



# REAL ESTATE BULLETIN

Volume 45 • October 2014 • Number 2

## Administration Director Mary Frances Whitley To Retire

Mary Frances “Fran” Whitley, Director of Administration for the Real Estate Commission, will retire January 1, 2015 after 36 years of service.



**Whitley**

Whitley joined the staff of the Commission (then known as the Real Estate Licensing Board) in 1978 as an administrator with financial oversight responsibilities. She soon took on the responsibilities of Financial Officer, and in 1987, was named the Director of Administration.

Whitley received her Bachelor of Science degree from Atlantic Christian College. In 2007, she received the Old  
(See *Whitley*, page 6)

## Judy F. Greenhill Appointed To Commission



**Greenhill**

Judy F. Greenhill of Hickory has been appointed to the North Carolina Real Estate Commission by Governor Pat McCrory, it was announced by Miriam J. Baer, Executive Director.

Greenhill succeeds S. R. “Buddy” Rudd, Jr., of Oak Island.

The broker/owner of Classic Properties of the Catawba Valley in Hickory, Greenhill has been a licensed broker since 1983.

She is a past director of the North  
(See *Greenhill*, page 3)

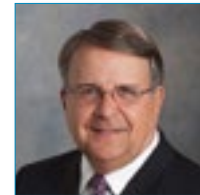
## Thomas R. Lawing, Jr., Elected Chairman; Cindy Chandler, Vice Chair

Thomas R. Lawing, Jr., of Charlotte, has been elected Chairman and Cindy S. Chandler of Charlotte, Vice Chairman, of the North Carolina Real Estate Commission effective August 1, 2014, it was announced by Miriam J. Baer, Executive Director.

Lawing is a second-generation Certified Property Manager and President of T. R. Lawing Realty, a family-owned residential property management company serving the Charlotte region since 1957.

He is a past president and REALTOR® of the Year of both the North Carolina Association of REALTORS® (NCAR) and the Charlotte Regional REALTORS® Association (CRRA) and a past director of the National Association of REALTORS® (NAR).

Active in civic affairs, Lawing is a past chair of the Church Council at Hawthorne Lane United Methodist Church, a past president of the Charlotte West Rotary Club, a Co-Captain



**Lawing**



**Chandler**

with the Wells Fargo Championship & Chiquita Classic and an Eagle Scout.

Chandler, owner of The Chandler Group, a commercial real estate consulting and training firm, has been in real estate for more than 30 years in the areas of investment real estate, syndication, strategic planning, management, marketing and education.

(See *Commission*, page 3)

## Broker-in-Charge CE Requires BIC Update Course

The Commission changed the broker-in-charge rule effective July 1, 2014, and, in doing so, eliminated the *Broker-in-Charge Annual Review* (BICAR) course, and created two versions of the *Update* course: the *Broker-in-Charge Update* course (BICUP) and the *General Update* course.

Rule 58A.0110(k) now requires brokers-in-charge and those brokers wishing to maintain BIC eligibility, to complete the *BICUP* course beginning the first full license year after the license year in which the BIC declares her/himself as BIC. The four-hour *BICUP* will satisfy the mandatory CE portion of the BIC’s CE requirement for the license

year, and the elimination of the required BICAR elective will allow brokers-in-charge to *select an approved elective of their choice* to satisfy the remaining 4 hours.

Those brokers who are NOT BICs or are not BIC-eligible will take the four-hour *General Update* course as their mandatory CE, and will also select an approved elective of their choice to satisfy the remaining four hours. Licensees who are neither BICs nor BIC-eligible will not receive any CE credit if they mistakenly take the *BICUP* course instead of the *General Update* course.

If a BIC or BIC-eligible licensee  
(See *BICUP*, page 8)

Brokers-in-Charge; BIC-Eligible Brokers	Broker-in-Charge Update (BICUP) + Elective
Non-Brokers-in-Charge	General Update + Elective

## REAL ESTATE BULLETIN

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

### NORTH CAROLINA REAL ESTATE COMMISSION

1313 Navaho Drive  
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[www.ncrec.gov](http://www.ncrec.gov)

Pat McCrory, Governor

### COMMISSION MEMBERS

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Judy F. Greenhill	Hickory
Everett "Vic" Knight	Raleigh
Richard L. Sullivan	Raleigh
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Charlene D. Moody	Assistant Director, Legal Counsel
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Emmet R. Wood	Chief Auditor
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Glenn M. Wylie	Consumer Protection Officer
Peter B. Myers	Information Officer
Elizabeth W. Penney	Information Officer

### Editor-In-Chief

Miriam J. Baer

### Editor

Robert L. Forshaw



## People

**Frederick A. Moreno** has been named as Deputy Legal Counsel in the Regulatory Affairs Division. He is a graduate of East Carolina University with a BS in Business Administration and the North Carolina Central University School of Law. Prior to joining the Commission, he was an Assistant District Attorney for Durham County.



## Commission Receives ARELLO® Awards

The Real Estate Commission has received two awards for Education and Communications from ARELLO® (Association of Real Estate License Law Officials).

A new course and publication, *Issues and Answers in North Carolina Real Estate Practice*, received the Education award. The course reviews selected issues which often result in violations of the Real Estate Law and Commission rules.

The re-designed Commission Web site received the ARELLO® Communication award.

## 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](http://www.ncrec.gov). Please allow at least four weeks prior to your group's meeting.

## Appearances

**Miriam J. Baer**, Executive Director, spoke to the general membership of the North Carolina Association of REALTORS® at its annual meeting and to the Cary office of Fonville Morisey Realty.

**Janet B. Thoren**, Legal Counsel, spoke to the general membership of the North Carolina Association of REALTORS® at its annual meeting and to the Hendersonville Board of REALTORS® in Hendersonville.

**Charlene D. Moody**, Chief Deputy Legal Counsel, spoke to the Wilkes County Association of REALTORS®.

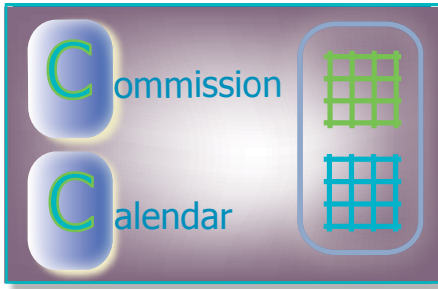
**Eric A. Mine**, Associate Legal Counsel II, spoke to the Harnett County NC Fair Housing Training and Seminar and to the USDA Rural Development Area II All-Hands Staff Meeting in Statesville.

**Stephen L. Fussell**, Senior Consumer Protection Officer, hosted a North Carolina Association of REALTORS® webinar on the topic of "Ten Top Complaints".

**Jean Wolinski-Hobbs**, Consumer Protection Officer, spoke to Barbara Caravan Realty and Associates in Jacksonville and to L&F/Fonville Morisey Real Estate in Raleigh.

**Glen M. Wylie**, Consumer Protection Officer, spoke to the Raleigh Regional Association of REALTORS®.

**Peter B. Myers**, Information Officer, spoke to Fonville Morisey & Barefoot in Raleigh, the NC 2nd Annual Short Sale Conference of Advance Mortgage Education in Raleigh, to the Winston-Salem Regional Association of REALTORS®, and to the Yancey-Mitchell Board of REALTORS®.



November 12  
 December 10  
 January 14  
 February 11

*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**

*(Continued from page 1)*

She is a 2011 recipient of the Billie J. Mercer Excellence in Education Award of the Real Estate Commission and is the author of *The Insider's Guide to Commercial Real Estate*, published by Dearborn/Kaplan Publishing.

A past regional vice president of the National Association of REALTORS®, Chandler was also Chair of the Mecklenburg County Zoning Board of Adjustment and Charlotte Chapter President of Commercial Real Estate Women (CREW).

Chandler is a past president of the North Carolina Association of REALTORS® and the North Carolina Real Estate Educators Association and a past Vice Chair of the Charlotte-Mecklenburg Planning Commission.

**Greenhill**

*(Continued from page 1)*

Carolina Association of REALTORS®, past president, vice president and director of the Catawba Valley Association of REALTORS®, past president and director of the Multiple Listing Service of Catawba Valley, and past director of the North Carolina Real Estate Educational Foundation.

Greenhill received the North Carolina Association of REALTORS® Lifetime Achievement Award in 2008 and the Regional Service Award in 1997. She received the Catawba Valley Association of REALTORS' Lifetime Service Award in 2014 and was named the Association's REALTOR® of the Year in 1996.

**Broker-in-Charge and  
 Basic Trust Account Procedures Courses**  
 Register online at the Commission Web site, [www.ncrec.gov](http://www.ncrec.gov),  
 under Education/Course Registration.

**Broker-in-Charge Course**  
 (Two days) Day 1: 1 - 5 p.m.; Day 2: 8:30 a.m. - 5:30 p.m.

Asheville	Holiday Inn East/Blue Ridge Parkway	November 18-19 February 17-18
Concord	Hilton Garden Inn, Concord	December 3-4 January 26-27 March 11-12
Greensboro	Deep River Event Center	October 28-29 February 11-12
Raleigh	McKimmon Center	November 6-7 December 15-16 January 21-22 March 4-5
Wilmington	Best Western Coastline Center	October 22-23 February 23-24

**Basic Trust Account Procedures  
 (Commission Offices, Raleigh)**  
 (All classes 1 - 5 p.m.)

Raleigh	Commission Offices 1313 Navaho Drive, Raleigh	October 22 November 18 December 16 January 26 February 23
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See Commission Web site to confirm course dates.

**Your Email Address:  
 Public or Private?**

You now have the option to designate your email address(es) 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 and update your record.



# Fannie Mae Ramps Up Short Sale Portal

© ARELLO® (Association of Real Estate License Law Officials)  
Reprinted courtesy of ARELLO® Boundaries magazine.

Government-sponsored enterprise (GSE) Fannie Mae recently launched enhancements to its online tool that helps real estate professionals to navigate and close notoriously slow, cumbersome and complicated short sale transactions.

Along with its counterpart GSE Freddie Mac, Fannie Mae supports secondary U.S. mortgage markets by acquiring and securitizing mortgage loans. The GSEs own or guarantee about half of all U.S. mortgages and currently back the vast majority of new mortgage loans.

Short sales, of course, involve homes that are sold for less than the amount owed on the existing mortgage. For loans owned or guaranteed by Fannie Mae, the GSE must approve the transaction since it will incur any resulting loss.

Fannie Mae's [www.homepathforshortsales.com](http://www.homepathforshortsales.com) portal is a resource for listing agents who are working with clients considering or pursuing a short sale on a property whose first lien is held by the GSE. Over the last few years, the system has been upgraded several times. A recent enhancement allows real estate professionals to "escalate" short sale problems such as valuation dis-

The screenshot shows the HomePath Short Sales Portal interface. At the top, there's a navigation bar with 'HomePath Short Sales' and 'Login Register' buttons. Below that, a 'Short Sale Home' section features a house image and a 'Quick Links' sidebar with links like 'Homeowner Submitter Form', 'Loan Contract Tool', 'Mortgage Information', 'Short Sales 101', and 'FAQs'. The main content area is titled 'What is the Process for a Short Sale?' and displays a five-step process flow: 1. Determine if Fannie Mae Owns your Client's Mortgage, 2. Understand Homeowner's Eligibility, 3. Request List Price Guidance, 4. Submit an Accepted Contract, and 5. Review and Prepare to Close. Each step has a 'Learn More' button. Below the process flow is a 'HomePath Short Sale Portal' section with a 'Login Register' button and a brief description of the portal's purpose and Fannie Mae's commitment to helping users.

putes, servicer delays and uncooperative subordinate lien holders. Upon submission of an "inquiry", a Fannie Mae representative responds and gets directly involved in an attempt to resolve the problem. With the latest round of system upgrades, the portal now allows listing agents to determine if Fannie Mae owns the mortgage, understand Fannie Mae homeowner short sale eligibility requirements, request list price guidance, submit an accepted contract offer and take steps to close

the transaction. One of the primary new features will soon allow listing brokers to negotiate and receive first lien approval on a short sale directly from Fannie Mae, which allows earlier contact with Fannie Mae representatives and the ability to preempt some of the problems that continue to plague short sale transactions. Fannie Mae says that allowing real estate professionals to directly negotiate short sales is an important step in its continuing efforts to streamline the short sale process. (But, see the article below concerning North Carolina limits on negotiating and counselling "short sales".)

## New Requirements for Fannie Mae Short Sales

By Eric A. Mine, Associate Legal Counsel II

With the recent upgrades to its web portal, [www.homepathforshortsales.com](http://www.homepathforshortsales.com), Fannie Mae now allows real estate professionals to submit problems in short sale transactions directly to a representative. Other features rolling out soon will allow brokers to negotiate and receive first lien approval directly from Fannie Mae. While this may appear to be a welcome change to the process, licensees should bear in mind that in North Carolina negotiat-

ing the settlement of a debt and counseling a seller or buyer on the legal or tax implications that may result from a short sale are both considered the practice of law. Potential clients considering selling property through the short sale process should be directed to consult with a licensed attorney.

Upgrades to the Fannie Mae web portal aren't the only changes that will affect brokers in North Carolina. With the release of Servicing Guide An-

nouncement SVC-2014-09, the mortgage giant announced changes to some short sale servicing requirements which took effect on August 1, 2014.

For all new short sales in which Fannie Mae is the lender, borrowers will be prohibited from listing their own property. Practically, this change means that all short sale properties now *must* be listed with a licensed real estate professional who is not the borrower before

*Continued*

Fannie Mae will approve an offer.

Fannie Mae has also announced a change to its Short Sale Affidavit (Fannie Mae Form 191). Since 2012 Fannie Mae has required that all parties involved in a short sale, including real estate brokers, sign that affidavit at the time of closing to confirm that the transaction was conducted at arm's-length. The affidavit has now been updated to include an attestation from the listing broker affirming that all purchase offers have been presented to the seller/borrower and that no offers have been held or concealed. While the attestation is new, the requirement to deliver all offers to a seller is not.

Commission Rule 58A.0106(a) requires that all agency agreements, contracts, offers, leases, or options affecting real property be delivered immediately, but in no event more than five (5) days after execution. Licensees should also keep in mind that in a short sale transaction, once an offer has been submitted to the lender, *all* subsequent offers must also be submitted to the lender, even after an offer has been accepted by the seller. Fannie Mae, as lienholder, is an interested third party and must approve the short sale; therefore Fannie Mae is owed a duty of honesty and fair dealing in the transaction.

The changes implemented by Fannie Mae are designed to stream-line the short sale process. But they do not make the pit-falls and problems inherent in short sale transactions any less significant. Licensees should be well aware and well versed in the risks posed to their clients, whether buyer or seller, before engaging in a short sale transaction.



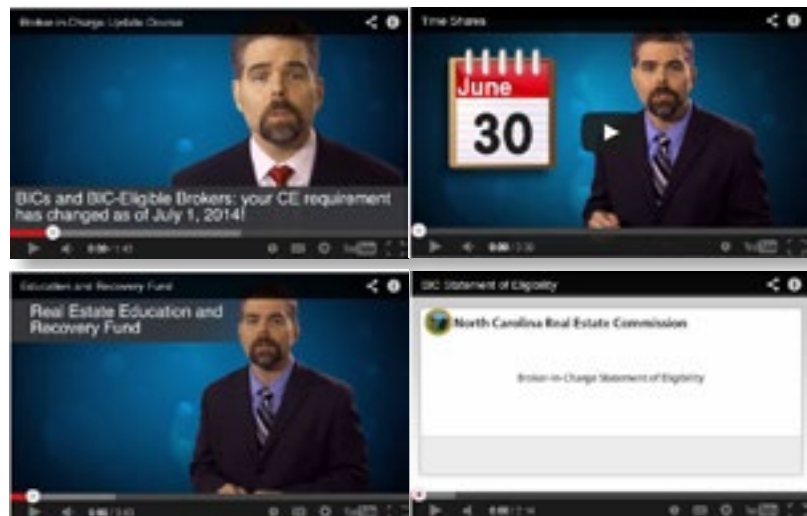
## Brokers Earn Scholarships For Academic Achievement

Scholarships for academic excellence were presented by then Commission Chairman Everett "Vic" Knight, left, and then Vice Chairman Thomas R. Lawing, Jr. to three brokers at the June Commission meeting.

The recipients of the Commission scholarships, which honor former Commission Executive Directors, are (l. to r.) Thao-Van "Amy" Thai, Cary, *Joe Schweidler Memorial Scholarship*; Ray Gasperson, Columbus, *Blanton Little Memorial Scholarship*; and Deborah Kempter, Charlotte, *Phillip T. Fisher Scholarship*.

Winners received reimbursement of course tuition fees. Thai and Gasperson were selected by the North Carolina Real Estate Educational Foundation (NCREEF) for courses in the REALTORS® Institute, and Kempter was selected by the North Carolina chapter of the National Association of REALTORS® Council of Real Estate Specialists (CRS).

## Latest additions to the Commission's Video Library





Schools

## Outstanding Examination Performance Records

July 1, 2013 - June 30, 2014

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/pdf/schools/LicExamPerfRep.pdf>.

The overall examination performance (passing rate) for all first-time candidates taking the comprehensive real estate examination for the license year July 1, 2013 – June 30, 2014 was 61%. The Commission congratulates each of the following schools for achieving an outstanding examination performance record of 75% or higher during the most recent annual reporting period. 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

■ Brunswick Community College, *Leland*; ■ Cape Fear Community College, *Wilmington*; ■ Central Carolina Community College, *Sanford*; ■ Dream Weaver School of Real Estate, *Kannapolis*; ■ Laney School of Real Estate, *Wilmington*; ■ Northeast NC School of Real Estate, *Kitty Hawk*; ■ Onslow Real Estate Institute, *Jacksonville*; ■ Pitt Community College, *Winterville*; ■ Wayne Community College, *Goldsboro*; ■ Wilkes Community College, *Wilkesboro*.

## Whitley

(Continued from page 1)

North State Award for dedication and service beyond expectation and excellence to the State of North Carolina.

As Director of Administration, Whitley has managed the Commission's finances, personnel, information technology, publications, and information services.

One of Whitley's responsibilities has been the annual renewal of real estate licenses. She has seen the number of license renewals grow from fewer than 25,000 to about 100,000 in recent years.

Whitley also oversaw the development of the Commission's first Web site. Most recently, she played a key role in the creation of the design and features of the Commission's new award-winning Web site, including easier navigation, improved search functions, and display on mobile devices.

Whitley has always managed the Commission's data and recalls when licensee records were housed in file drawers within the Commission's offices. Since that time, she has overseen the maintenance of Commission records from paper files to microfilm to microfiche to digital storage to cloud storage. Utilizing changing technology, she has kept the Commission's record keeping systems functional and efficient.

Whitley has been a dedicated member of the Association of Real Estate License Law Officials (ARELLO®) and in 2006 was elected its President. She has twice received an ARELLO® Presidential Award for her outstanding leadership and service.

Whitley is a member of the Board of Directors for The American Red Cross of Eastern North Carolina. She is a member of the Board of Advisors for Project Enlightenment, an early childhood education and intervention program of the Wake County School System, which focuses on building children's strengths in order to help them succeed in school and life.

The Commission congratulates Mrs. Whitley on her long and distinguished career, with many thanks for her service to licensees, the Commission, and to citizens of this State.



### Allan R. Dameron Legal Internship Award

James W. Nelson, a second-year law student at the Charlotte School of Law, is the recipient of the 2014 *Allan R. Dameron Legal Internship* award. Nelson received the award from then Commission Chairman Everett "Vic" Knight, left, and then Vice Chairman Thomas R. Lawing, Jr., in June. The award is given annually in memory of and tribute to former Commission Chairman Dameron for his dedicated service in protecting the interests of consumers.

In a tight rental market, competition between multiple applicants for a single vacancy is becoming the norm rather than the exception. While this is good for the landlord, it places additional challenges on the property manager to properly screen prospective tenants with the goal of selecting the applicant who best meets the owner's re-

quired. While some property managers notify all qualified candidates and award the rental to the first applicant to submit a signed lease agreement and security deposit check, such an approach invites claims of discrimination and may even result in a fair housing complaint.

been submitted, each applicant should be informed of the existence of competing applications and the manner in which the applicants will be notified as to whether or not they were selected. The applicant should also be informed regarding the types of information that will be accessed during the screening process, such as credit reports, criminal

history, rental history, employment verification and history, and personal references. The property manager should also explain how the information obtained during the background check will be used in the selection process, and the type of information that might result in a rejection of the application, such as a low credit score or prior eviction. The tenant will have to provide written consent for the property manager to obtain some of the required information.

When the application has been submitted, the property manager's next task is performing the background check to verify the information provided by the applicant. A typical background check might include obtaining a credit report, criminal history, rental history, and employment verification.

After the background check has been completed, the property manager is ready to make a selection in accordance with the tenant qualifications agreed upon with the landlord. The selection process should be based on an objective and documented system to avoid possible fair housing issues.

Once the applications have been evaluated, the best qualified applicant should be notified of the deadline (e.g., within 72 hours of acceptance) for submitting the signed lease agreement, security deposit, and applicable pet fee. If the applicant fails to respond within the prescribed time limit, the next most qualified applicant would then be no-

ified. While some property managers notify all qualified candidates and award the rental to the first applicant to submit a signed lease agreement and security deposit check, such an approach invites claims of discrimination and may even result in a fair housing complaint.

The unsuccessful candidates should also be notified. If the applicants are otherwise qualified, the property manager can suggest other available rental properties for them to consider. If an applicant was rejected, the property manager may notify him or her of the basis of the rejection, such as poor credit score, adverse rental history, or unacceptable criminal history; however, such notification is not required. If the rejection was based on information obtained from a credit agency, the property manager will need to provide the applicant with information regarding the credit agency that provided the information in accordance with Fair Credit Reporting Act requirements.

Thorough tenant screening will benefit both the landlord and property manager. The selection of a reliable tenant who maintains the property will provide the landlord with a steady source of income and will reduce the time and energy expended by the property manager in servicing the account.

## Screening Tenants in a Tight Rental Market

*By Thomas R. Lawing, Jr., Commission Chairperson,  
and Curtis E. Aldendifer, Associate Legal Counsel*

quirements. A thorough tenant screening increases the chances of procuring a tenant who will maintain the landlord's property and pay rent on time.

In order to determine the minimum qualifications for a prospective tenant, the property manager must first determine the owner's needs and expectations. Typical issues to address include whether pets will be allowed, whether smoking will be permitted, and the number of permitted occupants. The property manager and landlord should also review the application form to ensure that it covers the essential questions. These and related questions should be resolved at the time the property management agreement is formed.

While many property managers may attempt to pre-screen tenants to eliminate unqualified candidates early in the process, it is important that each interested person be provided with an application regardless of their qualifications. Each applicant should receive an identical application form and be asked the same questions. Picking and choosing who receives an application form or providing different application forms to different applicants may violate state and federal fair housing laws.

The property manager should take care to inform each applicant in writing regarding non-refundable application and "hold/reservation" fees, and what will be required for the formation of a binding rental agreement. In a situation where multiple applications have

### Broker Numbers

As of October 1, 2014, there are 90,335 brokers licensed by the Real Estate Commission in the following categories:

Active Brokers 56,412

(Active Provisional Brokers 4,495)

Inactive Brokers 23,387

(Inactive Provisional Brokers 3,862)

Firms 10,536

Brokers-in-Charge 17,534

Effective January 1, 2015, sellers must provide a new Mineral and Oil and Gas Mandatory Disclosure Statement (MOGMDS) to buyers prior to making an offer.

The form for the Statement is being developed by the Real Estate Commission and will be available on the Commission Web site, [www.ncrec.gov](http://www.ncrec.gov), in December to allow sellers time to complete the disclosure for any properties on the market as of January 1. It will be separate from and in addition to the Residential Property and Owners' Association Statement (RPOADS).

The new requirement results from the legislature's amendment of the Residential Property Disclosure Act (North Carolina General Statutes Chapter 47E), which previously required that oil and gas disclosures be included in, not separate from, contracts for the sale of any real property subject to the Act. In

the amended Act, there is no exemption from the MOGMDS for new construction, properties under a lease/purchase agreement, and properties for which the parties have agreed that RPOADS is not

## New Oil and Gas Disclosure Statement Effective January 1

By Charlene D. Moody,  
Assistant Director, Regulatory Affairs

required. (These exemptions still apply to the RPOADS.)

The amendment adds the requirement of the disclosure of the severance of mineral rights to the severance of oil and gas rights. Minerals are not specifically defined, but other North Carolina statutes provide some guidance: under the NC Mining Act of 1974 (NCGS

§74-49(6)), "mineral" is defined as soil, clay, coal, stone, gravel, sand, phosphate, rock, metallic ore, and any other solid material or substance of commercial value found in natural deposits on or in the earth.

Sellers are allowed the option to mark No Representation in the Disclosure Statement as to whether mineral and oil and gas rights were severed from the property by a previous owner. Sellers must mark "yes" or "no" as to their own previous severance of rights or their intended severance prior to transfer of title to the buyer.

The Commission is proceeding with temporary rulemaking to have appropriate rules and the Statement form in place by January 1. Information about the rulemaking process is available on the Commission Web site.

### BICUP

(Continued from page one)

mistakenly takes the *General Update* instead of the *BICUP*, s/he will receive CE credit for the *General Update* course; however, s/he will lose his/her BIC status or eligibility the following July 1. The only way to prevent loss of BIC status/eligibility is to also take the *BICUP* course **and** a 4-hour elective.

(Verify BIC status on the Commission's Web site under "Licensing" from the Navigation Bar and "BIC Only" from the drop-down menu. From here, BICs can obtain an eligibility statement/certificate verification that their BIC status is current.)

## Stephen Fussell Receives Investigator of Year Award

Stephen L. Fussell, Senior Consumer Protection Officer, has received the 2014 Investigator of the Year Award from the Association of Real Estate License Law Officials (ARELLO®), an international organization.



Fussell

Fussell's investigation involved the activities of a real estate broker whose conduct went outside the scope of her employment, without her employer's knowledge. Fussell obtained evidence that the broker offered to assist a disabled tenant, whose rental unit was being demolished as part of a right-of-way taking by NCDOT, in relocating from the property and convinced the tenant to purchase a property that resulted in a windfall profit, not to the broker, but, in secret, to her close friend. The Commission suspended her real estate license as a result.

Distinguishing Fussell from other real estate investigators was his role as

a Consumer Protection Officer (CPO) rather than a field/auditor investigator. Fussell performed his investigation entirely from within the office by letter, telephone, fax, and email, not in person as a field investigator. Most complaints received by the Commission every year are handled by CPO's, who can complete certain types of cases much faster than a field investigator. Fussell's knowledge, expertise, and experience enable him to investigate difficult cases without outside field assistance.

Fussell, who has been with the Commission for 23 years, holds an undergraduate degree from the University of North Carolina at Chapel Hill and a graduate degree from Campbell University. He is a licensed real estate broker and a Certified Fraud Examiner.





Free Publications	Quantity
<u>Questions and Answers on:</u>	
Fair Housing	_____
Tenant Security Deposits	_____
Condos and Townhouses	_____
Residential Subdivisions and Planned Communities	_____
Purchasing Coastal Real Estate in North Carolina	_____
Renting Residential Real Estate	_____
N.C. Military Personnel Residential Lease Termination	_____
Trato Con Agentes de Bienes Raíces (Working With Real Estate Agents)	_____
<u>Preguntas y Respuestas sobre:</u> (Questions and Answers On:)	
Vivienda Justa (Fair Housing)	_____
El Depósito de Seguridad del Inquilino (Tenant Security Deposits)	_____
Alquiler de Inmuebles para Viviendo (Renting Residential Real Estate)	_____
Real Estate Licensing in North Carolina	_____
Residential Property Disclosure Statement (Available online)	_____

### How To Order:

**Online:** [www.ncrec.gov](http://www.ncrec.gov)

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

**Fax:** 1-919-877-4227

**This form for free publications only.**

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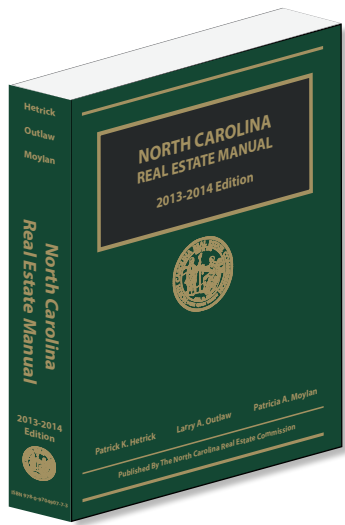
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# NORTH CAROLINA REAL ESTATE MANUAL

The *North Carolina Real Estate Manual*, published by the Real Estate Commission, is a comprehensive reference addressing real estate law and brokerage practice, the North Carolina Real Estate License Law and Commission rules. It serves as the authorized textbook for the real estate broker postlicensing courses and is highly recommended for licensees, attorneys, instructors and anyone else engaged or interested in real estate law and brokerage practice.

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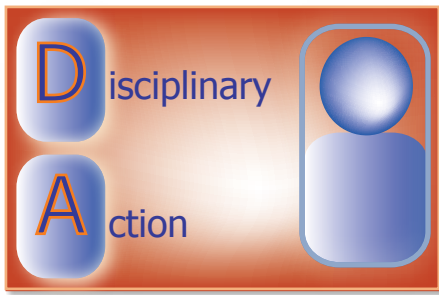
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*Penalties for violations of the Real Estate License Law and Commission rules vary depending upon the particular facts and circumstances present in each case. Due to space limitations in the Bulletin, a complete description of such facts cannot be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

**KIMBERLY E. ABRAHAM** (Bradenton, Florida) – By Consent, the Commission reprimanded Ms. Abraham effective August 13, 2014. The Commission found that Ms. Abraham, a North Carolina and Florida real estate broker, voluntarily placed her Florida license on inactive status in or around August 2008; and that despite her Florida license being inactive, beginning in 2009 and continuing through 2013, Ms. Abraham represented to the Commission that she had a current, active out-of-state license on her annual renewal form in order to maintain the active status of her North Carolina license.

**APS REALTY GROUP INC.** (Winston-Salem) – By Consent, the Commission suspended the firm license of APS Realty Group for a period of one year effective May 1, 2014. The Commission then stayed the suspension for a probationary period ending May 1, 2015. The Commission found that APS Realty Group, a real estate brokerage firm, contracted to manage a property for a landlord-client who lived out of the country; that APS Realty Group entered into a one-year lease agreement with a tenant on behalf of its landlord-client and that, shortly thereafter, APS Realty Group deducted \$572 from rental proceeds to cover the cost of unapproved repairs in violation of the property management agreement with the landlord-client. The Commission also found that APS Realty Group executed a “Release and Termination of Lease Contract” with the tenant in violation of the property management agreement; that APS Realty Group used rental proceeds to pay the attorney who had drafted the tenant release agreement; that APS Realty Group refunded the tenant security deposit to the tenant without its landlord-client’s approval; and that after termination of the lease agreement in June 2013, the tenant

remained in the property until the end of July 2013, without paying rent.

**HAL G. BARNES** (Fort Lauderdale, Florida) – By Consent, the Commission reprimanded Mr. Barnes effective June 18, 2014. The Commission found that Mr. Barnes, who resides in Florida and maintains a license there, was placed on inactive sta-



tus in Florida August 2008 when his affiliation with a real estate firm ended; and that, despite being inactive, beginning in 2009 and continuing through 2013, Mr. Barnes misrepresented to the Commission that he had a current, active out-of-state license on his annual renewal form in order to maintain the active status of his North Carolina license.

**CHESLEY G. BOWENS, JR.** (Raleigh) – By Consent, the Commission suspended the broker license of Mr. Bowens for a period of one year effective May 1, 2014. The Commission then stayed the suspension for a probationary period of one year. The Commission found that Mr. Bowens, acting as broker-in-charge of his sole proprietorship, between 1987 and 2011, was convicted of multiple offenses that he failed to disclose on two separate license applica-

tions, and which he failed to report to the Commission after licensure. The Commission also found that Mr. Bowens failed to report at least four civil judgments at the time of his 1995 application for a real estate salesperson license.

**NICOLE ANN BULLARD** (Fuquay Varina) – The Commission accepted the permanent voluntary surrender of the broker license of Ms. Bullard effective April 16, 2014. The Commission dismissed without prejudice allegations that Ms. Bullard violated provisions of the Real Estate License Law and Commission rules. Ms. Bullard neither admitted nor denied misconduct.

**RONALD G. CAMERON** (Waynesville) – By Consent, the Commission suspended the broker license of Mr. Cameron for a period of three months effective June 1, 2014. The Commission found that Mr. Cameron listed for sale his personal residence and advertised it has having 2,600 square feet including 600 square feet of heated space with garage doors; that the space had been used as a garage, office and spare bedroom; and that Mr. Cameron disputed the action taken against his license

**CYNTHIA R. CARSWELL** (Gastonia) – By Consent, the Commission revoked the broker license of Ms. Carswell effective July 1, 2014. The Commission found that Ms. Carswell agreed to the terms of a Consent Order issued September 8, 2011, which revoked her broker license unless, by July 1, 2012, she made full payment of \$10,000 owed to a consumer as reimbursement of a down payment in a failed transaction, in which case the revocation would be reduced to a one year stayed suspension; that when Ms. Carswell failed to satisfy the terms of the 2011 Consent Order, having made only

*Continued*



## 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.

partial repayment, she was notified that her license was subject to revocation; that Ms. Carswell notified the Commission that her pending bankruptcy action prohibited her from complying with the 2011 Consent Order and that she had renegotiated a payment plan that would satisfy the terms of the 2011 Consent Order, but over a longer period of time.; that Ms. Carswell agreed to the terms of a second Consent Order issued June 14, 2012, which extended her repayment deadline to July 1, 2014, and which Ms. Carswell failed to fulfill.

**CHANTICLEER PROPERTIES LLC** (Pinehurst) – By Consent, the Commission reprimanded Chanticleer Properties effective August 1, 2014. The Commission found that a local attorney created a listing agreement for Chanticleer Properties so that its agents could sell townhouses for a builder; that the listing agreement did not contain the required anti-discrimination provision; and that the listing agreement was signed by both Chanticleer Properties and the builder. Chanticleer Properties neither admitted nor denied, but did not object to the Commission’s findings.

**BRIAN CINC** (Winston-Salem) – By Consent, the Commission suspended the broker license of Mr. Cinc for a period of

one year effective May 1, 2014. The Commission then stayed the suspension for a probationary period ending May 1, 2015. The Commission found that Mr. Cinc, acting as qualifying broker and broker-in-charge of a real estate brokerage firm, contracted to manage a property for a landlord-client who lived out of the country; that Mr. Cinc and his firm entered into a one-year lease agreement with a tenant on behalf of their landlord-client and that, shortly thereafter, Mr. Cinc deducted \$572 from rental proceeds to cover the cost of unapproved repairs in violation of the property management agreement with the landlord-client. The Commission also found that Mr. Cinc executed a “Release and Termination of Lease Contract” with the tenant in violation of the property management agreement; that Mr. Cinc used rental proceeds to pay the attorney who had drafted the tenant release agreement; that Mr. Cinc refunded the tenant security deposit to the tenant without his landlord-client’s approval; and that after termination of the lease agreement in June 2013, the tenant remained in the property until the end of July 2013 without paying rent.

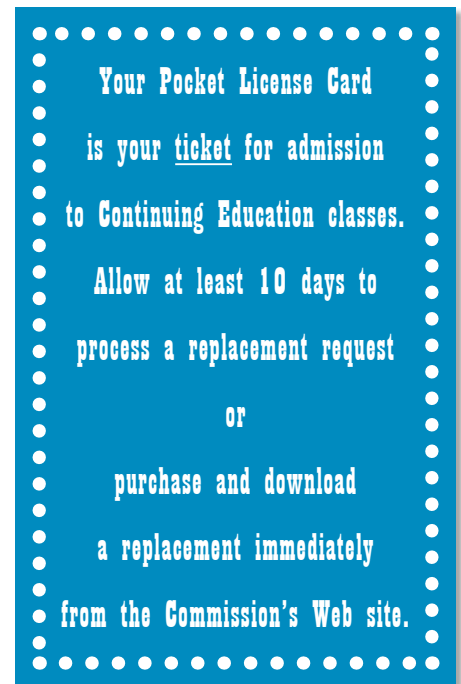
**DAN RYAN BUILDERS-NORTH CAROLINA LLC** (Raleigh) – By Consent, the Commission reprimanded Dan Ryan Builders effective August 1, 2014. The Commission found that a listing agent for a real estate brokerage firm signed a listing agreement with Dan Ryan Builders to market and sell new houses on townhouse lots in a subdivision; that the listing agent provided a purchase contract drafted by Dan Ryan Builders to a buyer and the buyer’s agent for a property in the subdivision; that the contract contained an addendum given to the listing agent by Dan Ryan Builders disclosing that the streets were “public”; that the developer had also placed street signs in the neighborhood which indicated that the streets were “public”; that the listing agent also provided a plat map of the lot location, provided by Dan Ryan Builders, which indicated that the street was “private”; that, after the property closed, it was determined that some of the streets in the subdivision were “public” and some, including the street where the property which had closed was located, were “private”. The Commission noted that Dan Ryan Builders, after dis-

covering the street disclosure discrepancy, issued the proper “private” street disclosure form with its contracts. Dan Ryan Builders neither admitted nor denied, but did not object to the Commission’s findings.

**MICHELLE SIZEMORE DAVIS** (Sanford) – By Consent, the Commission suspended the broker license of Ms. Davis for a period of two years effective March 1, 2014. Three months of the suspension were active with the remainder stayed for a probationary period ending February 28, 2016. The Commission found that Ms. Davis acted as a dual agent in selling her own home and failed to obtain a written Buyer’s Agency agreement or written consent for Dual Agency; that after closing, the buyer discovered evidence of mold and ordered a home inspection; and that testing revealed a significant infestation of black mold which rendered the basement of the home uninhabitable.

**ROBERT M. DAVIS** (Charlotte) – The Commission accepted the permanent voluntary surrender of the broker license of Mr. Davis effective April 16, 2014. The Commission dismissed without prejudice allegations that Mr. Davis violated provisions of the Real Estate License Law and Commission rules. Mr. Davis neither admitted nor denied misconduct.

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**DAVID ROBERT DICECCO** (Charlotte) - The Commission accepted the voluntary surrender of the broker license of Mr. DiCecco for a period of five years effective April 1, 2014. The Commission dismissed without prejudice allegations that Mr. DiCecco violated provisions of the Real Estate License Law and Commission rules. Mr. DiCecco neither admitted nor denied misconduct.

**BENJAMIN EDWARDS FALCON** (Asheville) – By Consent, the Commission suspended the broker license of Mr. Falcon for a period of two years effective July 1, 2014. Six months of the suspension is active with the remainder stayed for a probationary period ending July 1, 2016 on certain conditions. The Commission found that in November 2013 Mr. Falcon pled guilty to felony sale of marijuana; and was sentenced to between 8 and 19 months imprisonment (suspended), 72 hours of community service, and ordered to pay \$1,224.50. The Commission noted that Mr. Falcon self-reported the criminal conviction to the Commission on January 7, 2014.

**FOURTH DEVELOPMENT COMPANY D/B/A AL WILLIAMS PROPERTIES** (Atlantic Beach) - By Consent, the Commission reprimanded Fourth Development Company effective October 1, 2014. The Commission found that Fourth Development Company, a real estate brokerage firm, listed a property, which went under contract for purchase as a short sale; that the buyer's agent requested the rental schedule for the unit from the firm managing the property and requested that the advanced rents be given to the buyer at closing; that closing on the property did not occur as scheduled because the property was being foreclosed; that the buyers then went under contract with the new owner and the buyer's agent again requested that advance rents be given to the buyers at closing; that on the day before closing, the firm managing the property notified the listing agent that there were no advanced rents to be given to the buyers, but did not notify the buyer's agent; that the property closed without any advanced rents being reflected on the HUD-1 statement; that the buyer's assumed that the advanced rental deposits were still in the

firm's trust account; and that, after closing, the buyers realized there were no advanced rental deposits available to them. The Commission also found that Fourth Development Company failed to enter into a new listing agreement with the new owner of the property.

**KAREN H. GRACE** (Charlotte) – By Consent, the Commission suspended the broker license of Ms. Grace for a period of ten months effective May 1, 2014. The Commission found that Ms. Grace, acting as qualifying broker and broker-in-charge of a real estate brokerage firm, entered into numerous property management agreements with landlord clients through the firm when, in fact, the firm was controlled by another individual. The Commission also found that Ms. Grace failed to remit collected rents to her clients and failed to keep trust account records in compliance with Commission rules.

**J. ANTHONY HAWKINS** (Raleigh) – By Consent, the Commission suspended the prelicensing and postlicensing courses' instructor approval issued to Mr. Hawkins for one year effective February 1, 2014. The Commission found that Mr. Hawkins in August 2013 taught the 30-hour postlicensing course, "Contracts and Closings", and during the conduct of the course made inappropriate comments and behaved inappropriately in response to various questions raised by students.

**HERITAGE REALTY ASHE INC** (Jefferson) – By Consent, the Commission reprimanded Heritage Realty Ashe effective August 1, 2014. The Commission found that Heritage Realty Ashe was the listing firm for a property; that the listing agent for Heritage Realty knew that the home on the property was "owner built" and the MLS listing advertised that it contained one bedroom and one bath with a septic system; that no septic or building permits were pulled for verification; and that, after closing, it was determined that the home was not built to code and that it lacked the proper building and septic permits.

**ASHLEE AMELIA HOOKS** (Oak Ridge) – The Commission accepted the

voluntary surrender of the broker license of Ms. Hooks for a period of two years effective August 13, 2014. The Commission dismissed without prejudice allegations that Ms. Hooks violated provisions of the Real Estate License Law and Commission rules. Ms. Hooks neither admitted nor denied misconduct.

**JENNIFER M. JOHNSON** (Apex) – By Consent, the Commission suspended the broker license of Ms. Johnson for a period of 18 months effective July 1, 2014. The Commission then stayed the suspension for a probationary period of 18 months. The Commission found that Ms. Johnson, on or about December 5, 2012, was convicted of *Misdemeanor Attempted Larceny* after attempting to shoplift clothing from a department store. The Commission noted that Ms. Johnson notified the Commission within 60 days of the conviction as required by Commission rules.

**GLENN EMERSON MAGILL, III** (Nags Head) – By Consent, the Commission suspended the broker license of Mr. Magill for a period of one year effective July 1, 2014. The Commission found that Mr. Magill's real estate license was issued in November 2012, but never placed on active status because Mr. Magill has never affiliated with a broker-in-charge; that in November 2012, Mr. Magill began managing rental properties on behalf of an unlicensed property management firm; and that Mr. Magill conducted business, including advertising rental properties on the unlicensed firm's Web site and collecting tenant security deposits and rental payments without the supervision of a broker-in-charge. The Commission noted that Mr. Magill no longer performs property management services on behalf of others.

**ELIZABETH ANN MASSEY** (Cornelius) – By Consent, the Commission reprimanded Ms. Massey effective September 10, 2014. The Commission found that Ms. Massey, on February 20, 2014, pleaded guilty in District Court to one count of misdemeanor larceny, was sentenced to one year of unsupervised probation, ordered to pay a \$1,000 fine, and was banned from all TJ

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Maxx and Marshall's stores in the state of North Carolina. The Commission noted that Ms. Massey reported the criminal conviction to the Commission on April 14, 2014.

**SEAN NICHOLAS MCGOVERN** (Belville) – By Consent, the Commission suspended the broker license of Mr. McGovern for a period of four years effective July 1, 2014. One year of the suspension is active with the remainder stayed for a probationary period ending July 1, 2019 on certain conditions. The Commission found that on May 17, 2011 Mr. McGovern pled guilty in U.S. District Court to one count of “Conspiracy to Distribute and Possession With the Intent to Distribute More Than 100 Kilograms of Marijuana”; that Mr. McGovern was sentenced to 21 months of imprisonment and upon completion of that term, five years of supervised probation; and that Mr. McGovern failed to report his guilty plea to the Commission within 60 days of sentencing. The Commission noted that Mr. McGovern self-reported his guilty plea in October 2013, more than two years after sentencing.

**JOHN A. MILLER** (Wilmington) – By Consent, the Commission reprimanded Mr. Miller effective October 1, 2014. The Commission found that Mr. Miller was convicted of *Misdemeanor Driving While Impaired* on or about June 6, 2011, and again on November 28, 2011; and that Mr. Miller self-reported these convictions to the Commission on March 7, 2014, after reading an excerpt from the February 2014 Bulletin reminding him of the Commission rule to report convictions within 60 days. The Commission noted that Mr. Miller has been on inactive status for a number of years, that he wishes to obtain active status now, and that he has completed all requirements imposed by the court for these convictions and has received numerous hours in substance abuse treatment.

**JAMES WILLIAM PAYLOR** (Atlantic Beach) – By Consent, the Commission reprimanded Mr. Paylor effective October 1, 2014. The Commission found that Mr. Paylor was a broker with a real estate brokerage firm that listed a property that went under contract for purchase as a short sale; that the buyer's agent requested the rental schedule for the unit from the firm man-

aging the property and requested that the advanced rents be given to the buyer at closing; that closing on the property did not occur as scheduled because the property was being foreclosed; that the buyers then went under contract with the new owner and the buyer's agent again requested that advance rents be given to the buyers at closing; that on the day before closing, the firm managing the property notified Mr. Paylor that there were no advanced rents to be given to the buyers, but he failed to notify the buyer's agent; that the property closed without any advanced rents being reflected on the HUD-1 statement; that the buyer's assumed that the advanced rental deposits were still in the firm's trust account; and that, after closing, the buyers realized there were no advanced rental deposits available to them. The Commission also found that Mr. Paylor failed to enter into a new listing agreement with the new owner of the property.

**BROOKS LIVINGSTONE POOLE** (Kinston) – By Consent, the Commission suspended the broker license of Mr. Poole for a period of two years effective August 1, 2014. Six months of the suspension are active with the remainder stayed for a probationary period ending August 1, 2016 on certain conditions. The Commission found that Mr. Poole was convicted on or about October 16, 2013 of three counts of misdemeanor possession of controlled substances and one count of misdemeanor possession of drug paraphernalia and sentenced to 120 days imprisonment (suspended), and placed on 18 months of supervised probation. The Commission also found that Mr. Poole failed to respond to four Letters of Inquiry sent by Commission staff, failed to fully respond to Commission staff's requests by failing to report two of the four convictions and the resulting prison sentence (suspended), and failed to provide copies of any judgments and a detailed account describing the relevant facts and circumstances surrounding the convictions, as requested by Commission staff.

**CHRISTY ESTHER QUICK** (Cornelius) – By Consent, the Commission suspended the broker license of Ms. Quick for a period of three years effective June 1, 2014. The Commission then stayed the suspen-

sion for a probationary period ending June 1, 2017. The Commission found that Ms. Quick, acting as a provisional broker, hired a contractor to perform work on bank-owned properties listed by her firm; that Ms. Quick represented that the contractor had been paid when it had not; and that instead of paying the contractor's invoices with the monies received as reimbursement from her owner clients, she converted the funds to her own personal use. The Commission noted that Ms. Quick has repaid a substantial portion of the original amount owed to the contractor and continues to make monthly payments to settle the debt.

**GAYLE S. RAY** (Fayetteville) – By Consent, the Commission reprimanded Ms. Ray effective October 1, 2014. The Commission found that Ms. Ray represented a buyer who closed on a property in Raleigh in March of 2013; that Ms. Ray possessed a reasonable knowledge of the I-540 completion project which included various proposed routes for future highway construction; that the buyer discovered in the fall of 2013 that the proposed “Orange Route”, if built, would come to rest within a quarter of a mile from his front door; that the route was proposed by the North Carolina Department of Transportation (NCDOT) in 1996 and is still pending approval; that Ms. Ray did not disclose the proximity of the Orange Route to the property; and that the buyer did not order an appraisal. The Commission also found that NCDOT has still not decided which of the proposed various routes will be used and that the proximity of I-540 was not disclosed in the Residential Property Disclosure Statement, the MLS listing, or other marketing materials.

**CARLA HINESLEY SEVILLA** (Raleigh) – By Consent, the Commission reprimanded Ms. Sevilla effective August 1, 2014. The Commission found that Ms. Sevilla, on behalf of her real estate brokerage firm, signed a listing agreement with a builder to market and sell new houses on townhouse lots in a subdivision; that Ms. Sevilla provided a purchase contract drafted by the builder to a buyer and the buyer's agent for a property in the subdivision; that the contract contained an addendum given

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to Ms. Sevilla by the builder disclosing that the streets were “public”; that the builder had also placed street signs in the neighborhood which indicated that the streets were “public”; that Ms. Sevilla also provided a plat map of the lot location, provided by the builder, which indicated that the street was “private”; that, after the property closed, it was determined that some of the streets in the subdivision were “public” and some, including the street where the property, which had closed was located, were “private”. The Commission noted that Ms. Sevilla, after noticing the street disclosure discrepancy, immediately informed the builder. Mr. Sevilla neither admitted nor denied, but did not object to the Commission’s findings.

**PATRICIA MOORE SMITH** (Atlantic Beach) – By Consent, the Commission reprimanded Ms. Smith effective October 1, 2014. The Commission found that Ms.

vanced rental deposits were still in the property management firm’s trust account; and that after closing the buyers realized there were no advanced rental deposits available to them.

**MARCUS SCARBOROUGH SPENCER** (Durham) – By Consent, the Commission suspended the broker license of Mr. Spencer for a period of two years effective May 1, 2014. One year of the suspension is active with the remainder stayed as a probationary period on certain conditions. The Commission found that Mr. Spencer, acting as broker-in-charge of his sole proprietorship, timely reported to the Commission that on July 23, 2013, he was convicted of two counts of *Possession With Intent to Sell/Distribute Marijuana* in Brunswick County and was ordered to pay fines and court costs of \$800 and placed on 24 months’ supervised probation. The Com-

**GENE D. THOMAS** (Goldsboro) – By Consent, the Commission revoked the broker license of Mr. Thomas effective August 13, 2014. Mr. Thomas shall be ineligible to reapply for reinstatement five years from the date of revocation. The Commission found that Mr. Thomas was Executive Director of the Housing Authority for the City of Goldsboro (GHA); that the GHA received funds from the federal government through annual grants and other assistance; that beginning in August 2002, and continuing until June 2012, Mr. Thomas falsified GHA time sheets to reflect that a former employee worked 20 hours per week, when, in fact, that employee had resigned and did very little work for the GHA; that as a result of Mr. Thomas’ actions, federal funds were illegally converted; and that on April 8, 2014, Mr. Thomas pleaded guilty to one count of Unlawful Conversion of Federal Funds in the U.S. District Court.

**If you are a BIC or BIC eligible, you must take the Broker-in-Charge Update Course (BICUP) + an Elective.**  
**Do not take the General Update Course - it will not satisfy your BIC CE requirements.**  
*(See article, page 1.)*

Smith was the buyer agent for a property that went under contract as a short sale listing on or about May 27, 2013; that Ms. Smith requested a rental schedule for the property and requested that any advanced rents already paid to the previous owner be given to the buyer at closing; that on June 18, 2013, the property management firm tried to contact the closing attorney with these figures, however, the closing did not occur on this date due to the property being foreclosed on and the note sold; that the buyers then went under contract with the new owners of the property and Ms. Smith again requested the advanced rents be given to the buyers at closing; that on July 18, 2013, the day before closing, the property management firm told Ms. Smith that the correct amount would be forwarded to the closing attorney; that the property closed on July 19, 2013 without any advanced rents being reflected on the HUD-1 statement; that buyers and Ms. Smith were present at closing and buyers assumed that the ad-

mission also found that Mr. Spencer was previously disciplined by the Commission for failing to report criminal convictions, including convictions in 1993, 1996, and 1998 and for which his real estate license was suspended for a period of two years which was stayed after a six-month active period.

**LARRY A. STANLEY** (Jefferson) – By Consent, the Commission reprimanded Mr. Stanley effective August 1, 2014. The Commission found that Mr. Stanley was the broker-in-charge of a real estate brokerage firm when the firm listed a property for sale; that the listing agent for the firm knew that the home on the property was “owner built” and the MLS listing advertised that it contained one bedroom and one bath with a septic system; that no septic or building permits were pulled for verification; and that, after closing, it was determined that the home was not built to code and that it lacked the proper building and septic permits.

**MINDY S. WALLER** (Wallace) – By Consent, the Commission suspended the broker license of Ms. Waller for a period of six months effective July 1, 2014. The Commission then stayed the suspension for a probationary period of six months. The Commission found that Ms. Waller listed a bank-owned property and received multiple offers on the property but failed to submit to her seller the highest written offer of \$40,000, instead allowing her seller to accept an offer of \$38,500.

**ALFRED WILLIAMS IV** (Atlantic Beach) – By Consent, the Commission reprimanded Mr. Williams effective October 1, 2014. The Commission found that Mr. Williams was Broker-in-Charge and Qualifying Broker for a real estate brokerage firm when it listed a property that went under contract for purchase as a short sale; that the buyer’s agent requested the rental schedule for the unit from the firm managing the  
*Continued*

property and requested that the advanced rents be given to the buyer at closing; that closing on the property did not occur as scheduled because the property was being foreclosed; that the buyers then went under contract with the new owner and the buyer's agent again requested that advance rents be given to the buyers at closing; that on the day before closing, the firm managing the property notified the listing agent that there were no advanced rents to be given to the buyers, but did not notify the buyer's agent; that the property closed without any advanced rents being reflected on the HUD-1 statement; that the buyer's assumed that the advanced rental deposits were still in the firm's trust account; and that, after closing, the buyers realized there were no advanced rental deposits available to them. The Commission also found that Mr. Williams failed to enter into a new listing agreement with the new owner of the property.

**KEVIN A. WOLBORSKY** (Raleigh) – By Consent, the Commission suspended the broker license of Mr. Wolborsky for a period of four months effective August 1, 2014. The Commission then stayed the suspension on certain conditions. The Commission found that Mr. Wolborsky represented a buyer who submitted an offer for a property and paid a \$2,500 earnest money deposit; that after the Due Diligence period ended, the buyer's financing fell through; that the seller terminated the contract and sent the buyer a Release Request for the earnest money deposit; that Mr. Wolborsky assisted the buyer in obtaining new financing and later submitted an offer to purchase another property upon pre-approval from the bank; that after the offer was submitted, the buyer signed the Release Request of the earnest money deposit and prepared a statement to the seller of the first property; that the statement contained inaccurate information and requested the return of the earnest money deposit due to the buyer's financial troubles; that Mr. Wolborsky forwarded the buyer's letter to the seller's listing agent for delivery to the seller; and that ultimately the seller kept the earnest money deposit.

**CHARLES GARY ZAHLER** (Asheville)- Following a hearing, the Commission reprimanded Mr. Zahler effective August

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5, 2014. The Commission found that Mr. Zahler, a licensed real estate broker listing his own property, failed to disclose to the buyer problems with the foundation, settlement and other issues affecting the property that had been revealed in a structural engineering report provided to Mr. Zahler prior to his purchase of the property in 1997; that in 1998, Mr. Zahler replaced an aluminum overhang with a new roof and had a new retaining wall constructed to support the new roof; that Mr. Zahler believed that the new retaining wall and re-poured concrete slab cured all of the settlement and foundation issues; that between 1998 and 2008, Mr. Zahler did not notice any indications of further settlement in the home; that an appraisal

performed on the home in 2006 did not indicate any deficiencies or adverse conditions affecting the structural integrity of the property; that in 2007, the City of Asheville issued a Housing Certificate and determined that the property met the requirements for occupancy under the city's Housing Code; that when Mr. Zahler sold his property in 2008, he failed to provide the buyer with a copy of the 1997 engineering report or otherwise disclose the settlement and foundation problems revealed in the report; that in 2010, the same engineer who prepared the 1997 report inspected the property and found that several of the problems addressed in the 1997 report were still present.

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