

# Vermont Real Estate Commission



## Newsletter

### Message from the Chair

Change is in the air at the VT Real Estate Commission. We have begun the monumental task of revisiting the rules and revising where appropriate. Because the real estate industry is in constant change with new technologies, it is difficult to keep pace with what faces the consumer and licensee alike. So we are once again looking at revisions and changes. Consumer protection is our charge.

In addition to the forming of a committee for the revising of the rules, we have two new members on the REC. We are happy to welcome David Raphael, Broker Member from Chittenden County, and our new Board Counsel, Colin Benjamin, from Washington County. Both have hit the ground running and have added a new dimension to our group.

Continuing on the "change" note, we are planning to implement a new program with REC inspectors in the field. We have found that many of the brokerage offices have not been inspected for quite some time and those that remember those routine office inspections, speak fondly of a former inspector, "Mr. Whipple" who would show up at an office in a non-threatening manner to check office records. Many licensees have told us that he created a good mixture of inspecting the records and educating the brokerages in proper procedures for record keeping. Unfortunately, Harold Whipple retired some years ago and has recently passed away. He will long be remembered for setting the standard for a REC inspector. We hope to recreate that atmosphere. More information on the new program and its implementation will be forthcoming in the next few months.

#### Governor

The Honorable Peter Shumlin

#### Secretary of State

James Condos

#### Office of Professional Regulation

Christopher D. Winters, Esq., Director

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#### Members of the Commission

Maretta Hostetler, Broker, Chair  
Elizabeth Wilkel, Broker, Vice Chair  
Gloria Rice, Attorney Member, Secretary  
David Raphael, Jr., Broker, Member  
Claire Porter, Public Member  
Thomas Prindiville, Public Member  
Michelle Gosselin, Salesperson

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#### Commission Staff

Terry Gray, Administrator  
Colin R. Benjamin, Esq. Board Counsel  
Judith Griffen, Administrative Assistant  
Carla Preston, Case Manager

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[http://vtprofessionals.org/opr1/real\\_estate/](http://vtprofessionals.org/opr1/real_estate/)

This is a good time for brokerage firms to examine their policies and procedures in record keeping and to get their records in order. It has been an amazement to the REC and the investigators when in a response to a complaint, the careless and hapless methods of record keeping that have been discovered in an inspection. Deposits records, bookkeeping of escrow accounts, information on open and closed sales and listings have been scattered about and in a form that was hard to decipher.

For clarity in record keeping, keep in mind the chain of events in a transaction from the time of listing or service contract to the closing of a sale. Keep your records accordingly and in a manner that the chain of events can be followed easily. In terms of electronic messages, electronically conveyed contracts, phone or messaging conversations, make sure to have a backup system that can be tracked to the file involved in the transaction or event. All of your records should be located to be easily accessible. This is not only for the benefit of an inspector on a routine inspection but also for the brokerage firm to instill good record keeping habits for the brokerage and its affiliated associates. Our advice is to keep good, clear, and accessible records so that when the new program is in place, your office will be in good order.

### **Meet Our New Board Member**

David Raphael, Jr. joined our board in February of this year and is the owner and principal broker of Artisan Realty of Vermont located in Essex, Vermont. He practices real estate full time working with buyers and sellers as well as building and development. Prior to making the transition to real estate ten years ago, David had a long career in information technology management and software development. 2011 marked his sixth year in Realtor® leadership holding such roles as local board President, three terms as President of the State's largest MLS, and continuing service on his Realtor® Professional Standards Board. In 2011 he was the first Vermont licensee to graduate from the National Association of Realtors® Leadership Academy. Outside of real estate, David serves

on the Town of Essex Planning Commission and UVM Lane Series Board and is an active volunteer with Rebuilding Together Greater Burlington.

### **Principal Brokers and Brokers in Charge: Do you know where your licensees are?**

**David Raphael**

The better clarification to this question might be, "Do you know where your licensees are on-line?" As more and more of our business is transacted electronically and on-line through websites, blogging, and social media, it becomes critical as Principal Brokers to pay attention to what licensees are doing and saying through these mediums. After all, it's our license that is hanging in the balance.

One of the rules we practice under the Vermont laws and rules is *Rule 4.2 Broker Supervision*. Section (a) states "A principal broker is vicariously responsible for the professional conduct of all licensees and all employees of the brokerage firm, including all branches. A broker in charge is vicariously responsible for the professional conduct of all licensees and employees of the branch office." Vicarious responsibility, a big phrase. We mean, we get that when we manage licensees, we have to make sure they fill out brokerage service agreements, don't break fair housing or advertising laws, and train them to practice to the rules in an ethical and responsible manner. We need to make sure they take their continuing education and have a license. But what about all the real world areas our agents find themselves practicing in? E-mail correspondence, social networking sites such as Facebook, Twitter, LinkedIn, ActiveRain?

The short answer is that what a licensee says or does on-line is ultimately your responsibility. Your licensees may think that they are free to Tweet, post on Facebook, and blog and that the rules don't apply. Unprofessional conduct doesn't differentiate between the technological and on-line world and the physical marketplace. Becoming a licensed salesperson or broker means the rules apply 24/7 no matter where we practice.

As brokers we have to be aware of where our licensees are on-line and what they are saying. We should have written policies and procedures addressing what is acceptable conduct and what isn't. We should be requiring licensees to keep us apprised of what sites they post to and monitor these with some regularity. Agents, we have a responsibility to follow the same rules on-line as we do off-line. Advertising? Yes. Client confidentiality? Yes. Consumer Information Disclosures? Yes

You say, "Come on, when I post on Facebook, I am doing it to my personal page and to friends and family." Not if the content falls under conduct governed in our licensing laws. As licensees we aren't able to sever our license status when we want. The rules apply, 24x7, 365 days a year. More and more examples and cases are popping up around the country entailing licensees who crossed the line and were brought up on disciplinary charges. Many states have revised their licensing laws to go as far as talking about such social sites as Twitter and a licensee's responsibility to do such things as identify themselves and their firm and their status as a licensee. Imagine a casual Facebook post talking about how one of your clients' listings is overpriced and how frustrated you are that they won't agree to a price reduction. We have seen them. That post may well break the fiduciary client duties. Imagine a post from a licensee about a new listing. Does it comply with the requirements in the rules in 4.12 Advertising to prominently indicate the brokerage firm's registered name? Imagine a e-mail chain with a customer about property and the oral and written disclosures were never given.

Brokers, take the time to look at your policies and insure that they are up to date for today's marketplace and technology. Talk to your licensees about their obligations and remind them that the rules always apply. Monitor the social networking sites and blogs and take corrective action when you see conduct that crosses or gets close to the line.

## **Duty to Customers And The Public: Rule Making Update**

The "Green Book", aka the Rules, which was last published in April 2008 is undergoing a complete review.

Greetings to all Vermont Real Estate licensees! A Rules Workgroup was recently appointed by the full Commission to review and update the "Green Book". The Workgroup includes our Attorney Member Gloria Rice, Broker Member David Raphael, Broker Member and REC Chair Maretta Hostetler as an Ad-Hoc member, and Broker Member Elizabeth Wilkel. Joining us for this important work is our Board Counsel Colin Benjamin, Esq., and our Board Administrator Terry Gray. We have been meeting every couple of weeks reviewing the 'Green Book' section by section, and line by line to determine what works, what doesn't, and very importantly what needs to be revised in order to give Vermont consumers the best possible protection in the purchase and sale of Vermont real estate.

Please be advised that everything is on the table. To this end we are researching how other states handle various other forms of Agency that are not currently allowed in Vermont. The "Rules" are a living document, and each and every existing Rule, as well as new proposed additions are being reviewed for clarity, enforceability and relevance to the practice of the profession particularly in light of recent Court decisions and OPR Unprofessional Conduct Decisions. We are reminded in our work of our very specific task to protect the public.

Our Workgroup meetings are 'Public Meetings' as defined by Vermont Statute. You are most welcome to come and observe the Workgroup meetings and offer brief comments at the meeting during the time specifically set forth for public comment, in the same manner as at a Commission meeting. You may also submit written suggestions for the Workgroup's consideration by emailing them to our Board Administrator.

A special kudos and many thanks to our Commission members that spend many hours researching and writing articles for this months newsletter:

Maretta Hostetler, Chair  
Elizabeth Wilkel, Vice Chair  
David Raphael, Jr.

### Licensees as of August, 2011

Type of License	Resident
Broker	1152
Salesperson	1170
Office	767

### Unprofessional Conduct Activity January 2011 through July, 2011

New cases opened and Under Investigation	20
Pending Charges	2
Pending Hearings or Other	15
Cases Concluded Without Action	16
Disciplinary Actions Taken	6

### Disciplinary Actions Taken 2009-August 2011

Aiken, Susan	<a href="#">REC10-1008</a>	December 18, 2009
Altrui, Roxanne	<a href="#">REC09-1006</a>	February 27, 2009
Bollman, Scott	<a href="#">REC11-1008</a>	August 27, 2010
Chase, Mildred	<a href="#">REC15-1206</a>	May 3, 2010
Derobertis, Kristy	<a href="#">2009-519</a>	February 2, 2010
Elwood, Christine	<a href="#">2009-139</a>	September 24, 2010
Hart, Herbert	<a href="#">REC18-1208</a>	June 25, 2010
Hawthorne, Robert	<a href="#">REC26-0407</a>	April 28, 2009
Hickok, Barry	<a href="#">2008-332</a>	January 3, 2011
Provost, Robert	<a href="#">2009-327</a>	August 27, 2010
Swanson, Ann	<a href="#">REC41-0206</a>	November 2, 2010
Wagoner, Giles	<a href="#">2009-486</a>	December 18, 2009
Wyman, Vickie	<a href="#">2009-551</a>	January 14, 2011
Swanson, Ann	<a href="#">2009-482</a>	April 25, 2011
Chamberlin, James	<a href="#">2009-490</a>	October 22, 2009
Provost, Robert	<a href="#">M2011-30</a>	February 23, 2011

To view all disciplinary actions:

[http://vtprofessionals.org/conduct/decisions.asp#  
Real\\_Estate](http://vtprofessionals.org/conduct/decisions.asp#Real_Estate)

### WANTED

The Real Estate Commission is seeking professional individuals to perform the function of Real Estate Commission Field Inspectors. Must have experience in all aspect of Real Estate from Disclosures, Buyer and Seller Agreements, Active and Closed files, General Operations and Deposit and Escrow Accounts.

Interested individuals please send your letter of interest and a resume to:

Real Estate Commission Inspector  
Office of Professional Regulation  
National Life Bldg., North, FL 2  
Montpelier, VT 05620-3402

### Commission Meetings

The Commission usually meets once a month on the fourth Thursday, beginning at 9:30 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.

[www.vtprofessionals.org/realestate](http://www.vtprofessionals.org/realestate)

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