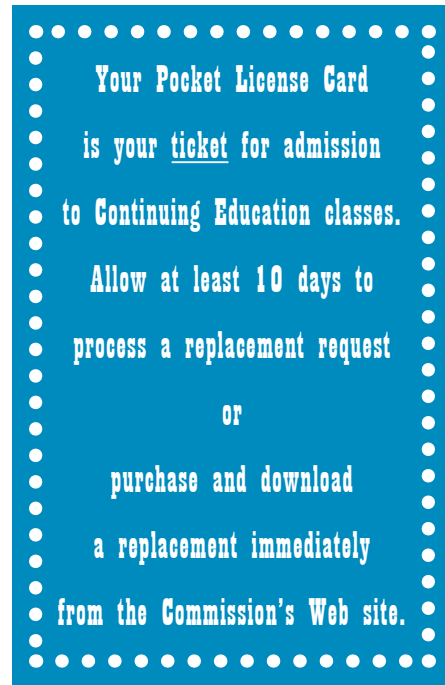
with the overpayments and filed an inaccurate 1099 for his landlord-client. The Commission also found that Mr. McCook failed to maintain trust accounts and agency agreements in accordance with Commission rules, failed to perform reconciliations for over three years, and had an \$8,000 overage in the sales trust account. The Commission noted that Mr. McCook revised the inaccurate 1099 and repaid the landlord-client for the overpayments the client had to refund to the tenant.

MARK G. PARKER (Raleigh) – By Consent, the Commission suspended the broker license of Mr. Parker for a period of six months effective August 1, 2012. The Commission then stayed the suspension on certain conditions. The Commission found that Mr. Parker, acting as broker-in-charge of a real estate brokerage firm, failed to adequately supervise an associated broker who performed Broker Price Opinions (BPOs) for various lending institutions and their agents, but did not confirm with the BPO clients that there was a reasonable opportunity to list the properties on which the BPOs were performed and did not obtain listing agreements to sell any of the properties examined.

PLATINUM PROPERTIES USA LLC (Leland) – By Consent, the Commission suspended the firm license of Platinum Properties USA for a period of one year effective August 1, 2012. The Commission then stayed the suspension for a period of one year ending August 1, 2013. The Commission found that Platinum Properties, acting as listing agent for a real estate development company and with a qualifying broker who was a member-manager of the development company, listed a subdivision and advertised to buyers that it would have full amenities, private streets maintained by a Homeowners Association, and that septic permits would be available; over five years after the first closings, the amenities have not been completed although the developer continues to attempt to complete the project. The Commission also found that Platinum Properties

failed to indicate on a *Working With Real Estate Agents* brochure that it represented only the seller, failed to use an appropriate contract form for the type of transaction, and failed to issue a subdivision street disclosure statement to buyers.

DAWN CRAIG POTTER (Sneads Ferry) – By Consent, the Commission permanently revoked the broker license



of Ms. Potter effective May 9, 2012. The Commission found that Ms. Potter ran a real estate brokerage firm after its broker-in-charge stopped supervising the firm, but did not remove himself as broker-in-charge and never notified the Commission of his retirement. The Commission further found that Ms. Potter stopped keeping trust account records at the end of 2010, but continued to manage properties until October 2011.

DEWEY W. PROPST (Southport) – By Consent, the Commission revoked the broker license of Mr. Propst effective July 12, 2012. The Commission found that Mr. Propst pled guilty to one count of fraudulently burning a dwelling, was sentenced to 6-8 months in prison, which was stayed for a supervised probationary period of 18 months, and ordered to pay \$1,049.50 in court costs, fines and legal fees.

R. D. EVANS REALTY, INC. (Fayetteville) - The Commission accepted the permanent voluntary surrender of the firm license of R. D. Evans Realty effective August 22, 2012. The Commission dismissed without prejudice allegations that R. D. Evans Realty violated provisions of the Real Estate License Law and Commission rules. R. D. Evans Realty neither admitted nor denied misconduct.

BRENDA H. SMITH (Graham) – By Consent, the Commission suspended the broker license of Ms. Smith for a period of one year effective June 1, 2012. The Commission then stayed the suspension for a probationary period of two years ending June 1, 2014. The Commission found that Ms. Smith refinanced her home in 2007 and at the insistence of the loan officer and under some duress from him, paid the loan officer a fee outside of closing that was not disclosed on the HUD-1 closing statement. The Commission noted that Ms. Smith has not defaulted on her loan.

SOUTHEASTERN CAROLINA REALTY, INC. (Jacksonville) - After a hearing, the Commission revoked the firm license of Southeastern Carolina Realty effective August 30, 2012. The Commission found that Southeastern Carolina Realty, acting as property manager of a condominium development, failed to respond to multiple Letters of Inquiry from the Commission during 2011 and 2012 on two separate matters. The Commission also found that Southeastern Carolina Realty failed to account for or remit monies coming into its possession which belonged to others.

SUN REALTY OF NAGS HEAD d/b/a THE OUTER BANKS SCHOOL OF REAL ESTATE (Harbinger) – By Consent, the Commission suspended the school license of the Outer Banks School of Real Estate for a period of six months effective October 1, 2013. The Commission then stayed the suspension for a probationary period through and including October 1, 2013. The Commission found
(Continued)

that Outer Banks School of Real Estate conducted a prelicensing course in an unapproved facility with knowledge that the facility had not been approved because it did not meet Commission requirements. The Commission also found that Outer Banks School of Real Estate registered students and accepted student fees but failed to obtain enrollment contracts with the students.

ELIZABETH E. WHITCRAFT (Harbinger) – By Consent, the Commission suspended the approval of Ms. Whitcraft to teach prelicensing, postlicensing, *Update* and *Broker-in-Charge Annual Review* courses for a period of one year effective September 5, 2012. The Commission found that Ms. Whitcraft, as director of a licensed real estate school, during 2012 conducted a prelicensing class in an unapproved facility which she knew had not been approved because it did not meet Commission requirements. The Commission also found that Ms. Whitcraft registered students and accepted student fees but failed to obtain enrollment contracts with her students. The Commission noted that Ms. Whitcraft is not currently employed with the school.

CHRISTINE R. WILLARD (Reidsville) – By Consent, the Commission suspended the broker license of Ms. Willard for a period of two years effective May 15, 2012. The Commission then stayed the suspension for a probationary period of two years effective May 15, 2012. The Commission found that Ms. Willard served as listing agent for a property with an original listing price of \$89,000, had the owner sign a short sale addendum, and advised the seller to stop paying the mortgage, and had the seller sign documentation authorizing a third party negotiator who is not licensed as an attorney or by the Commission and whose firm had been administratively dissolved in 2007 to act on the seller's behalf with lienholders. The Commission further found that Ms. Willard prepared a comparative market analysis ("CMA") for the seller as potential client showing a value range of \$84,000 to

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\$104,000, but produced a second CMA and subsequent broker priced opinion for the seller's lienholders showing a value range of \$38,000 to \$58,000 although other properties in the neighborhood were listed in the range of \$90,000 to \$109,000. Finally, the Commission found that Ms. Willard falsely represented to the lienholders that the property was owner-occupied.

WILLIFORD & ASSOCIATES, INC. (Garner) – By Consent, the Commission reprimanded Williford & Associates effective June 30, 2012. The Commission found that Williford & Associates served as listing agent for a house owned by its qualifying broker's building company and failed to disclose to the prospective buyer the existence of moisture-related damage to wooden structural components in the crawlspace. The Commission also found that when the buyer discovered the damage, Williford & Associates refused to refund the due diligence of \$500 but offered to reduce the purchase price, and when Williford & Associates subsequently offered to resolve this matter with the buyers by re-

funding to them the due diligence fee of \$500, the buyers rejected the offer.

MARGARET E. WILLIFORD (Garner) – By Consent, the Commission reprimanded Ms. Williford effective June 30, 2012. The Commission found that Ms. Williford, acting as qualifying broker and broker-in-charge of a licensed real estate brokerage firm, contracted to sell a house owned by her building company and listed with her brokerage firm and failed to disclose to the prospective buyer the existence of moisture-related damage to wooden structural components in the crawlspace. The Commission also found that when the buyer discovered the damage, Ms. Williford refused to refund the due diligence fee of \$500 but offered to reduce the purchase price; and that Ms. Williford subsequently offered to resolve this matter with the buyers by refunding to them the due diligence fee of \$500, but the buyers rejected the offer.