

# Kentucky Real Estate NEWS

A Publication of the Kentucky Real Estate Commission

## *Governor Ernie Fletcher Appoints F. M. Sponcil as Newest Commission Member*



On January 4, 2007, F. M. Sponcil was appointed to the Commission by Governor Ernie Fletcher. Mr. Sponcil was appointed to the consumer member position for a term which runs through June 19, 2009.

Mr. Sponcil was born, raised and still resides in Montgomery County, Kentucky. Upon graduating from Camargo High School, Mr. Sponcil worked for a local manufacturing company for over twenty years. He then served on the the County Board of Elections for fifteen years. Following that, Mr. Sponcil served

as County Commissioner on the Montgomery County Fiscal Court. During his seventeen years of service to his county, he dealt with county government issues of growth and roads. During his time as County Commissioner, he also served on the Local Health Board for twelve years.

Currently, Mr. Sponcil and his wife, Patsy, are the owners and operators of Regan Ridge Farm in Montgomery County. They also manage a second farm and several investment properties.

Mr. Sponcil has been a faithful and active member of the Camargo First Church for nearly forty years. He has served as Sunday School Superintendent and on the Board of Trustees.

Mr. Sponcil and his wife have one son, Tim, and a daughter-in-law, Susan. They are also the proud grandparents of Leslie, who is eighteen, and Jakob, who is five.

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**RENEWAL TIME IS HERE AGAIN  
DEADLINE IS MARCH 31, 2007**

**Kentucky**  
UNBRIDLED SPIRIT™

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## **Kentucky Real Estate Commission**

10200 Linn Station Road,  
Suite 201  
Louisville, KY 40223  
Phone: 502-429-7250  
Toll Free: 1-888-373-3300  
Fax: 502-429-7246  
Web Site: www.krec.ky.gov

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**Lois Ann Disponett**  
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**Ken Perry**  
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**Ron Smith,**  
Louisville

**F. M. Sponcil**  
Mount Sterling

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Sarah Chandler  
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General Counsel

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Director of Administration

Kim Brewer-Davis  
Louis Carter  
Melissa Keithley

## **Comments from the Chair**

by: **Jerry McMahan,**  
**Chair**



I want to begin by saying how happy I am to once again be serving as Chair of the Commission. I am honored to be a member of the Commission and to serve the licensees and consumers of this great state.

I also want to say thank you to former Chair Ron Smith for his service in 2006 and congratulate him on his recent re-appointment to the Commission. Under his command, the Commission was able to pass a regulation package, which included updated Seller's Disclosure forms and new and improved Agency Disclosure forms. I would also like to say how happy we are to have F. M. Sponcil on board, who was just recently appointed by the Governor.

At the last Commission meeting, there was a lot of discussion regarding the new Agency Disclosure forms. Each month, the Commission reviews alternate Agency Disclosure forms, which vary from the approved forms. Some companies and Boards of Realtors® have wanted to remove the reference to designated agency completely. The Commission does not have a problem with this change, since the form was designed to disclose the particular agency relationship at hand. If your area does not offer designated agency, then it would not need to be disclosed on the form. However, all Boards of Realtors® need to have the Commission-approved

forms as well as the approved alternate forms available for their members, as a Board cannot eliminate designated agency for consumers.

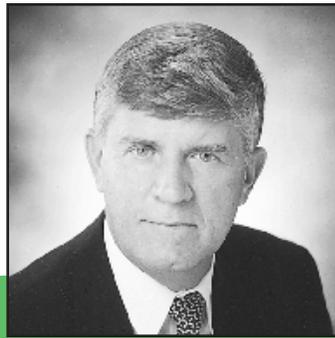
Some companies have combined both the Agency Disclosure form for Buyers and the Agency Disclosure form for Sellers into one form. At the top of the form they have added Buyer/Seller and at the signature line of the consent they have added Buyer/Seller. The consumer would simply circle whether they are a seller or a buyer on the form. Keep in mind, that if you are changing the Agency Disclosure forms, you must get Commission approval in order to do that. If you would like to use an alternate Agency Disclosure form, simply e-mail Lee Harris at the Commission at [Lee.Harris@ky.gov](mailto:Lee.Harris@ky.gov), and she will either approve it or place it on the Commission's agenda for approval.

The agency model policies are just that, a model policy for companies to design, which fit their particular company's needs. These can be changed without commission approval.

If you ever have any questions regarding the new agency policy and forms, please contact the Commission. All of the forms are on the Commission's website under General Information, "Licensee-Restricted Contracts and Forms." The user name is "get" and the password is "forms."

## From the Director's Desk

by: Norman E. Brown,  
Executive Director



Last year was a very busy time at the Commission. Many of you may not know what goes on at the Commission on a daily basis, so I thought I would use this column to outline some of the important projects and events that were sponsored by the Commission in 2006.

For the sixth year in a row, we had a booth at the Kentucky State Fair. We met thousands of consumers and licensees from across the state and gave them a yard stick, a calendar or a Commission brochure. Ours is always one of the most popular booths at the fair.

As always, the legal staff attended numerous sales meetings, Association of Realtors® meetings and conventions to update the licensees on license laws and other pertinent information. Our legal counsel, Lee Harris, developed a three-hour agency law course and presented it throughout the state. She then trained many of our instructors on the course, so they can now present it as well. In addition, our legal hotline fielded approximately 6,600 calls, and we filed numerous injunctions and cease-and-desist orders to combat unlicensed real estate brokerage in this state. We also passed several new regulatory changes and proposed a statutory package for the 2007 General Assembly session.

In the education field, we conducted a two-day Educators' Conference, developed an online continuing education reporting program that will be active in a few months, conducted a brokerage management instructor training course, provided continuing education on the new ANSI Standard of measurement, revised the core course, and worked with a task force to develop a broker-specific continuing education program, among other things.

We also published three newsletters that were sent to all licensees, updated our license law manual to be sent out to all licensees, continued to send a copy of our textbook to all new brokers, continued refinement of our website, renewed over 27,000 licenses and held our eighth annual 50-year awards reception. As busy as we were in 2006, 2007 is already shaping up to be just as eventful. We are off and running with several new projects and events. For instance, I am honored to be serving as a Director for ARELLO this year, and we are currently working on a Spanish-language video for homebuyers and an overhaul of our continuing education and pre-licensing courses.

As always, please do not hesitate to contact us with any suggestions or concerns.

## REFERRAL FEES

**Referring and offering to refer is licensed activity.**

**Referral fees may only be paid from one broker to another broker.**

**Referral fees may not be paid to unlicensed individuals.**

**The new inducement and rebate laws do not apply to referral fees to unlicensed individuals.**

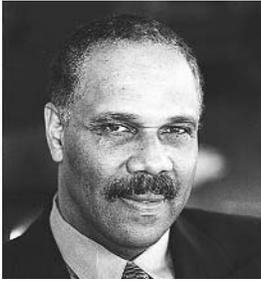
**A licensee may receive a referral fee from a vendor, such as a home warranty company, so long as it is disclosed in the purchase contract.**

**If a licensee purchases leads from a company, the company must be licensed in Kentucky or in some other state. Payments must be broker to broker, not agent to broker.**

***Remember*, referring or offering to refer is licensed activity under KRS 324.010(1).**



## Commissioner's Corner



Ron Smith



Arvel J. McMahan



Lois Ann Disponett



Ken Perry



F. M. Sponcil

## We Have Updated Our Telephone System!!

While the Commission has always been proud of the fact that callers are greeted with a "live" voice, a decision was recently reached to install an automated telephone system. We truly feel that this new system will help expedite calls and connect each caller with the proper staff member more quickly and efficiently. The Commission has limited line capacity, so there will still be times that you will get a "live" voice when you call the Commission. However, most of the time, you will be placed into our automated system.

When calling the Commission, callers will now be able to reach staff members directly by dialing their extension numbers. Should you call the Commission and not know the name of the person you need to speak with, please listen to the automated system, which will help route your call to the appro-

priate person. If the system fails to address your particular need, you may always press "0" for the receptionist, and she will manually route your call.

We ask that you bear with us during this transformation, because the system is new and we are currently trying to "work out the bugs." The Commission receives hundreds of calls a day and we are hoping this new system will assist us in addressing all issues for both licensees and consumers in a more timely fashion.

Below is a list of Commission staff members and their direct extensions. Please keep this list handy when calling the Commission. If you have trouble with the system, please let someone at the Commission know of your concern. We want the system to be easy to use as well as being more efficient.

### COMMISSION STAFF EXTENSIONS

- Louis Carter, Receptionist - Extension 10
- Lee Harris, General Counsel - Extension 12
- Denise Wade, Staff Attorney - Extension 13
- Dianna Rogers, Legal Secretary - Extension 14
- Shelly Saffran, Director of Administration - Extension 15
- Kim Brewer-Davis, Account Specialist - Extension 16
- Sarah West, Continuing Education Secretary - Extension 18
- Linda Poliskie, Education Director - Extension 19
- Sarah Chandler, Licensing, Escrow/Changes - Extension 20
- Michelle Gary, Licensing, Applicants/Reciprocity - Extension 21
- Norman Brown, Executive Director - Extension 22
- Melissa Keithley, Executive Secretary - Extension 24
- Brenda Peixotto, Legal Secretary - Extension 34

# RENEWAL RENEWAL RENEWAL

It is here again. Time to renew your license. The deadline to renew your license is **March 31, 2007**.

This applies to active licensees as well as escrowed licensees. Active licensees renew through their principal brokers. Escrowed licensees renew individually. The fee to renew your license is \$55.00 for brokers and \$50.00 for sales associates. Active licensees are also required to carry group errors and omissions insurance or they must show proof of coverage by a private carrier. This private carrier Certification of Coverage form can be found on the Commission's website at [www.krec.ky.gov](http://www.krec.ky.gov).

Principal brokers have a lot of responsibility during renewal. A renewal form is mailed to all principal brokers with a list of the licensees affiliated under their companies. Principal brokers need to review the renewal form carefully and if changes need to be made, follow the instructions that will accompany the form. Principal brokers are required to collect the renewal fees from each licensee and submit only **ONE** check to the Commission for the entire company. However, principal brokers who have a branch office or a multiple office should send separate checks for each branch or multiple office.

Online renewal will not be available this year. There was a lack of participation as well as difficulty processing changes and transfers which caused this program to not be beneficial.

For licensees in escrow, renewal forms are mailed to your home address. Simply return the form to the Commission along with your check.

Make sure your renewal form is postmarked or hand carried to the Commission by **March 31, 2007**. Any renewals received after the deadline will be assessed a \$100.00 fine, which increases to \$200.00 after May 15, 2007. The penalty is in addition to the regular renewal fees. Failure to receive a renewal form in the mail is not an acceptable excuse for not renewing on time.

For information regarding 2007/2008 errors and omissions insurance, please turn to page 8 of this newsletter.

Again, the deadline to renew is **March 31, 2007**. Renewals must be postmarked or hand delivered by that date in order to be accepted without a penalty. We thank you for your help and patience during renewal.

## Helpful Renewal Tips

**The Commission cannot accept cash or credit cards.**

**Insufficient fund checks will be assessed a \$100.00 penalty.**

**Do not write your renewal check on your escrow account.**

**Principal Brokers need to make sure all licensees are listed on the renewal.**

**Only one check should be submitted for each company.**

**Only the Principal Broker can sign the renewal form.**

**Only escrow accounts from a Kentucky bank will be accepted.**

**If your office moves to a different city or county, please call the Commission for a new tax rate.**

**Principal brokers must return the license with the renewal form if a licensee is being released from the company.**

**If you are making any changes to your renewal, please verify your calculations prior to sending in your renewal.**



# Disciplinary Actions



## **Paul D. Miller**

(Richmond) Case No. 05-0341

**Violation:** Mr. Miller did not comply with the Commission's Final Order or letters, and he did not pay the fine or release the agent whose license was held with him.

He was, therefore, found in default.

**Disposition:** Mr. Miller's license was revoked.

## **Winston E. Wilson**

(Louisville) Case No. 05-0309

**Violation:** Mr. Wilson stipulated to a violation of KRS 324.160(4)(u) for violating KRS 324.160(4)(d), (h) and (v) by failing to provide an accounting for all funds received by him on behalf of his client, thereby pursuing a continued and flagrant course of misrepresentation or making false promises; by failing to render an accounting and remit all monies to client; and by engaging in conduct that constitutes improper, fraudulent, and dishonest dealing.

**Disposition:** Mr. Wilson expressly agreed to voluntarily surrender, permanently, his Kentucky real estate license to the Commission, in lieu of a permanent revocation.

## **John A. Lawson**

(Louisville) Case No. 05-0262

**Violation:** Mr. Lawson stipulated to a violation of KRS 324.160(4)(b) when he unintentionally caused the Complainants in this matter to make an improper assumption transfer to him of their residence, as "a trade," after Mr. Lawson made the inadvertent substantial misrepresentation to the Complainants that he could --and would -- assume their loan on the Property (which was not assumable) to enable the Complainants to purchase his newly-constructed residence and to assure them that he would, immediately after the trans-

fer, take action that would result in the immediate full satisfaction of their outstanding loan debt on the Property, which Mr. Lawson failed to do, notwithstanding his good-faith attempts to accomplish this goal.

**Disposition:** Mr. Lawson's license is probated for a period of five (5) years and he agreed to pay the Complainants the sum of one thousand dollars (\$1,000.00). The Commission also fined Mr. Lawson five hundred dollars (\$500.00). Upon entry of the Commission's Final Order, Mr. Lawson shall, in good faith and with due diligence, take appropriate action, at his expense, to the extent necessary, that shall result in the outstanding debt on the Property being either paid in full by him or refinanced in his name. Either action shall be completed no later than July 31, 2007. Mr. Lawson shall file with the Commission, monthly status reports, notifying the Commission of the action(s) he has taken in furtherance of his obligation to pay off the loan on the Property.

## **Donna Stacy**

(Liberty) Case No. 06-0162

**Violation:** Ms. Stacey stipulated to a violation of KRS 324.160(4)(u) for violating KRS 324.111 for failing to properly handle monies that were placed into her brokerage escrow account. She had at least six (6) checks returned for insufficient funds, and she paid several phone bills, a storage bill and took \$65.00 for personal cash out of her escrow account.

**Disposition:** Ms. Stacy agreed to have her license suspended for a period of one (1) year, to attend twelve (12) hours of continuing

education in law, in addition to any hours already required by law, and to accept a formal reprimand from the Commission. At the end of her suspension, Ms. Stacy's license will be placed on probation for a period of one (1) year.

## **Elwanda Roberts, Kirby Roberts, Vincent Rosenthal and Zella Rosenthal Roberts**

(All from Winchester) Case No. 06-0240

**Violation:** Ms. Roberts, Mr. Roberts, Mr. Rosenthal and Ms. Rosenthal all stipulate to violation of KRS 324.160(4)(b) for failing to disclose that a fire had occurred in a property that they jointly owned and were selling.

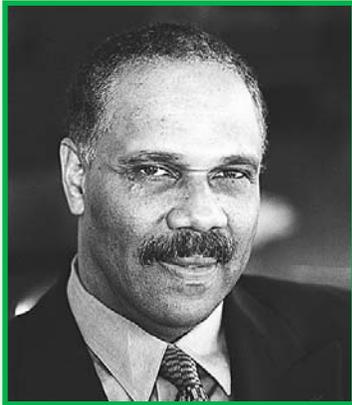
**Disposition:** They all agreed to pay a fine in the amount of five hundred dollars (\$500.00) and to attend twelve (12) hours of continuing education in law, in addition to any hours already required by law. They will each also receive a formal reprimand from the Commission.

## **Vicki Mullins**

(Campbellsville) Case No. 05-0149

**Violation:** Ms. Mullins stipulated to a violation of KRS 324.160(4)(b) stemming from a listing that incorrectly identified the real property which is the subject of this action as being "commercial" in nature. Another licensee enabled an advertisement of the listing to occur utilizing the term "commercial" and Ms. Mullins repeated the usage of the term "commercial" in the final sales contract. The property in question was actually not zoned at all, though the "general surroundings" of it were being used for "commercial/residential" purposes.

## *Governor Fletcher Reappoints Commissioner Ron Smith*



We are very happy to announce that Commissioner Ron Smith was reappointed by Governor Ernie Fletcher on January 4, 2007 for his third four-year term. Ron was originally appointed on November 17, 1998.

Ron served as Chair of the Commission in 2001 and 2006. Ron was originally licensed as a sales associate in 1978 and obtained his broker license in 1995. He is now the owner and principal broker of Ron Smith Realty and oversees five agents.

Ron has been a member of the Greater Louisville Association of Realtors® and the Kentucky Association of Realtors® since 1978. He is also a member of the National Association of Real Estate Brokers (NAREB) and served as President of the NAREB Louisville branch from 1995 - 1998.

Ron says, "I have so enjoyed the

past eight years on the Commission. I am so proud of the professionalism of the industry and the dedication of the real estate licensees."

Besides real estate, Ron refereed high school basketball games for 22 years. In his free time, he enjoys horse-racing and is a huge fan of the University of Louisville athletic programs.

He is an active member of the West Chestnut Street Baptist Church. He resides in Louisville with his wife of 44 years, Shirlee. They have five children and nine grandchildren.

The Commission congratulates Ron on his reappointment and looks forward to four more great years.

## **CARRYOVER CLAUSES/PROTECTION PERIODS**

*By: Lee B. Harris  
General Counsel*

The Commission, by Regulation 201 KAR 11:100, Section 1, prohibits the use of a listing agreement that contains an automatic continuation of the expiration date. It is common, however, for listing agreements to have a "carryover clause" or "protection period," which provides the listing broker with an additional time period, from the termination date of the listing agreement, to complete negotiations with someone who began negotiating on the property during the specified term of the listing agreement. This "carryover clause" or "protection period" is intended to protect the broker from a seller who may wait until after the expiration of the initial listing period before selling to a purchaser with whom the broker had previously conducted negotiations. Furthermore, a "carryover clause"

or "protection period" provides a grace period during which a broker may protect his or her efforts to secure a sale. It is important to review the specific language of the "carryover clause" or the "protection period" in the listing agreement, as the language of that clause will determine whether a commission is due. In the absence of a "carryover clause" or "protection period," the broker must sell the property within the time frame outlined in the listing agreement or no commission will be due to that broker. (C. Robert Peter & Co. v. Fix, 7 S.W.2d 1040 (Ky. 1928); Reedy v. Beauchamp, 211 S.W.2d 393 (Ky. 1948)).

"Carryover clauses" have caused considerable confusion for many consumers and brokers. When a commission dispute arises under this type of clause, the first consideration must be the particular wording of the listing contract. Note the distinct words used in the

clause that triggers the protection period. For instance, some clauses may require the buyer to have actually "negotiated" on the property while others may include a buyer who simply viewed the property during the listing period.

In addition, several Associations of Realtors have included language in their listing agreements which terminates the "carryover clause" or the "protection period" if the property is listed with another Realtor® or broker after the expiration of the original listing agreement. Either way, it is imperative that the broker who is claiming a commission under the "carryover clause" or "protection period" give a written list of the buyers or potential buyers who may fall under that clause to the seller so the seller will know which offerors may trigger the clause. (Mayo v. Century 21 Action Realty, 823 S.W.2d 466 (Ky.App. 1992)).

# NEW SELLER'S DISCLOSURE FORM

By now, all licensees should be using the new Seller's Disclosure Form, which became effective on January 1, 2007. There are a few new terms in the form, under "#7 Sewer System." Some of the terms might be confusing to sellers. The following is a detailed explanation of each of these new terms:

**Public Municipal Treatment Facility** – a wastewater treatment plant owned by a public entity: city government, county government, fiscal court, water and sewer district;

**Private Treatment Facility** – a wastewater treatment plant owned by a private individual or private company, *i.e.* non-governmental ownership;

**Subdivision Package Plant** – a wastewater treatment plant that is either publicly or privately owned; package plant means that the treatment plant is a pre-fabricated unit assembled at a factory off-site and trucked to the plant site and final assembly and connection to power utility occurs there;

**Single Home Aerobic Treatment Facility** – a wastewater treatment plant that is a small individual home treatment plant, usually with a treatment

capacity of 500 gallons per day; the typical home will generate approximately 400 gallons per day;

**Septic Tank with Drain Fields, lagoons** – a wastewater treatment system that is generally on the owner's property that has a septic tank to collect the solids and the liquids flow out of the tank into sub-surface lateral lines where the liquids soak into the ground or the liquids flow into a small lagoon where there is evaporative dispersion of the water;

**Septic Tank with Disposal to an Off Site Multi-Property Facility** – a wastewater treatment system that involves several homes in a development with each home having a separate septic tank where solids are collected and the liquids from all the connected homes flow through sewer lines to a large lateral field sub-surface soak in disposal system or the liquids flow to a lagoon large enough for evaporative dispersion of the water;

**No Treatment Facility** – there is no collection or treatment plant; may be just a privy or outhouse.

You may want to keep these explanations handy, in case your seller or buyer clients have questions about these new terms.

## ERRORS AND OMISSIONS INSURANCE FOR 2007/2008

The group errors and omissions premium for 2007/2008 will again be \$140, plus applicable taxes, and the administrator for the program is still Rice Insurance Services Company, LLC (RISC). Licensees have the option of purchasing group coverage through the Commission or they may shop for insurance through a private carrier. If you purchase private coverage, the Commission has a new Private Carrier Certification Form, which must be filled out by the insurance agent and mailed to the Commission along with the renewal form. The new form can be found on the Commission's website under the E & O section.

In addition to the basic policy, RISC also offers several endorsements. Examples are: additional

limits of liability; appraisal coverage; limited environmental coverage; extended reporting; limited fair housing coverage and limited regulatory complaint coverage. All of these endorsements can be purchased directly from the carrier by calling (502) 897-1876 or toll-free at 800-637-7319. Information about the optional additional coverage options were included in the renewal package that was mailed to all principal brokers.

**Again, the Commission requires that the basic group errors and omissions premium be mailed to the Commission along with the renewal. However, any additional coverage that you wish to purchase MUST be purchased through RISC.**

# 2006 Half-Century Awards Reception

The Commission held its 8th Annual Half-Century Awards Reception on October 26, 2006 at the Louisville Marriott East. This event honors real estate agents and brokers who have been licensed for over 50 years.

The event began with a breakfast buffet, which was complimented by special musical presentation by the Absolute Magic Quartet. Following this, the guests were honored with a speech given by special guest, Teresa Hill, Secretary of the Environmental and Public Protection Cabinet.

Each honoree was presented with a plaque. The honorees were also treated to a copy of their picture they submitted to the Commission when they were originally licensed.

The Commission always looks forward to this event. It is a wonderful achievement of dedication to the real estate industry, and we again want to congratulate all of the honorees.



**Pictured left to right, front row: William Kachler, David Bailey, James Fothergill; back row: Leland Hollis, Jack Ely, Donald Ball & George Cave**

**Licensees honored but not present were: Paul Bollinger, Louis Cohen, Richard Fenley, Edwin Freeman, Jack Godhelff, Ray Keeney, George Kurtz, William Lippy, Beatrice McCormick, Ernestine Ritter, Junius Todd, Margarete Weber, William Wilson & Clarence Woodall, Jr.**

## Regulation Proposal Includes ANSI Standard Mandate

The Commission is proposing a new regulation to mandate the use of the ANSI Residential Measurement Standard **IF** a licensee measures a house for the purposes of including the square footage on the Multiple Listing Service or on any fact or information sheets that are made available to prospective purchasers. This decision was made at the October 26, 2006 Commission meeting. The regulation **WILL NOT** mandate that all licensees measure properties, but, if they do, the ANSI Standard must be used. This will apply only to residential properties. Commercial properties will be excluded from the mandate. We understand that some Boards of Realtors® do not require square footage on the multiple listing service.

The Commission feels that this will benefit the industry by requiring that licensees use the same standard for measurement. The Kentucky Real

Estate Appraisers Board already requires all appraisers to use this standard. We anticipate an early 2008 implementation date for this new requirement.



Continuing education classes on the ANSI Standard have been offered in various areas of the state over the past year. Representatives from the Real Estate Commission, the Real Estate Appraisers Board and the Kentucky Real Estate Educators Association Chapter have been working on a new continuing education course that will soon be available. Information on this new program will be posted on the KREC website ([www.krec.ky.gov](http://www.krec.ky.gov)) when the program is available. Updates will be included in future issues of this Newsletter. We encourage licensees to be prepared by educating themselves on this proposed new requirement.

# HOW MUCH TAX SHOULD I PAY, . . . REALLY?

By: *Steve Robison, J. D., LL.M.*  
& *Jeff Arnzen, J. D.*  
*Strategic Property Exchanges, LLC*

As the tax deadline approaches, every one of you will be faced with tax questions, both personally as well as from clients, involving the sale of real estate.

The first question you're asked is whether there will be tax on the profit (gain) on the sale of their property and how much will it be? The answer depends on whether the sale involved your client's residence or real estate they were holding for investment or use in their business.

**Personal Residence.** If the property was your client's residence for 2 of the 5 years before the sale, there's good news! They should be

able to exclude between \$250,000 (single taxpayers) to \$500,000 (married taxpayers filing jointly) of the gain on the sale of their personal residence. Remember for tax purposes, typically you can have only one residence at a time.

**Investment Property.** If the property is investment property, the gain could be subject to three different rates of tax for federal tax purposes and, of course, the 6% tax imposed by the State of Kentucky. The applicable federal rates of tax are:

- 15% for the appreciation on the property,
- 25% recapture for straight line depreciation (whether you deducted it or not) and
- up to 35% for accelerated depreciation taken for pre-1986 property or other property whose depreciation was less than 27.5 years, such as HVAC systems and land improvements.

Fortunately, there is a way out of high taxes on the sale of investment property. If the sale is treated as a "1031 Exchange", (aka "Like-Kind Exchange"), and the proceeds from the sale are reinvested in other investment or business property, then both the Federal and Kentucky taxes are deferred and possibly eliminated.

Section 1031 and your Exchange Intermediary. While some individuals treat Section 1031 as a ho-hum easy transaction, there are numerous complicated rules for a successful 1031 Exchange. Fortunately there are experts, who deal with Exchanges every day and they can answer questions and guide your clients effortlessly through the process.

As a valued and trusted Real Estate Professional, you owe it to yourself to become more familiar with 1031 Exchanges.

## Disciplinary Actions

*Continued from Page 6*

**Disposition:** Ms. Mullins agreed to pay a fine in the amount of one thousand dollars (\$1,000.00).

### Anna Humphress

(Campbellsville) Case No. 05-0149

**Violation:** Ms. Humphress stipulated to a violation of KRS 324.160(4)(b) stemming from a listing that incorrectly identified the real property which is the subject of this action as being "commercial" in nature. Ms. Humphress enabled an advertisement of the listing to occur utilizing the term "commercial" and another licensee repeated the usage of the term "commercial" in the final sales con-

tract. The property in question was actually not zoned at all, though the "general surroundings" of it were being used for "commercial/residential" purposes.

**Disposition:** Ms. Humphress agreed to pay a fine in the amount of five hundred dollars (\$500.00).

### Michael Pelfrey

(Hebron) Case No. 06-0139

**Violation:** Mr. Pelfrey stipulated to a violation of KRS 324.160 (4)(u) for violating 201 KAR 11:121 for failing to obtain a written agreement regarding necessary repairs to a garage door, while acting as a dual agent for both the buyer and the seller.

**Disposition:** Mr. Pelfrey agreed to accept a formal reprimand and to attend six (6) hours of continuing education in addition to the hours already required by law.

## EARNEST MONEY & COMMISSIONS

It is common practice in some areas of this state for brokers to deduct the amount of the earnest money deposit from their commissions and then to transfer that amount to their operating accounts. However, it has come to the attention of the Commission that some brokers are not immediately switching this money over. Once the money belongs to the broker as commission, it should be paid over. Otherwise, there may be allegations of funds being commingled, which is not legal.

# Questions and Answers Regarding Kentucky Group E&O Insurance Program

## *The "Owned Property" Exclusion*

Some licensees have recently had questions regarding the "owned property exclusion" contained in the group real estate E&O policy. The insurance policy protects for professional services provided for others (not on the licensee's own behalf). The "owned property exclusion" excludes transactions where an insured would be in a position to benefit from his/her own negligence.

**Am I covered if I sell my own property?** No. The policy provides there is no coverage for a claim involving professional services relating to property more than 10% owned by an Insured (or their spouse).

**Why not?** Coverage for owned property would put the insured in a position to benefit from his/her own negligence. For example, we recently had a case where a licensee sold property she owned. The buyers alleged misrepresentation of the condition of the fireplace, plumbing and electrical systems. The buyers alleged damages of approximately \$20,000. The claim was not covered due to personal interest. As the seller of the property, the licensee benefited by receiving a higher purchase price than the buyer believed was justified. It would be unjust for the seller to receive a higher price for the property due to her misrepresentations about the property's condition. Therefore, the insurance will not cover this type of transaction.

**Am I covered if I sell property owned by any entity, corporation, partnership or trust which I (or my spouse) own or control?** No. The policy provides that there is no coverage for a claim involving professional services relating to property more than 10% owned by any entity, corporation, partnership or trust in which the Insured (or spouse of an Insured) owns or controls more than 10% financial interest.

**Why not?** Coverage for property owned by an entity, corporation, partnership or trust in which the licensee owns or controls would put the insured in a position to benefit from his/her own negligence. For example, we recently had a case where

an entity sold an office building which was listed by one of its owners. The owner failed to disclose that the property needed repairs. The buyers alleged damages of \$68,000. The claim was not covered because of the licensee's ownership interest in the company that owned the building.

If the company benefited from the failure to disclose the needed repairs and received a higher purchase price than was justified for the building, then the licensee would benefit (through his ownership in the company). Therefore, the insurance will not cover this type of transaction.

**Am I covered if I purchase property that I have listed?** No. The policy provides that there is no coverage for a claim involving professional services relating to property purchased or attempted to be purchased by an Insured (or the spouse of an Insured.)

**Why not?** Coverage for property that a licensee purchases for his own interest would allow the licensee to benefit from his or her own negligence. For example, we recently had a claim where the seller alleged the listing agent, who was the buyer of the property, breached his fiduciary duties to the seller by failing to disclose that a potential purchaser who had made an offer, was willing to pay more money for the property than the price the listing agent was willing to pay. The claim alleged that the listing agent had a conflict of interest and he placed his own interest above that of the seller (or the other purchaser).

It would be unfair for the insured to buy a property at a lower value than another purchaser was willing to pay. The insured would benefit from his own self-dealing. Therefore, the insurance will not cover this type of transaction.

*This information is for illustrative purposes only and is not a contract. It is intended to provide a general overview of the products and services offered. Only the policy can provide the actual terms, coverages, amounts, conditions and exclusions. This program is only available in Kentucky.*

# Wishing Everyone a Prosperous 2007 from the KREC



Kentucky Real Estate Commission  
10200 Linn Station Road, Suite 201  
Louisville, KY 40223  
Phone: (502) 429-7250 Fax: (502) 429-7246  
Toll Free: 1-888-373-3300  
Web Address: [www.krec.ky.gov](http://www.krec.ky.gov)

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The Kentucky Real  
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will be closed on:  
**April 6, 2007**  
(Good Friday 1/2 Day)  
&  
**May 28, 2007**  
(Memorial Day)