



## Realtor® HOT TOPICS

Miriam J. Baer, Executive Director



January 28, 2013



# North Carolina Real Estate Commission

- State government agency
- Dedicated to licensing and regulation of real estate brokers
- Your source for real estate information



# What does the Commission do?



The Commission is responsible for:

- Licensing and Education
  - Pre-licensing, post-licensing & continuing education
  - License examination & character assessment
- Regulatory matters





# What we can do for you:

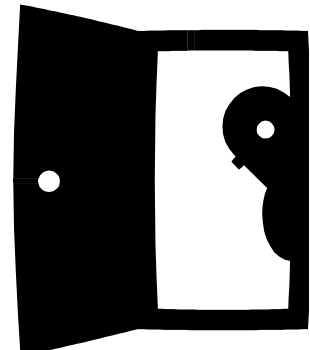
- answer your questions by phone
  - **919-875-3700**
- provide you with information on our Web site
  - **NCREC.gov**
- come to your Board or Association to speak and answer questions.

# Upcoming Commission Meetings

Come watch the Commission work:

- **February 6**
- **March 6**
- **April 3**

at the Commission's office  
1313 Navaho Drive, Raleigh





# RECENT LAW AND RULE CHANGES

# Real Estate License Law

## ■ **Provisional brokers:**

- If you don't take post-licensing courses on time, your license will be placed on **inactive status** - your license will NOT be cancelled.
- While inactive, you cannot engage in brokerage, but you can activate by taking courses and you won't have to retake the licensing exam.

# Real Estate License Law

## Brokerage Contracts:

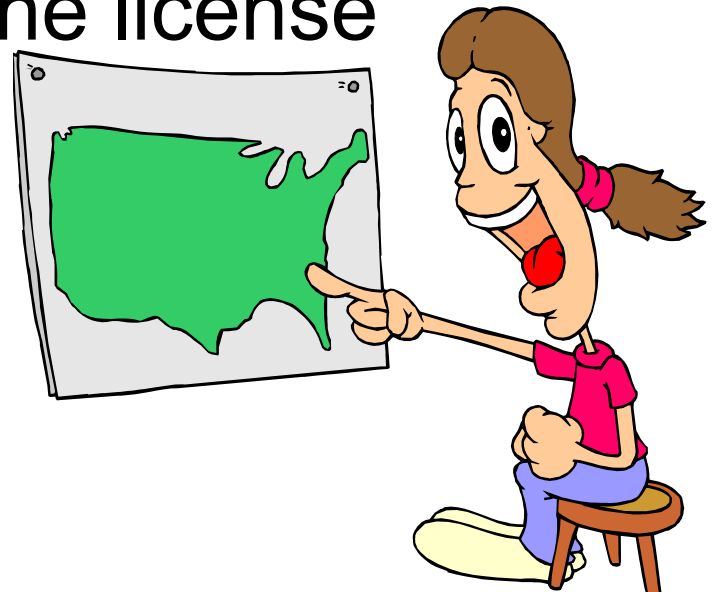
- As always, they must be in writing.
- New law clarifies that without a written agreement, you cannot sue for a commission.
- Protect yourself and your company with written brokerage agreements.





# Reciprocity Legislation

- Reciprocity is out
- State-specific licensing exam is in
- Already have a current reciprocal license? You can keep the license indefinitely if you:
  - Renew each year
  - Take necessary CE

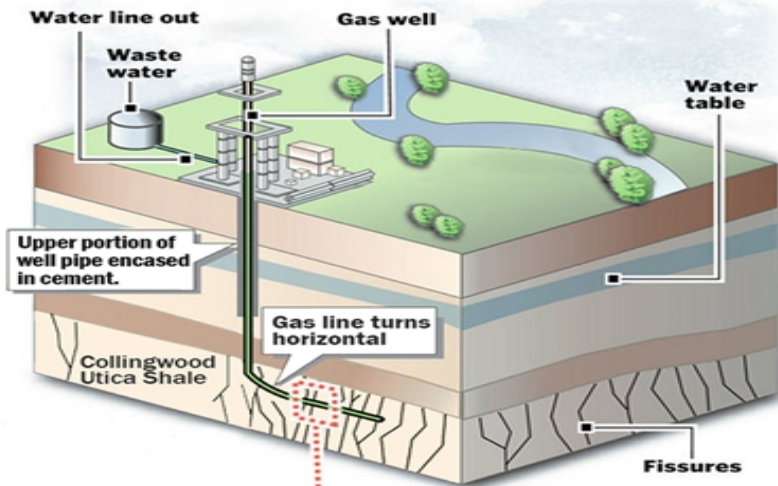


# Mineral, gas and oil rights

- Minerals, oils and gases underground can be owned separately from the land above
- Some developers “reserve” mineral rights or the like to themselves, when conveying the property
- Some oil & gas companies lease oil, gas rights directly from property owners for money (“bonus” payments, royalties, rents)

# Separating oil & gas from land - hydraulic fracturing, or *fracking*

- **New law allows “*fracking*”**
- Well is drilled down vertically, perhaps a mile or more below the surface of land
- Well is then drilled across horizontally, again sometimes more than a mile
- Water and chemicals are pumped into the well at high pressure to force the release of natural gas from the shale rock by fracturing it

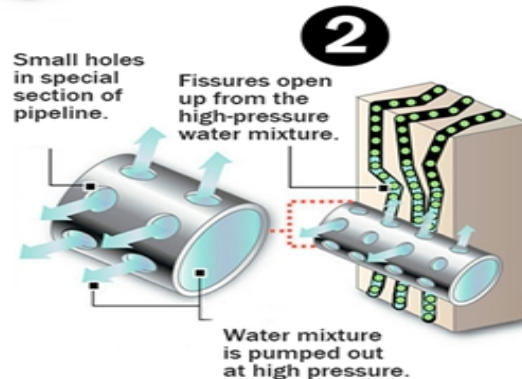


# Hydraulic Fracturing

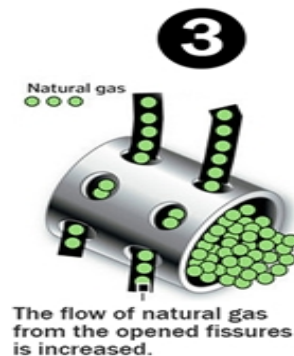
## A new way of drilling for natural gas



**1. Drilling for maximum effect**  
The drilling turns horizontal at about 9,000 feet, hitting multiple fissures and increasing the volume of available natural gas.



**2. Putting the Pressure On**  
A mixture of water, sand and chemicals is pumped into the pipe-line, which has small holes through which the mixture is forced.



**3. Increase Gas Flow**  
The small fissures are widened by the pressure. The water mixture is pumped back out of the well and natural gas follows back up the pipeline to the wellhead.

# Oil and Gas Disclosure



- With the legalization of *fracking* came a requirement that virtually all **residential sales contracts** include a **disclosure**
  - Disclosure cannot be waived
- Seller can make “no representations” as to whether oil and gas rights were severed from the property by a prior owner
- Seller must disclose if s/he has severed the rights or intends to do so pre-closing

# Oil & Gas Disclosure Exceptions

- Court order
- Administration of an estate
- Sales between co-owners
- Lease with option where tenant occupies the dwelling
- Vacant/unimproved land
  - Buyers and buyer agents should inquire as part of due diligence



# Offer to Purchase – oil & gas disclosure as mandated by law:

1. Oil & gas rights were severed by a previous owner. \_\_\_Yes; \_\_\_No; \_\_\_No Rep
2. Seller has severed the oil and gas rights from the property. \_\_\_Yes; \_\_\_No
3. Seller intends to sever the oil and gas rights from the property prior to transfer of title to Buyer. \_\_\_Yes; \_\_\_No

\*In transactions where the buyer is getting the oil & gas rights, answer “No” to #2, 3

# Making an offer with the new oil and gas disclosure language

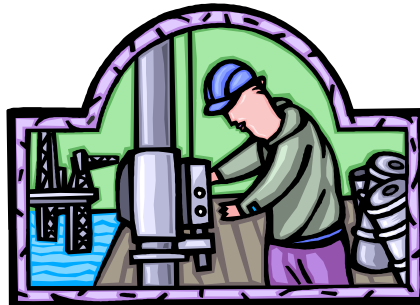
Buyer agent can...

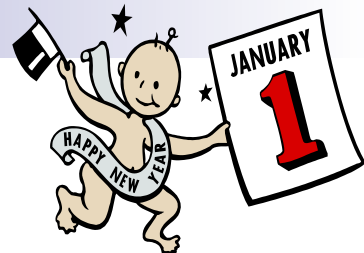
- fill in the answers as buyer wants them to be
  - Listing agent and seller must correct/counteroffer
- contact listing agent for information and fill in the offer accordingly (assuming buyer still wants to make an offer)
- leave the answers blank and let the seller/ listing agent fill them in (counteroffer)



# More Info: Fracking/Oil and Gas

- Commission's Web site - [ncrec.gov](http://ncrec.gov)
- Dept of Justice – [ncdoj.gov](http://ncdoj.gov)
  - *Oil and Gas Leases in NC-Summary of Landowner and Public Protections in the Law*
  - *Oil and Gas Leases in NC: Landowners' Rights*
- CNN videos on fracking – [youtube.com](http://youtube.com)





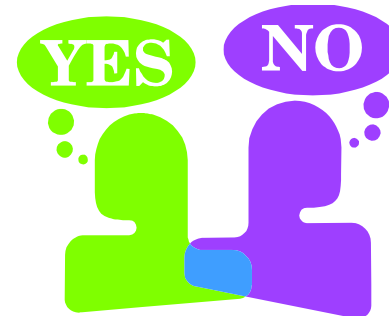
# New Residential Property Disclosure Statement in Effect

- After the legislature mandated disclosure of information about owners' associations, the Commission decided it was time for a complete overhaul of the form to make it more user-friendly.
  - Each question now stands alone
  - HOAs addressed in the separate section on the form

# New RPDS

- You should be using the new form now
  - Listings carried over from 2012 - old form ok unless property condition has changed
- The instructions have been clarified to say that the owner is responsible only for the things within his or her “actual knowledge”
- Checking “No Rep—” is permitted, even if the seller has actual knowledge
  - Broker has a legal duty to disclose material facts the broker knows or should know.

# New RPDS



- Some questions are about only the “dwelling” while others relate to the whole “property” (including land, other structures)
- Q1 - Seller can explain “year...constructed”
- Q10-12 – more info about HVAC
- Q13 – “shared well” added for water source
- Q17 – “...***do you know*** how many bedrooms are allowed by the septic... permit?”

# New RPDS

- Q19 – specifically lists a variety of systems and fixtures rather than asking the parties to know what a system or fixture is
- Q20 – broadened to include any appliances included in the conveyance, not just built-ins
- Q23 – clarified to get at whether there have been room additions or structural changes
- Q33 – new – HOA transfer fees

# Broker Price Opinions (BPOs)

- New law addresses BPOs /CMAs
- BPO/CMA both defined as “an estimate... by a...broker [of] the probable selling price or leasing price of a particular...property...”
  - Allows comps, but not automated valuation model (mathematical modeling combined with a database)
- Brokers cannot estimate value/worth, just probable selling price; otherwise it's an appraisal, requiring an appraisal license.

# BPO's by "Full" Brokers

- You are no longer limited to situations where you can reasonably expect to get the listing or buyer agency agreement;
- Effective October 1, 2012, "full" brokers (not provisional brokers) may perform BPOs for a fee.
- BPOs cannot be used for a mortgage loan origination, including a first or second mortgage, refinance, or equity line of credit.

# BPOs by Provisional Brokers

- May not charge a separate fee
- May perform a BPO/CMA as a service to a buyer or seller and receive a sales commission as part of the transaction





# Required Contents of a BPO

- BPO must be in writing and must include:
  - Statement of its intended purpose
  - Brief description of the property to be priced
  - Basis of reasoning
  - Any assumptions or limiting conditions
  - Any interest of the broker in the transaction
  - Effective date, broker's name, license #, signature, date of signature, brokerage firm
  - Specified disclaimer to the effect that it's not an appraisal of market value...
  - A copy of the assignment request

# Commission's new BPO Rules

21 NCAC 58A. 2201, 2202

- Broker must have **knowledge of the market**, direct **access** to market data, brokerage or appraisal **experience** in the geographic area
- Broker must be objective, free of influence by an interested party
- Broker must personally inspect exterior and interior unless inspection is waived in writing
- Broker must use appropriate methodology
  - Analysis of sales or income
- Specific standards are set out for analyzing comps & communicating comps/adjustments to client



# Pending Rule Changes

- Simplify trust account rule
- Increase the renewal fee \$5
- Allow activation and supervision forms to be submitted online
- Require BIC whose BIC status is terminated to take the 12-hour BIC Course prior to re-designation as a BIC

# Rules Under Consideration

- Want to weigh in on proposed rules?
  - Check the Commission's home page and click on the "rules" link.

Welcome To North Carolina Real Estate Commission

The screenshot shows the homepage of the North Carolina Real Estate Commission. At the top, there is a blue header with the commission's logo and name. Below the header is a navigation bar with links for Home, About Us, Contact Us, FAQs, Site Map, and Search. The main content area is divided into several sections. On the left, there is a vertical menu with various links, including BIC Only, Licensee Login, Licensees Only, License Search, Schools/Sponsors, Apply for a License, Continuing Education, Postlicensing Education, Course Registration, Forms, License Law/Rules, Commission Meeting News, Publications/Bulletins, Vendors/Compliant Software, Employment Opportunities, Related Links, and Video Library. The main content area features a "Follow Us" section with social media icons for Twitter and Facebook. Below this is a section titled "2012-2013 Reinstatements" with three links: "To reinstate your broker license online, click [here](#)", "To reinstate your firm license online, click [here](#)", and "To reinstate your limited NR commercial license online, click [here](#)". The next section is "Rule Changes" with a link: "For current proposed rule additions, changes, or deletions, click [here](#)". The final section is "Hurricanes, Evacuations, and Vacation Rentals" with a paragraph of text and three numbered points.

Home About Us Contact Us FAQs Site Map Search

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[t](#) [f](#)

**2012-2013 Reinstatements**

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**Rule Changes**

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**Hurricanes, Evacuations, and Vacation Rentals**

With hurricane season well underway, a review of the laws governing evacuations and vacation rentals is appropriate.

(1) The first and most important thing to remember is that when state or local authorities order a mandatory evacuation of a coastal area, tenants occupying vacation rental properties must comply with the order. Evacuations are ordered to protect human life and health and are not undertaken lightly. Brokers managing vacation rental properties should support state and local authorities by encouraging and facilitating tenant compliance with evacuation orders.

(2) When a vacation tenant complies with an evacuation order, he or she is entitled to a refund of a share of the money he or she has paid for the rental (rent, security deposit, taxes, etc.) prorated for each night the evacuation order was in effect. There is an exception to this rule, however. If the tenant was offered travel insurance that covered the risk of mandatory evacuation, then the landlord has no obligation to refund the tenant's money. To trigger the exception, the cost of the insurance offered cannot exceed 8% of the cost of the vacation rental.

(3) If, following the storm, the landlord or his broker cannot provide a promised rental property to a vacation rental tenant - whether the reason is that the house was significantly damaged or that it is inaccessible due to damage to or closure of roads or ferries - the tenant is entitled to a refund of the full amount of the rental fee plus the cost of the travel insurance, if any, that the tenant purchased.



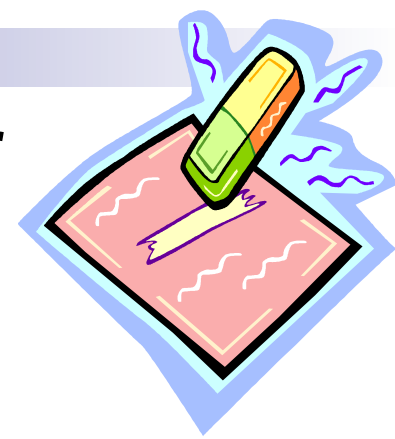
# Rules Under Consideration

- You can track the process from start to finish on the Commission's Web site;
- You can submit written comments; and
- You can come to the public hearing and speak (or watch) [already passed for current rulemaking]
- Your Association representatives have participated in the process on behalf of members.

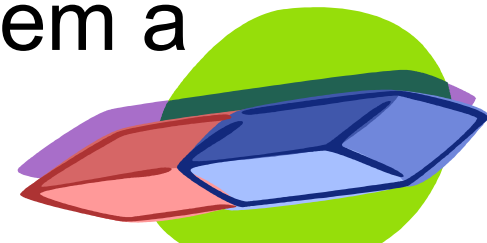
# Possible legislation

- The Commission is considering asking the General Assembly to make certain law changes relating to:
  - Expunction of criminal records
  - License application fees
  - Trust money
  - Public records
- **This is subject to change – no bill has been introduced at this time**

# Legislation – Expunction of Criminal Records



- A new law requires agencies to “reverse” administrative actions taken against the person whose criminal record is expunged
- The Commission would like the law to be clarified to require that person to retake the pre-licensing education and examination, if it has been a long time, before the Commission issues them a license.



# Legislation – License Application Fee



- The Commission would like to increase the license application fee to \$100 to better reflect the actual cost to the Commission
- Would apply to applicants – not licensees
- This cost is currently subsidized by existing licensees through renewal fees





# Legislation – Defining Trust Money

- The Commission is seeking to better define “trust money” and to clarify when it must be deposited in a trust account
  - This would allow deposit of money in very limited commercial lease transactions directly into the owner’s account

# Legislation – Public Records



- The Commission is considering asking that certain records it maintains about licensees not be considered a public record
  - Primarily for licensee safety
  - Especially concerned about home addresses and home emails

# COMPLAINTS

- Process
- Typical complaints



# Complaint Process

- Complaints must be in writing
- May be made by consumers, brokers, etc.
- Handled by the Commissions' new Division of Regulatory Affairs
  - Merger of former "Audits & Investigations" and "Legal" Divisions, effective January 1, 2013
- When received, complaints are assigned a file number and a case processor
  - Processor can be a Commission investigator or consumer protection officer



# Complaint Process

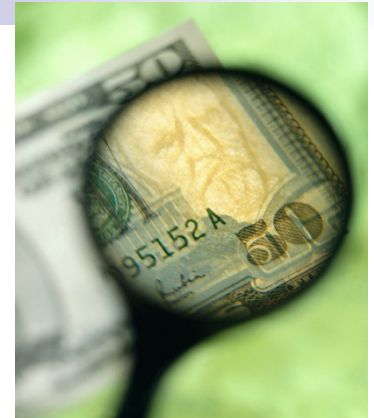
- When you are contacted by the Commission, you are entitled to see a copy of the complaint filed against you, including any documents included in the complaint
- You have a duty to provide a full and fair response
  - You can ask an attorney to assist you

# Complaint Process



- Some complaints are handled by letter of inquiry
  - If you receive one, it should include a complete copy of the complaint
  - You have 14 days to file a full and fair written response
  - Keep good records and enclose copies to expedite the process

# Audits and Investigations



- Some complaints are handled by an auditor/investigator who may come to see you in person
- You are required to provide your books and records to the auditor/investigator
- Having well-maintained, complete books and records will go a long way toward expediting the process



# Completion of Investigation

- Case is evaluated for probable cause
  - If no probable cause to believe a violation occurred the case is closed
  - Cases where it appears a violation has occurred go to the Commission members for a determination of whether to order a hearing
- No discipline is ever imposed without first giving the broker the opportunity to come to a hearing before the Commission
- Many cases settled by consent agreement





# Backlog Substantially Eliminated

- Most cases are investigated right away
- The turnaround time for the majority of cases (80-90%) is less than 90 days
- The average turnaround time for cases where the Commission calls a hearing upon finding probable cause to believe there has been a violation of the law or rules is 18 months, including investigation, hearing, and settlement or Commission decision.

# Typical Complaints

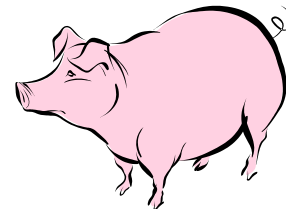
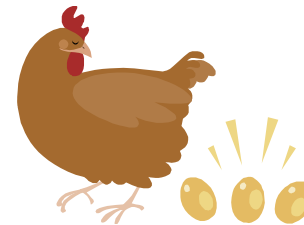
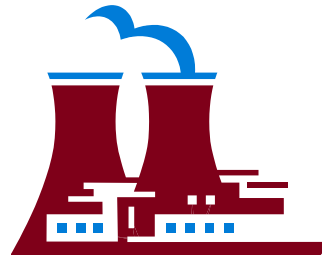
## ■ Misrepresentation

□ Facts or features of property offered for sale

- School districts
- Zoning
- Nearby uses
- Etc.

□ Intentional vs. negligent

□ Direct vs. by omission



# Complaints – Subdivision Street Disclosure Statement

- Developer must give the **first** purchaser of each property a Subdivision Street Disclosure Requirement [GS 136-102.6(f)]
  - Discloses who owns the road & who is responsible for its upkeep
- Until control of the road maintenance is transferred to the municipality or State, developer or owners are responsible

# Complaints – Offer, Acceptance

- Oral agreements are not enforceable
- Ideally, buyer will make a written offer
  - Brokers may then communicate counteroffers back and forth orally
  - No contract until the contract is fully executed
- Be careful about leading your client to believe “we have a deal” – not set until the contract is signed and acceptance communicated



# Working with out-of-state brokers

- You may cooperate with, and compensate, brokers located outside of NC
  - They must be licensed in their home jurisdiction
  - They must NOT physically enter the State of NC in connection with the transaction unless they are licensed here
  - Be aware of the limited nonresident commercial broker license

# Payment of commissions



- Brokerage commissions can be paid only to licensees or to the parties to the transaction
  - Parties to a transaction are not entitled to be paid, but the broker may agree to pay the party
  - Since the party is acting for himself or herself, and is not acting as a broker, no broker license is required

# Useful Resources

- [ncrec.gov](http://ncrec.gov) – NC Real Estate Commission
- [ncleg.net](http://ncleg.net) – NC General Assembly
- [ncdoj.com](http://ncdoj.com) – NC Dept of Justice (Office of the Attorney General)



# NCREC.gov – Did you know...

- ...you can do a Google search inside the Commission's Web site using the "Search" feature

Welcome To North Carolina Real Estate Commission



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# North Carolina Real Estate Commission

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## NCREC Bulletin Archive

The Real Estate Commission Bulletins are now available in their entirety as PDF's for your reference.

These are organized chronologically as follows:

- [2007-2012](#)
- [2006 and earlier](#)

You can also [Search the Current Bulletins](#) or use the "Search" button above (immediately below the masthead).

Your results will include articles in the "current" Bulletins and other related information on the Commission Web site.

If you are interested in historical information, you can [Search the Bulletin Archive](#) for articles published more than five years ago.

Please be aware that a search of the Bulletin Archive may lead to articles and other information that is no longer current and should not be relied upon for anything other than historical purposes.

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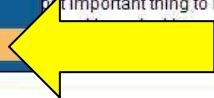
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- Publications/Bulletins
- Vendors/Compliant So
- Employment Opportur
- Related Links

Publications

Bulletins

Update, BICAR Topics



# Law and Rules



## A.0108 Retention of Records

Licenses shall retain records of all sales, rental, and other transactions conducted in such capacity, whether the transaction is pending, completed or terminated prior to its successful conclusion. The licensee shall retain such records for three years after all funds held by the licensee in connection with the transaction have been disbursed to the proper party or parties or until the successful or unsuccessful conclusion of the transaction, whichever occurs later. Such records shall include contracts of sale, written leases, agency contracts, options, offers to purchase, trust or escrow records, earnest money receipts, disclosure documents, closing statements, brokerage cooperation agreements, declarations of affiliation, and any other records pertaining to real estate transactions. All such records shall be made available for inspection and reproduction by the Commission or its authorized representatives without prior notice.

## A.0109 Brokerage Fees and Compensation

(a) A licensee shall not receive, either directly or indirectly, any commission, rebate or other valuable consideration of more than nominal value from a vendor or a supplier of goods and services for an expenditure made on behalf of the licensee's principal in a real estate transaction without the written consent of the licensee's principal.

(b) A licensee shall not receive, either directly or indirectly, any commission, rebate, or other valuable consideration of more than nominal value for services which the licensee recommends, procures, or arranges relating to a real estate transaction for a party, without full and timely disclosure to such party.

(c) In a real estate sales transaction, a broker shall not receive any compensation, incentive, bonus, rebate, or other consideration of more than nominal value:

(1) from his principal unless the compensation, incentive, bonus, rebate, or other consideration is pro-

# Law and Rules

- Link on the left, above Publications
- Searchable Adobe files
  - “right click” – “Find” – type the word or phrase you want to find.
    - The word(s) you type must exactly match
- Remember that you can use the “Search” function inside the Web site instead, which will yield broader results.

# Videos on the Commission Site

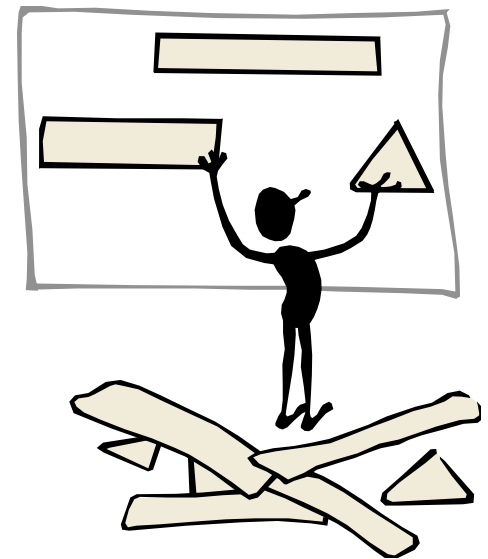
- Small library now
- More to come



# www.NCREC.gov

## Goals:

- Finding what you need more easily
- Fillable forms
- Expanded video library
- Updating
- More information for licensees and consumers



# Do you have Web ideas for us?

- Email me: [exec@ncrec.gov](mailto:exec@ncrec.gov)
- Tag line: “Web site”
- We will review all suggestions





# Visit Us! Call Us! Follow Us!

Visit our site, call us with questions, and follow us on Facebook for

- License status
- BIC issues
- Your education status
- License Law and rules
- Other real estate topics



*Remember, we're **your source for real estate information** and we're just a mouse-click or a phone call away.*





Miriam J. Baer, Executive Director



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

919-875-3700

January 28, 2013