



# Vermont Real Estate Commission

## Newsletter

### Governor

The Honorable James Douglas

### Secretary of State

Deborah L. Markowitz

### Office of Professional Regulation

Christopher D. Winters, Esq., Director

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Tara Dowden, Public Member, Vice Chair  
Gloria Rice, Attorney Member, Secretary  
Herb Beggs, Non-Realtor Broker  
Maretta Hostetler, Broker  
Claire Porter, Public Member  
Elizabeth Wilkel, Broker

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### Commission Staff

Rita Knapp, Administrator  
Judith Griffen, Administrative Assistant  
Kevin Leahy, Legal Counsel

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## Message from the Chair

I know that spring will come...eventually....and with it the new Real Estate Commission Rules. For well over a year the Commission, in addition to its regular workload, has been diligently reviewing and editing the existing Rules. We have strived to refine the Rules to accurately reflect statutory changes and to better guide licensees in the practice of real estate. During this process, the Commission has sought input from many of our stakeholders and we found the interaction to be most beneficial. Real Estate practitioners, educators and the Vermont Association of Realtors joined us as we sought to improve, clarify or otherwise amend the Rules.

A great deal of time-consuming work was involved with this process. Every written and spoken comment was considered by the Commission. After each review by the Commission, the staff from the Office drafted a new edition of the Rules. Once the Commission completed the final draft, the staff once again prepared an array of documents for presentation to the LCAR and ICAR legislative committees. Now approved, the staff will send hardcopies to all licensees and stakeholders.

Therefore, I want to take a moment and sincerely thank the members of the Commission for enduring long meetings, attending public hearings and reviewing multiple drafts as we tackled this project. I also would like to thank our intrepid staff; Rita Knapp, Kevin Leahy and Judith Griffen. They not only were dedicated to the project but gave the Commission a significant amount of time over and above their normal daily routine to help us accomplish this task. It has been an honor and a pleasure working with such dedicated people!

The new Rules will become effective April 15, 2008 and we encourage all licensees to review them carefully as there are some significant changes.

Susan (Sam) Matthews, Chair

## In Recognition

The Real Estate Commission would like to recognize Richard (Dick) Thurston, and Mary Davis Tope for their many years of outstanding service to the real estate industry, and their years of service as members of the Vermont Real Estate Commission. Mary W. Davis Tope died Saturday, February 16, 2008, in Ludlow. Richard L. (Dick) Thurston, died Tuesday, Jan. 29, in East Montpelier. The Commission extends their heartfelt sympathy and condolences to their families. Both Mary and Dick gave countless volunteer hours to the Commission and their diligent work is reflected in the profession to this day.

## Printed Brochures, After The Listing Expires – What To Do?

You've printed, and distributed, a brochure to advertise properties you have currently listed. Shortly after distribution the property sells, or the listing expires. What do you do about the brochure? The Commission's position is that at the time the brochure is printed the properties must all be accurately identified as to their status (active listing, sold, under contract, etc.) and that if the status changes, after distribution, the agency should be able to document in their records the change in status (e.g. active listing to sold) happened after the brochure was created. The Commission would not expect the advertising office to try to recall brochures already distributed, but would expect future distributions to be updated accordingly.

## Earn Continuing Education for Attending Commission Meetings

The Commission decided at its November 2007 meeting to give continuing education credit to any licensee for attendance at a Real Estate Commission meeting within the following parameters.

- \*two hours credit for attendance at a meeting, (must attend for a minimum of 3 hours per meeting)
- \*limited to a maximum of four hours of credit per renewal period,
- \*may not be applied toward the Mandatory Course requirement.

Due to space limitations licensees must pre-register with the Office. To register contact Judith Griffen at: [jgriffen@sec.state.vt.us](mailto:jgriffen@sec.state.vt.us).

## Continuing Education for New Licensees

An individual licensed for less than one year (from the original issue date to the current license renewal date) must only complete the four hour mandatory course required during that renewal period. Individuals licensed for more than one year must complete all 16 hours, including the four hour mandatory course.

## Can A Licensee Take The Same Course Twice In One Renewal Cycle

A licensee may repeat, one time, any course, offered by two different providers, for continuing education credit during any two year renewal cycle.

## Professional Designations

Advertisements that indicate you are a "Licensed Realtor " would be considered misleading advertising under the laws, and rules of the Commission. You may advertise yourself as a "Licensed Broker " or "Licensed Salesperson", or as a "Realtor " but there is no such designation of "Licensed Realtor".

## Fiduciary Duty

The fiduciary relationship of broker and client exists until the agency agreement expires or the purpose of the agency has been accomplished (i.e. the transaction has completed). Therefore, when a broker has obtained an offer that has been accepted by the client the fiduciary relationship remains in effect until the transaction is completed or the agency agreement terminates.

However, even when an agency agreement and, thus, the fiduciary relationship between broker and client has been terminated, some fiduciary duties continue – for example, on termination of an agency relationship brokers cannot use confidential information acquired while representing a client for their own or a third party's benefit.

## Inspections – What Do They Involve – Unraveling The Mystery

The primary role of the inspector is to provide guidance to licensees, and to assist them in complying with the Commission's laws and rules. The Commission and Inspector do not want licensees perception of the inspection to be one where the

Inspector is looking for a violation to file as a complaint but rather as an opportunity for the Office of Professional Regulation to educate, and provide guidance to the licensees as it relates to the laws and rules.

During an inspection typically the inspector examines a random sampling of files in the real estate office. The inspector then reviews those files looking for proper documentation, appropriately executed agreements, copies of checks received for deposits on properties. The inspector might also request to see a copy of the firm's deposit log statements to verify that deposits have been made within the appropriate time frame. If for some reason the individual present does not have access to those records because they are not the principal broker or designee then, when appropriate, the inspector will instead request that those documents be sent separately to the office within a reasonable period of time.

### Listing Agents Must Cooperate With Buyer Brokers

We have had numerous calls, and emails, from buyer brokers who have expressed frustration because the listing agent is not cooperative. In one case the listing agent told the buyer broker they would not give them any commission, and if their buyer was interested the buyer would have to call the listing agent directly. The short answer to this scenario is: "WRONG!" The failure of a listing agent to cooperate with a buyer broker is not in the best interest of their client, and therefore, may be considered unprofessional conduct by the Commission, and could result in disciplinary action if a complaint is filed.

### All Brokers Must Work from A Real Estate Office Registered With The Commission

If you are a sole proprietor of your own business then you must register that office with the Commission, regardless of whether you use a trade name (dba), or your own personal name.

If you plan to use something other than your own personal name (e.g. Flatlander Real Estate) then you must first register that name with the Corporations Division of the Secretary of State's Office <http://www.sec.state.vt.us/corps/>. After registering you can then apply to the Commission for your office registration by going to our website at: [http://vtprofessionals.org/opr1/real\\_estate/](http://vtprofessionals.org/opr1/real_estate/).

### What Duties Can Your Non-Licensed Assistant Perform

The Commission has received questions from licensees asking for guidelines defining the permitted activities of "assistants". These requests have come at a good time, because in Vermont, it is getting more and more common for real estate licensees to hire assistants to assist them with tasks associated with their practice.

The Commission has addressed this issue and the guide can be found on our web page, however, in brief a good rule is that an unlicensed assistant should have no conversations with the buyer or seller beyond providing secretarial assistance or factual information on listings. The use of personal assistants in the real estate profession can be productive and useful, if the licensed broker insures that all of the safeguards are in place. To read the full text on this matter go to the Commission's web page.

### What Would You Like To Know?

The Commission attempts to place articles in their newsletters that the licensees will find beneficial, and that will give them guidance in their day to day practice. Are there issues that you would like us to consider addressing in one of the next newsletters? We would like to hear from you, please send any ideas you have to the Commission, or email them to: [rknap@sec.state.vt.us](mailto:rknap@sec.state.vt.us).

### Licensees as of March 2008

Type of License	Resident	Non-Resident	Total
Broker	1,122	186	1,308
Salesperson	1,265	125	1,390
Office	457	60	517

### Unprofessional Conduct Activity September 2007 thru February 2008

New cases opened	13
Cases investigated	20
Cases concluded without action	16
Formal charges filed	1
Disciplinary Actions Taken	8*

\*Six of the eight cases were against one licensee.

### Disciplinary Actions Taken

## Since July 2007

### Ellis, Richard

ULP-REC59-0506/November 7, 2007

Ellis was the owner and broker for Ellis Sotheby's International Realty (the Company) a real estate office located in New York. Ellis did not hold a Vermont license. In December 2005 Ellis' agent H.M. signed a listing agreement with Vermont property owner M.R., and a real estate agency located in Vermont, to sell M.R.'s property located in Jay, Vermont. Under the terms of the listing the Company was to receive a 5% commission upon the sale of the property. Also under the terms of the listing agreement the Company would make and confirm all appointments to show the property. The property was displayed by the Company through a website, and the contact information listed the Company as the source for further information. The Commission determined that these acts constituted the practice of real estate and found Ellis in violation of the Law. The Commission imposed an Administrative Penalty of \$ 500.00.

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### McPadden, Bonnie

REC47-0306, et al/January 24, 2008

McPadden was found to have engaged in unprofessional conduct for: failing to pay an administrative penalty from a previous Order by the deadline date, advertising a property without a valid listing agreement, providing false information on her renewal application, listing D.T. as an active agent on her website after D.T. ceased to work for the office, and operating her office under a corporate entity that was expired. The Commission Ordered McPadden's license to be suspends for sixty days, imposed an Administrative Penalty of \$ 400.00, required that McPadden take the forty hour broker course, and prohibited her from serving as principal broker for any agency for one year.

## Commission Meetings

The Commission usually holds its meetings on the fourth Thursday of each month, beginning at 9:00 a.m. Meetings are posted on the Office web page found at:

[www.vtprofessionals.org/meetings/meetingslist.htm](http://www.vtprofessionals.org/meetings/meetingslist.htm)

We encourage anyone who has an interest to attend. Meetings are open to the public. We also post the upcoming meeting Agenda, and Minutes on the Commission's web page.

On a final note, we have made changes to the Commission's web page and hope you will find some time to take a look.

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