

## *Governor Ernie Fletcher Appoints Lois Ann Disponett as Commissioner*



On October 18, 2004, Governor Ernie Fletcher appointed Lois Ann Disponett as Commissioner of the Kentucky Real Estate Commission.

Lois Ann was born and raised in Anderson County, Kentucky. She first obtained her sales associate license on August 1, 1976, becoming the first female Realtor® in Anderson County. On January 3, 1978, she obtained her broker's license.

A few months later, she opened her own office and became the principal broker of Lois Ann Disponett Real Estate Company. This also made her the first female to own her own real estate company in Anderson County. Her office is located in Lawrenceburg, Kentucky, and she has five sales associates.

Lois Ann graduated in 1975 from

Anderson County High School and obtained her Associate Degree in Real Estate from the Lexington Technical Institute in 1977. Lois Ann obtained the designations of CRS, Certified Residential Specialist and GRI, Graduate Realtor® Institute. She is currently in the process of obtaining her CRB, Certified Residential Broker, designation.

In June of 2002, Lois Ann, along with four other individuals, formed and opened Century Bank in Lawrenceburg (which is the only financial institution in Anderson County).

Lois Ann is a member of First Baptist Church in Lawrenceburg, where she has been an active Sunday School teacher for over 27 years. She also serves as 6th District Chair of the Republican Party, is a member of WROCK, Women Republicans of Central Kentucky, is a KEMI board member, and is a 15 year member of the Lexington-Bluegrass Association of Realtors®. She is currently serving on the site based council at Turner Elementary School in Lawrenceburg.

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### **Commissioners**

**Sue Teegarden, Chair**  
Alexandria

**Arvel J. McMahan**  
PeWee Valley

**Ron Smith**  
Louisville

**Bob Roberts**  
Richmond

**Lois Ann Disponett**  
Lawrenceburg

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Executive Director

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Sarah Chandler  
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General Counsel

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Denise Wade

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Director of Administration

Kim Brewer  
Louis Carter  
Melissa Kime

## **Comments from the Chair**

by: **Sue Teegarden,**  
**Chair**



I want to begin by saying thank you to former Chair Bob Roberts for a fantastic year of leadership. Under Bob's direction, the Commission accomplished many great tasks in 2004. I am now looking forward to 2005 and the honor of serving as your Chair.

Recently, the Commission was made aware of an increase in crimes across the country against real estate licensees. The Commission and the Kentucky Association of Realtors® shared concerns over the licensees of this state and joined forces to develop a Safety Brochure. All *active* licensees should have received a brochure in the middle of November. Please take the time to review this brochure. It has valuable information regarding the safety of real estate licensees.

Many of us take the "it will not happen to me" approach - and hopefully you are right. However, there are many risks associated with the duties that we perform as real estate licensees, and the Commission and the Kentucky Association of Realtors® are mindful of these risks. This brochure gives examples of crimes that have happened across the country and preventive measures that licensees can take to avoid dangerous situations or to prevent an unfortunate incident. The Commission thanks the Kentucky Association of Realtors® for their

participation in the development, cost and mailing of these brochures.

Many of you have called the Commission asking for additional copies of the Safety Brochure for new licensees. The Commission will be mailing all new licensees a copy of the brochure. However, if you want to include it in an orientation package, please feel free to make copies. You can also find a PDF version of the brochure on the Commission's website at [www.krec.ky.gov](http://www.krec.ky.gov) under the "General Information" Section.

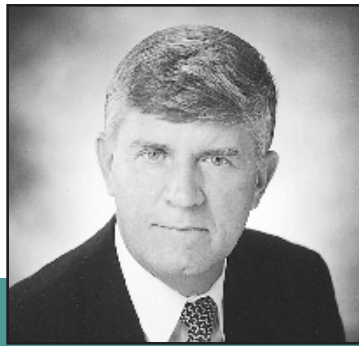
If you turn to page six of this newsletter, you will find a personal letter from Governor Ernie Fletcher. This letter is addressed to all of the real estate licensees in the Commonwealth. He applauds the work that licensees do for Kentucky and the part you play in the economic stability and growth of this great state.

Finally, 700 brokers were randomly chosen to help the Commission with a test run of our on-line renewal program. We are in the final stages of this project, and if everything goes well with the test, we will be up and running for the 2005/2006 renewal.

Again, I am honored to be your Chair for the next year. Keep up the good work and, as always, contact the Commission if you ever have any questions or comments.

# From the Director's Desk

by: Norman E. Brown,  
Executive Director



It is hard to believe that 2004 is about to come to an end. I always enjoy looking back to see all of the things that have been accomplished at the Commission in the last year. This year, the list seemed to go on and on.

Under the direction of the Commissioners, we have accomplished many projects, tasks and activities in 2004. First off, we have been working really hard to have on-line renewal in place for the 2005/2006 license year. This has been a harder task than we first imagined, but we are all crossing our fingers.

Next, we continue to travel around the state and visit local boards and offices. Upon their invitation, we have been to the Northern Kentucky Association of Realtors®, Madison County Board of Realtors®, Paducah Board of Realtors®, Greater Louisville Association of Realtors®, Ashland Board of Realtors®, Owensboro Board of Realtors®, My Old Kentucky Home Board of Realtors®, Lexington Bluegrass Association of Realtors®, and the Heart of Kentucky Board of Realtors®. In addition to that, fifteen legal presentations have been made at independent real estate offices.

The Commission also participated in the Kentucky State Fair, the REEA Road Show and the REEA and KREEA conferences, all of the Kentucky Association of Realtor® meetings and all of the Association

of Real Estate License Law Officials meetings.

The Commission held the sixth annual Fifty Year Award Reception, the annual Educator Conference, two homebuyer seminars, six investigator meetings, twelve Commission meetings and the Core Course and Brokerage Management Course instructor training.

We also reprinted the law manual, passed a new statutory package, monitored real estate classes, revised the Core Course, participated on the Inducement Law Task Force, published and mailed the Safety Brochures jointly with KAR, maintained the website, and published and mailed three newsletters.

General Counsel Lee Harris also finished completing the revised version of Kentucky Real Estate Professionals and the Law, a textbook which will be hitting the mailboxes of all brokers in the next couple of weeks. I'm sure many of you talked to her this year, since she fielded over 4,500 phone calls from licensees, attorneys and Board representatives.

All of this is in addition to our day to day work of issuing licenses, investigating unlicensed brokerage, reviewing applicants, renewing licenses, maintaining continuing education records and processing legal complaints.

I am very proud of all that we have accomplished this year, and I look forward to 2005. Happy Holidays.

## *Governor Ernie Fletcher Appoints Lois Ann Disponett as Commissioner Continued from Page 1*

Along with her real estate business, Lois Ann has been involved in the development of both residential and commercial property in the Anderson County area for the last 24 years. She has been married to her husband, Todd Hyatt, who is also a Realtor®, for 18 years and they have one daughter, Anna Marie Hyatt, who is ten years old. Lois Ann is very supportive of her family and is an active "Soccer and Softball" Mom.

Lois Ann brings a lot of knowledge and experience with her to her new role as Commissioner. She is excited about her new responsibility and the Commission welcomes her on board.

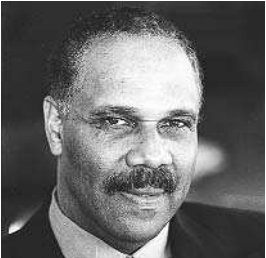
## **The Kentucky Association of Realtors® adopt ANSI Standards**

In September 2004, the Kentucky Association of Realtors® adopted the ANSI (American National Standards Institute) measurement as a standard for Realtors® when measuring residential property. Since training is an issue, this process is scheduled to take place over the next three years. Although the Commission does not mandate the use of ANSI Standards, we encourage all licensees to be trained on proper procedure when measuring square footage.

**Commissioner's  
Corner**



Sue Teegarden



Ron Smith



Arvel J. McMahan



Bob Roberts



Lois Ann Disponett

# Arkansas Reciprocal with Kentucky

On October 1, 2004, Kentucky and Arkansas entered into a Reciprocal Agreement, making Arkansas the eighth state to have a reciprocal agreement with Kentucky.

If you are considering a reciprocal license in another state, there are a few things to keep in mind. First, you must be an active licensee in Kentucky. Escrowed, expired or cancelled licensees are not eligible.

Also, the state for which you are applying will require a Letter of Certification from Kentucky. This can be obtained from the Kentucky Real Estate Commission by sending a request along with a \$10.00 check or money order to the attention of Melissa Kime at the Commission.



Depending on which state you are seeking licensure in, you may also be required to take that state's law portion of the exam and possibly submit to a criminal background check.

Because each state has different laws and requirements, licensees should contact each state directly. The Reciprocal Information on the Commission's website is geared for individuals wishing to become licensed in Kentucky. However, each state is listed along

with addresses and telephone numbers. Simply log on to our website at [www.krec.ky.gov](http://www.krec.ky.gov) for a complete list of reciprocal states. Then you would need to contact that state's Commission directly for an application, a list of fees and other requirements.

## Commission Website Survey Results

Below are the results of a website survey that was conducted during the months of August and September 2004 on the Commission's website. The Commission was pleased with the results, and we continue to strive to meet the needs of real estate licensees as well as consumers.

- |   |   |
|---|---|
| <p>1. What is your licensee status?<br/><b>Active 88.5% Escrow 11.5%</b></p> <p>2. How are you licensed?<br/><b>Sales Associate 56.3%</b><br/><b>Broker 19.5%</b><br/><b>Principal Broker 24.1%</b></p> <p>3. Do you find our website user friendly and helpful?<br/><b>Yes 93.1% No 6.9%</b></p> <p>4. When you call the Commission, is your call answered promptly and with courtesy?<br/><b>Yes 93.1% No 6.9%</b></p> <p>5. Do you feel as though the staff of the Commission is knowledgeable and helpful? <b>Yes 94.3% No 5.7%</b></p> | <p>6. Do you read the Commission's newsletter? <b>Yes 95.4% No 4.6%</b></p> <p>7. Have you ever had a complaint filed against you at the Commission? <b>Yes 12.6% No 87.4%</b><br/>(If yes, do you feel you were treated fairly?) <b>Yes 96.6% No 3.4%</b></p> <p>8. Are you in favor of amending the inducement prohibition to allow licensees to give more than just pens and magnets to customers and clients? <b>Yes 51.7% No 48.3%</b></p> |
|---|---|

*THE COMMISSION THANKS  
THOSE LICENSEES WHO TOOK  
THE TIME TO PARTICIPATE IN  
OUR SURVEY*

## Continuing Education Reminder

All active licensees (except those who were licensed in Kentucky prior to June 19, 1976) must complete six (6) hours of continuing education by December 31, 2004. Keep in mind that three (3) of the hours must be in law. Active licensees must also complete the Kentucky Core Course once every four (4) years. If you took the Core Course this year, it fulfills your six (6) hour continuing education requirement and no other education is needed in 2004. If you have not completed the required continuing education and plan to put your license into escrow, you must submit a signed written letter requesting to be placed in escrow along with a \$10.00 check and it must be postmarked on or before December 31, 2004. Otherwise, you will be considered as delinquent and subject to penalties for not completing the continuing education in a timely manner. For a complete list of providers, log on to our website at [www.krec.ky.gov](http://www.krec.ky.gov) and reference the Education Department.

The Kentucky Real Estate Commission would like to thank former Commissioner Betty J. Kaiser for her years of service as a Commissioner. Ms. Kaiser served as a Commissioner from October 1, 1997 to October 15, 2004. She served as Chair of the Commission in 1999 and 2003 and worked very hard on the development of the Core Course. She participated on numerous committees for the Association of License Law Officials, as well as being active in the Kentucky Association of Realtors® and Greater Louisville Association of Realtors®. She was a dedicated and committed Commissioner and her accomplishments were many. Thank you again, Betty.

## Continuing Education Suspensions

The following individuals were suspended for six months for failing to comply with the 2003 continuing education delinquency plan. These individuals signed an agreement to obtain their 2003 continuing education hours by June 15, 2004 and failed to comply with the agreement.

### Suspended September 1, 2004 through February 28, 2005:

Irvin J. Bacon	David R. Ernst
Kevin Garrett	Patsy L. Grant
Marilyn M. Hoffman	Joni S. Jaramillo
Walter H. Meadors	Aaron S. Wafzigi
Harriet M. Shirkey	Tonya L. White
Gregory T. Whaley	Jerri Waugh
Michael S. Yamamoto	

### Suspended November 1, 2004 through April 30, 2005:

Michelle Thomas

## Proposed Law Changes

The Commission has been working on a package of regulation changes, which will be presented to the General Assembly. The following is a synopsis of some of the main proposed amendments:

1. Changes to the inducement law;
2. Rules for acting as a loan originator and real estate licensee;
3. Rules for handling all types of listings;
4. A formalized settlement process;
5. Training for all real estate instructors;
6. Revisions to print advertising for buyers' agents; and
7. Amendments to the advertising requirements.

There will be a public hearing and comment period so that all licensees may review the proposed changes and make suggestions to the Commission and the legislature. Please check our website ([www.krec.ky.gov](http://www.krec.ky.gov)) for details and dates.



COMMONWEALTH OF KENTUCKY  
OFFICE OF THE GOVERNOR

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GOVERNOR

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Greetings:

I want to begin by thanking you for the significant work that you do in building Kentucky's economic vitality. Your profession plays an important role in providing for greater economic stability and growth here in our Commonwealth and my administration appreciates your work.

Real estate in Kentucky and across our nation continues to prove itself as a good investment for our state's citizens and businesses. Through your efforts, more and more Americans are now experiencing the freedom and independence of homeownership, and businesses are now growing at exceptional levels.

Again, I applaud you for your work and service to Kentucky. I look forward to working with the Kentucky Real Estate Commission and industry leaders as we continue to provide more opportunities for every Kentuckian.

Sincerely,

A handwritten signature in cursive script that reads "Ernie Fletcher".

Ernie Fletcher



AN EQUAL OPPORTUNITY EMPLOYER M/F/D

## Education, Research and Recovery Fund Annual Statement of Income and Expenses for Fiscal Year Ending June 30, 2004

### Income FY 2003/2004

Exam Recovery Fee	\$ 49,230
Reciprocal Recovery	2,370
Renewal Recovery	612,575
Core Course	7,567
Fines	17,167
Education Fines	51,200
Investment Income	52,172
Restitution	10,170
Unlicensed Practice Refund	39,409
Prior Year Grant Refund	59,520
Unused Postage	9,313
<b>TOTAL INCOME</b>	<b>\$ 910,693</b>

Speaker Fees	16,000
Room Rental	1,380
Postage/Parcel Delivery	2,429
Postage/Meter & Bulk	52,539
Printing State	9,706
Printing Vendor	61,097
State Fair	4,807
Advertising	20,380
Cassettes/Books	1,579
In-State Travel	13,127
Equipment Under \$5,000	5,106
Judgements	2,175
Airfare	3,675
Out of Pocket Expenses	85
Lodging	6,855
Meals	889
Mileage	235
Registration Fees	6,660
Transportation	802
Subpoenas/Court Fees	1,654
Subscriptions	6,873
Seminar Refreshments	4,972
College Grants/Scholarships	263,851
<b>TOTAL EXPENDITURES</b>	<b>\$ 894,393</b>

### Expenditures FY 2003/2004

Personnel	\$172,664
Legal Services	13,541
Advertising/Production	1,994
Continuing Ed. Services	74,144
Investigative Services	142,822
Language Translator	135
Carpool	1,081
Court Reporter	1,136



Executive Director Norman Brown gives Margie Harper, Executive Officer of the Heart of Kentucky Association of Realtors®, a 2005 KAR Calendar at the Commission's booth at the Kentucky State Fair. Thousands of consumers visited the Commission's booth which displays the importance of using a real estate licensee.

## *Has your Private Errors & Omissions Insurance Expired??*

It is the *principal broker's* responsibility to ensure that an updated "Certification of Coverage" form and an alpha-betized list of insured licensees affiliated with the firm is forwarded to the Commission **PRIOR** to the expiration date of the E & O coverage. Please refer to KRS 324.395 and 201 KAR 11:220. This form is required only for firms that have their E & O insurance with a private carrier.

If the Commission does not receive this updated certification, a letter will be sent to the principal broker with a deadline for compliance. Failure to provide proof of coverage by the deadline will result in the **cancellation** of all licenses for the firm until such time as the Certificate of Coverage is provided to the Commission.

Copies of the insurance form can be found on the KREC website at [www.krec.ky.gov](http://www.krec.ky.gov) or through fax on demand (888-KREC-FAX), document #500.

# LEAVING ONE PRINCIPAL BROKER AND GOING TO ANOTHER

*The following is an excerpt from the Commission's textbook entitled Kentucky Real Estate Professionals and the Law.*

As a general rule, the license law provisions and regulations promulgated by the Commission protect the public against improper conduct by real estate licensees. Very few of these laws or regulations concern disputes between and among brokers or agents. One dispute between brokers that imposes a threat to a member of the public, however, has been addressed by the legislature in KRS 324.160(4)(p). This statute prohibits a licensee from "negotiating or attempting to negotiate the sale, exchange, lease or rental of real property with an owner or lessor knowing that the owner or lessor has a written outstanding contract granting exclusive agency in connection with the property to another real estate broker."

Under this law, it is illegal for a real estate agent to negotiate in any manner with an owner if the agent knows that the owner's property is subject to an outstanding exclusive agency agreement with another broker. Real estate agents will not be held liable under the statute unless they know of the exclusive agency agreement. Knowledge by the broker or agent can be proven by the existence of signs on the property or the fact that a listing has been made public by way of a multiple listing service ("MLS") or broker advertising in the newspaper, on the Internet, in home-selling publications and the like. Any agent who sees a sign in a yard should presume that the property is subject to an exclusive agency agreement and should contact the listing agent to inquire about the type of listing agreement that has been executed on the property. In addition, the MLS listing should instruct all

other agents and brokers as to the type of agency agreement involved.

This statutory provision serves a dual purpose, benefiting both the public and the real estate licensees. A seller could become liable for more than one commission if he or she negotiates with more than one broker while the property is subject to an exclusive agency agreement. Hopefully, KRS 324.120(4)(p) will prevent, or at least limit, claims for double commission. In addition, if brokers were allowed to negotiate directly with the sellers during the term of an exclusive agency agreement, the function of and protection afforded by exclusive agency agreements would be defeated.

There is a discrepancy between the license law and the National Association of Realtors®' Code of Ethics regarding contacting sellers who are under exclusive agency agreements. The Code of Ethics allows a Realtor® to contact a seller to find out the expiration date of the current listing, if the listing agent has been asked and refuses to provide such information. (Please see National Association of Realtors®' Code of Ethics and Standard of Practice, Article 16-4) The license law always trumps the Code of Ethics; therefore, in Kentucky, agents may not use this Code of Ethics provision without violating the provisions of KRS 324.160(4)(p).

Real estate licensees are also prevented under 201 KAR 11:110 from attempting to induce a party to break an existing contract. Specifically, the regulation states that "no real estate broker shall induce any party to a contract or sale or lease to break such contract for the purpose of substituting in lieu thereof a new contract with another principal." Any

real estate licensee who approaches a seller and attempts to convince that seller that he or she has a better prospect for the property than the individual who has already contracted to buy the property will be subject to disciplinary action under this regulation. This regulation also prevents a real estate licensee from encouraging a seller to breach his or her existing listing agreement. If a seller is under a listing agreement with one agent and contacts another agent to seek advice on how to void the current listing, the agent should refuse to offer any such advice.

Generally, as stated above, the Commission handles disputes between consumers and licensees. When licensees have disputes among or between each other, there are several other options available to resolve those disputes. Those licensees who are members of a local Association of Realtors®, for example, may have their Realtor®-to-Realtor® disputes handled by that Association or the Kentucky Association of Realtors® ("KAR"). Most Associations have an arbitration panel that hears professional standards complaints as well as a panel that hears procuring cause claims in order to resolve ethics grievances and commission disputes, respectively. Those licensees who are not members of a local Association of Realtors® may always resolve their disputes through civil remedies, such as court, mediation or arbitration.

Revised by Lee B. Harris, General Counsel





# Commission Honors Half-Century Award Recipients

On October 26, 2004, nine more licensees were honored by the Commission with the Half-Century Award. The Half-Century Award is given to licensees who have held a real estate license for fifty years. The honorees were: Samuel Bennett, A. Cecil, Harold Haering, Gilbert Laycock, Robert Owens, Enrique Pantoja, Frank Strickler, Jr., Walter Wagner, Jr. and George Wiley. Present to accept their award were Gilbert Laycock and Robert Owens. In addition to the Commissioners and staff, also present were Bob Berning and Judy Piazza from the Kentucky Association of Realtors®, Elaine Hangis of the Lexington-Bluegrass Association of Realtors®, and Bruce Lynn, Wayne Pugh, Frances Almany and Charles Haynes from the Tennessee Real Estate Commission.

The featured guest speaker was Dawne Gee, of Wave 3 television in Louisville. Ms. Gee gave a fabulous speech that was not only humorous but inspirational. Ms. Gee reminded everyone to think positively, appreciate what you have and to look for the lessons in life.

This is a great event, and the Commission really enjoys meeting the honorees. A special thanks to honoree

Gilbert Laycock for addressing the attendees with his thoughts and memories about growing up in the great state of Kentucky.

This event is just a small token of the Commission's appreciation for the extraordinary achievement and dedication these licensees have provided to the real estate industry. Real estate has changed drastically over the last fifty years, and these individuals are the pioneers of the industry. Again, congratulations to all of the honorees.



Pictured above, left to right, Gilbert Laycock, Commissioner Bob Roberts, Robert Owens and guest speaker Dawne Gee

## When a Buyer Breaches a Contract: To Release or Not to Release?

By: Harry Borders,  
Borders & Borders, PLC

If you've been in the business for any time at all, you've probably run into a situation where everything appears to be going just right. You get a listing, start to market the house and then you find the perfect buyer. And then things suddenly go wrong when the buyer, for no good reason, decides he is no longer interested in purchasing the house. Where do you go from here?

Very frequently, both parties simply sign a release, and the seller forever releases the buyer from any and all future liability. Oftentimes that might be the best thing to do because it takes time, energy and money to enforce a contract against a buyer. But other times it might not be a wise choice for your seller and it's imperative she understands what it means to sign a release. You should



refer your client to legal counsel to explain the ramification of signing a release.

Once a release is signed, neither party can enforce the contract against the other party, and neither party can collect damages which have been sustained as a result of the breach by the other party. If you have difficulty reselling the house after your first buyer backs out, the seller could sustain serious damages as a result of the buyer's breach of contract. If a release is signed, the seller will never be able to recover these damages from the buyer. For example, if the buyer had agreed to buy the house for \$100,000.00 and breaches the contract, and the seller

is able to sell the house again for only \$95,000, the seller would lose the \$5,000 difference in sales price (in addition to any other incidental damages sustained) if she signs a release to relieve the buyer from liability.

So what do you do after the buyer breaches the contract? If your seller is confident that the property can be resold quickly, she could decide reasonably to release the first buyer from the contract in order to move quickly to another contract. But if your seller isn't comfortable doing that (which is often the case if it's not clear how much the house will sell for the next time or how long it will take to resell it), you'll want to look into the option of reselling the property without a release.

Now you should be asking, "but how can you sell the house to a second buyer without a release from the first buyer?" Contrary to popular opinion, you can sometimes sell the property

*Continued on Page 11*



# Disciplinary Actions



**Amy Griffith** (Lexington) Case No. 04-0070

**Violation:** Ms. Griffith did not respond to the Commission's sworn statement of complaint concerning her recent DUI convictions.

**Disposition:** Since she failed to respond to the Commission's sworn statement of complaint, the Commission revoked her license.

**Clark A. Sebree, Jr.**

(Crestwood) Case No. 03-0159

**Violation:** Mr. Sebree was found in violation of KRS 324.160 (4)(j) for being convicted of a felony while holding a real estate license. He was also found in violation of 201 KAR 11:030, Section 2 for failing to notify the Commission of his change of residence address. Pursuant to KRS 13B.080(6) Mr. Sebree was served at his last known address and failed to appear as ordered.

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

**J. Scott Hagan** (Louisville) Case No. 04-0122

**Violation:** Mr. Hagan stipulated that he unknowingly violated KRS 324.160(4) for allowing an out-of-state unlicensed company to "use" his Kentucky license by entering into a "co-broker agreement." Mr. Hagan immediately terminated the agreement prior to any actual impermissible use of Mr. Hagan's license.

**Disposition:** Mr. Hagan agreed to pay a \$2,000.00 fine.

**David R. Jernigan** (Franklin) Case No. 04-0025

**Violation:** Mr. Jernigan stipulated to a violation of KRS 324.160(4)(j) for being convicted of a felony

while holding a real estate license.

**Disposition:** Mr. Jernigan's license will be placed on probation for a period of two (2) years and the Commission will conduct random audits of files relating to his real estate transactions. Mr. Jernigan shall complete twelve (12) hours of continuing education in a Commission-approved law course, and he agrees that he will never apply for or try to obtain a "broker's" license to engage in real estate brokerage in this Commonwealth.

**Charles T. Allen** (Lexington) Case No. 04-0040

**Violation:** Mr. Allen stipulated to a violation of KRS 324.160 (4)(b) for his unintentional misrepresentation of a septic system in a real estate transaction involving the sale of his investment property in Versailles, Kentucky.

**Disposition:** Mr. Allen agreed to pay the complainants the sum of one thousand one hundred dollars (\$1,100.00), which represents one-half of the approximate cost to have the property served by a sewer system. Mr. Allen also agreed to complete six (6) hours of continuing education in a Commission-approved law course.

**James S. Long** (Scottsville) Case No. 04-0051

**Violation:** Mr. Long stipulated to a violation of KRS 324.160 (4)(u) for violating KRS 324.117 by unintentionally advertising in a false, misleading or deceptive manner. He advertised "\$2995 Sellers Flat Fee!" next to a "MLS" logo, without explaining in the advertisement that, under certain circumstances, the fee in question would be higher than \$2995, if the seller's property

is placed on the MLS.

**Disposition:** Mr. Long agreed to pay a fine in the amount of \$250.00 and complete nine (9) hours of continuing education in an approved law course.

**Margaret A. Gorbandt**

(Louisville) Case No. 04-0029

**Violation:** Ms. Gorbandt stipulated to a violation of KRS 324.160(4)(u) for violating 201 KAR 11:400 by failing to provide a properly completed Agency Disclosure Form.

**Disposition:** Ms. Gorbandt agreed to pay a fine in the amount of two hundred fifty dollars (\$250.00) and to complete three (3) hours of continuing education in a Commission-approved agency course.

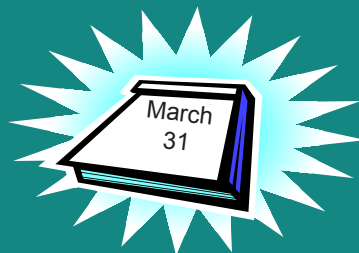
**Danny R. Willis** (Frankfort) Case No. 02-0099

**Violation:** - Mr. Willis failed to complete the correct continuing education hours as mandated in his Settlement Agreement.

**Disposition:** Mr. Willis was fined two hundred fifty dollars (\$250.00).

**MARK YOUR CALENDAR!**

**RENEWAL DEADLINE**



**IS MARCH 31, 2005**

# BROKER SUPERVISION

*The following is an excerpt from the Commission's textbook entitled Kentucky Real Estate Professionals and the Law revised by Lee Harris, General Counsel.*

Principal brokers are required to provide adequate supervision over their sales associates under KRS 324.160(6). Whenever a complaint is received by the Commission alleging misconduct on the part of the sales associate, the principal broker will also be required to respond to the complaint. The principal broker is not shielded from liability based upon a sales associate's status as an "independent contractor" or the fact that the principal broker and the sales associate may have entered into an independent contractor agreement.

Although the independent contractor status may affect the agent and/or broker for federal income

tax purposes, it has no effect on the licensee's status under the real estate license laws. The license law makes the principal broker responsible for the supervision of all of his or her agents. The facts of each case must be carefully considered, in order to determine whether a license law violation by an agent was the sole or partial result of inadequate supervision by a principal broker. If the Commission concludes that the violation was a result of the principal broker's neglect in supervising the agent, the Commission may order discipline against that principal broker as well as the sales associate.

The Commission expects principal brokers to provide supervision, training, and sales meetings. In addition, the principal broker or a designated managing broker should be available to review documents, including listing contracts and purchase contracts. While they are not required to review such documents, failure to do so

may result in liability and/or discipline against the principal broker or designated managing broker.

Of course, the principal broker cannot be held accountable for every wrongdoing by his or her sales associates. In many cases, no amount of supervision could prevent an intentional wrongdoing by a sales associate. Accordingly, if an agent or sales associate engages in some form of calculated or intentional misconduct, such as fraud or intentional misrepresentation, and the principal broker has no knowledge of and does not condone the misconduct, the principal broker will not be subject to disciplinary action by the Commission. This principle is incorporated into KRS 324.160(6), which states: "no unlawful act or violation of any provision of this chapter by any associate of the principal broker may be cause for holding the principal broker primarily liable unless the broker has knowledge of such unlawful violation."

## When a Buyer Breaches a Contract

*Continued from Page 9*

to another buyer without getting a release from the first buyer. It is always wise to get an opinion from an attorney, or at least your broker, before you move forward with another contract without a release on the first contract. It's not wise to decide yourself, or to encourage your seller to decide, that the first buyer is actually in breach (and has no defenses to the contract). If the buyer changes his mind and now decides that he in fact is going to perform under the contract? You could end up with two valid contracts and at least one very upset party on your hands.

When it's unclear whether your seller can move forward with another contract without a release on the first contract, the first thing to do is to speak with your broker or attorney about the facts of the situation and get an opinion as to whether or not the buyer is in default. If your broker or attorney agrees that the buyer has no legal right to terminate the contract, you then need to give your seller the choice of signing a release and letting this buyer go forever, or sitting down with a litigation attorney to dis-

cuss other options. Often, litigation attorneys will want to send a letter to the buyer, giving the buyer a stated amount of time within which to come forward and agree to purchase the property under the terms of the contract or lose the right to complain when the seller moves on to another buyer. If the buyer does not agree to perform, he will then be precluded from later arguing that he had a valid contract.

In most situations, the best choice for your seller might be to sign the release, take the buyer's good faith deposit (especially if it is a sufficient amount of money) and move quickly toward reselling the property. But not always. And this decision should always be the seller's, not the agent's. You don't want to end up with two valid contracts, but you also don't want to encourage your seller prematurely to release the buyer from all liability. If the seller signs the release without understanding that she is giving up the right to collect damages from the buyer, the next question when she goes to a litigation attorney will be, "OK, then can I collect from my agent?" If you do not advise the seller to seek counsel to explain the importance of signing a release, the answer just may be "yes."



# Farewell to Judy Piazza

The Commission would like to say goodbye and thank you to Judy Piazza. Judy resigned as the Governmental Affairs Director for the Kentucky Association of Realtors® to accept the position of Deputy Director for the Department of Alcohol and Beverage Control. Over the last five years, Judy in her role at the KAR assisted the Commission with passing joint legislation. Her many talents will be missed by the Commissioners, staff and licensees.

## NEW WEBSITE ADDRESS

[www.krec.ky.gov](http://www.krec.ky.gov)

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Web Address: [www.krec.ky.gov](http://www.krec.ky.gov)

The Kentucky Real Estate Commission will be closed  
on:  
December 24 & 27, 2004  
(Christmas)  
  
December 31, 2004  
January 3, 2005  
(New Year's)  
  
January 17, 2005  
(Martin Luther King, Jr. Day)

## Word Scramble

1. OGNINCTIUN CDTEAIUNO

2. ANDLIEDE

3. ODT'N

4. OGRFTE

5. CDERMEBE 31, 2004  
31, 2004

Answers: 1. Continuing Education 2. Deadline  
3. Don't 4. Forget 5. December 31, 2004

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