



VIRGINIA REAL ESTATE BOARD

VREB *SPEAKING*

www.dpor.virginia.gov

Winter 2011

Message from the Chair



Clifford L. Wells

I hope you all enjoyed the Holidays and are looking forward to a happy and prosperous 2012. Serving on the Real Estate Board provides me with many opportunities to hear from our licensees. In this article I'd like to address briefly two matters that primarily concern brokers. First, the random inspections of real estate firms initiated by the Board appear to be working well. Inspections conducted so far indicate that most real estate firms are in compliance with the Board's laws and regulations. Firms with what appear to be minor violations are allowed to take corrective action resulting in compliance with Board rules. However, firms with what appear to be violations that would harm the public will have appropriate disciplinary action taken against them by the Board. My firm

served as the test office for the inspection program. We welcomed the opportunity for Department investigators to review our operation and confirm we were conducting business well or to provide us with recommendations for taking corrective action if any was needed.

As of September 2011, 81 firm inspections have been completed. Fifty-one inspections resulted in no action being taken against the firm as they were determined to be in compliance with the Board's laws and regulations. Twenty-eight inspections revealed potential violations of the Board's rules and regulations ranging from failing to properly label escrow accounts to minor record keeping issues. The firms chose to become compliant with the Board's requirements, so no further action was taken. Two inspections were referred for further disciplinary action with regard to failing to respond and earnest money deposit issues.

Second, there is confusion concerning the self-audit by brokers process expressed in §54.1-2111 of the *Code of Virginia*. If a broker discovers noncompliance with the Board's laws and regulations in the firm, then the broker must "notify the Board of this non-compliance within 30 days after discovery and shall submit a written statement with a plan to bring the practices, policies, and procedures into voluntary compliance, which completion of such voluntary compliance shall not exceed a period of 90 days from the date that the plan is submitted to the Board." If the broker complies with this, then he/she is immune from Board enforcement action, unless

(Continued on page 4)

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9960 Mayland Drive
Richmond, VA 23233
804-367-8526

Robert F. McDonnell
Governor

James S. Cheng
Secretary, Commerce & Trade

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2012 Meeting Dates

January 26, 2012
March 15, 2012
May 17, 2012
July 12, 2012
September 6, 2012
November 29, 2012

All meetings are held at the above address at the Perimeter Center.

BOARD MEMBERS

Clifford L. Wells, Chairman
Virginia Beach
Licensee Member
Four-year term ends on 6/30/13

Judith L. Childress, Vice Chair
Martinsville
Licensee Member
Four-year term ends on 6/30/12

Nathaniel Brown
Charlottesville
Citizen Member
Four-year term ends on 6/30/12

Carol F. Clarke
Charlottesville
Licensee Member
Four-year term ends on 6/30/12

Anh Tu Do
Annandale
Licensee Member
Four-year term ends on 6/30/15

Sandra Ferebee
Norfolk
Licensee Member
Four-year term ends on 6/30/14

Joseph Funkhouser, II
Harrisonburg
Licensee Member
Four-year term ends on 6/30/14

Sharon Parker Johnson
South Hill
Licensee Member
Four-year term ends on 6/30/12

Jorge G. Lozano
Annandale
Citizen Member
Four-year term ends on 6/30/14

DPOR Staff

Gordon Dixon, Director

Mark Courtney, Deputy Director
Licensing & Regulation Division

Nick Christner, Deputy Director
Compliance & Investigations Division

Steven Arthur, Deputy Director
Administration & Finance Division

Lizbeth Hayes, Director
Fair Housing Office



Real Estate Board Staff

Christine Martine
Executive Director

Kevin Hoeft
Education Administrator

Jeffrey Williams
Board Administrator

Emily Trent
Administrative Assistant

Board Contact Information

Executive Director - 804-367-8552
Licensing Section - 804-367-8526
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E-mail - REBoard@dpor.virginia.gov
Internet - www.dpor.virginia.gov
DPOR Main Number - 804-367-8500
Complaints Section - 804-367-8504

2011 Real Estate Advisory Council Meetings Update

The Virginia Real Estate Board Advisory Council (Advisory Council) met in Richmond on September 12, 2011, and October 18, 2011, to review the Board's post license education program for new salesperson licensees pursuant to § 54.1-2105.01.B of the *Code of Virginia*.

At the September 12 meeting, Advisory Council Chairman Joseph Funkhouser informed the group that effective July 1, 2011, HB 1907 (passed by the 2011 General Assembly and signed into law by Governor McDonnell) removed the three practice tracks from the Real Estate Post License Education for New Salespersons' statute in the *Code of Virginia*. Mr. Funkhouser explained that the Advisory Council's primary goal this year is to recommend to the Real Estate Board what new 30-hour Post License educational curriculum should replace the current 30-hour Post License educational curriculum, which is based on the three practice tracks of Residential Real Estate, Commercial Real Estate, and Property Management.

Mr. Funkhouser added that no changes will be made to the Real Estate Board's current Post License Education program until the Board decides what to put in its place. The Advisory Council should provide the Board with advice on what 30-hour educational curriculum for new salespersons would best protect the public within the boundaries of Virginia law. The main boundaries of law are: 1) the curriculum must be at least 30 hours; and 2) the 30-hour curriculum must include the following nine topics: contract writing, handling customer deposits, listing property, leasing property, agency, current industry issues and trends, property owners' and condominium association law, landlord-tenant law, and Board regulations. The Advisory Council proposed a variety of topics that should be included in the 30-hour curriculum and agreed to meet again on October 18 to refine the proposed 30-hour curriculum.

At the October 18 meeting, after discussion and a vote, the Advisory Council unanimously recommended that the following 30-hour post license education curriculum, consisting of eight distinct courses, be approved by the Real Estate Board: 1) Fair Housing, Americans with Disabilities Act and the Civil Rights Act of 1866 – 2 hours; 2) Real Estate Law and Board Regulations – including Lead Based Paint, Virginia Residential Landlord and Tenant Act, Property Owners Association Act, Condominium Act, Common Interest Community Law, Megan's Law, Servicemembers Civil Relief Act, all required disclosures, Virginia Real Estate Board disciplinary actions, Building Codes and Smoke Detectors – 8 hours; 3) Ethics and Standards of Conduct – 3 hours; 4) Current Industry Issues and Trends – such as Short Sales, Social Media and Internet Advertising – 2 hours; 5) Virginia Agency Law – 3 hours; 6) Contract

Writing – such as Listing Parties, Residential Leasing, Net Leases, Triple Net Leases, Ground Leases, Contingencies, Ownership Principles, Multiple Offers, Ratification, Delivery, Back-up Offers and Home Inspections – 6 hours; 7) Risk Management – including Real Estate Settlement Procedures Act, Anti-Trust Act, Chesapeake Bay Preservation Act, Environmental Laws, Mold – 3 hours; and 8) Escrow Requirements – including Deposits and Trust Monies – 3 hours.

The Advisory Council then agreed that new salesperson licensees should not be required to complete all eight courses and 30 hours with the same approved education provider. New licensees should be able to complete the eight courses and 30 hours with different approved education providers.

At its November 17, 2011, meeting, the Board reviewed and discussed the October 18, 2011, Advisory Council Meeting Report and Recommendation and voted to direct the Advisory Council to meet again prior to the January 26, 2012, Real Estate Board meeting. At its next meeting, the Board would like the Advisory Council to: 1) Reconsider the number of hours allocated to Proposed Courses 2 & 6 (Real Estate Law and Board Regulations & Contract Writing); 2) Reconsider the number of hours allocated to Course 7 (Risk Management); 3) Consider whether 24 hours of the 30 hours should address the nine required subjects listed in 54.1-2105.01.C with the remaining six hours being allocated for Electives; and 4) Consider whether the Board should require more than 30 hours for the New Salesperson curriculum. Board Counsel advised that since 54.1-2105.01.C of the *Code of Virginia* states "an educational curriculum of 'at least' 30 hours," then the Board could require more than 30 hours if it deemed this necessary. The Advisory Council has scheduled its next meeting for Wednesday, January 18, 2012, at 10:00 a.m. at the DPOR Office in Richmond.

Also at its November 17, 2011, meeting, the Board decided to expand the Advisory Council from 15 to 18 members and has appointed five new members. They are former Real Estate Board Members Byrl Taylor and Florence Daniels, Marshall Toney of Prudential Towne Realty in Williamsburg, Dorothy Burch of Century 21 Nachman Realty in Hampton and Angie Delboy of Gateway 2 Real Estate, LLC in Chantilly.

Gerald Divaris and Ed Hall, who served on the Advisory Council since it was established in 2003, have completed their term of service. The Board is grateful for their exceptional service to the Commonwealth and its citizens during their tenure on the Advisory Council.

You can review the above-referenced Advisory Council and Real Estate Board meeting minutes at: <http://www.townhall.virginia.gov/L/Meetings.cfm?boardid=91&time=past180>.

Earnest Money Deposits - Questions and Answers

By Blake Hegeman, Virginia Association of Realtors®, Legal Counsel

The Real Estate Board is focused keenly on Earnest Money Deposits (EMD). There is a good reason for this focus – these funds are held in trust for parties and Board licensees must act with the utmost care to protect them. This article will focus on some hot-button issues concerning EMDs.

When does an EMD have to be deposited?

The deposit must occur within five business banking days following ratification unless otherwise agreed to *in writing* by the parties pursuant to **18 VAC 135-20-180 of the Board's Regulations (Maintenance and management of escrow accounts)**:

Purchase transactions. Upon the ratification of a contract, earnest money deposits and down payments received by the principal broker or supervising broker or his associates must be placed in an escrow account by the end of the fifth business banking day following ratification, unless otherwise agreed to in writing by the parties to the transaction, and shall remain in that account until the transaction has been consummated or terminated.

Is it permissible for a short sale seller and buyer to delay depositing the EMD until receiving lender approval?

Yes, the Board's Regulations allow the parties to agree in writing to a deposit date other than the standard five business banking days following ratification.

A number of disciplinary cases before the Real Estate Board involve confusion over when ratification occurs in a short sale contract and when the EMD must be deposited. A discussion of this confusion follows, but remember that the EMD must be deposited within five business banking days following ratification unless otherwise agreed to in writing by the parties – whether it is a short sales contract or not.

In the typical purchase contract, full execution and ratification usually occur upon acceptance of the last offer by the other side, by signing and notifying the other side of acceptance – the same is true of short sales. Despite this fact, one of the most common questions we receive concerning short sales is, "I understand you maintain that

short sale contracts are not ratified until lenders have approved them. Is this true?" The answer is absolutely not. Short sale contracts are typically ratified but with seller's obligations contingent on lender approval. This contingency is a title contingency that benefits the seller and no more defeats the existence of a ratified contract than does a buyer financing contingency, which also calls for lender approval.

In summary, the short sale contract is considered ratified when fully executed and delivered by and to all parties, just as if it were any other contract. The contingency for removal of the lien does not affect whether it's ratified or not. Please note that if the contract provides that ratification or acceptance are subject to lender signature or approval, that's different. In that case there is no contract until the lender approves.

Many licensees include in the purchase contract that the earnest money will be paid "upon ratification." Is it a violation of the Board's Regulations if the licensee cannot deposit the check within five days of ratification because the buyer delayed submitting the check?

If the buyer delays beyond the five days, then the terms of the purchase contract govern the matter. If the contract states the buyer made a deposit that is being held by the escrow agent, when in reality there is no such deposit, then there is a material misrepresentation. The licensee will likely be the subject of disciplinary action by the Board. The contract must reflect the actual transaction. If the contract is ratified without the licensee having the EMD, or with a post-dated check, or with a check in the mail, or whatever the case may be, the contract needs to reflect that status.

What is the principal broker's responsibility if a licensee fails to provide the EMD for a transaction within five business banking days?

The principal broker must report this action, or any other likely escrow violation, to the Board within three business days in accordance with 18 VAC 135-20-180.C.5 of its Regulations. Failure to do so could subject the principal broker to disciplinary action. Please note that the Board needs the broker to report the violation in writing either by regular mail or e-mail. The Board also needs to know the name of the licensee and license number, when the deposit was due and when it was received.

(Continued from page 1)

"the noncompliance by the broker was intentional or a result of gross negligence of the broker."

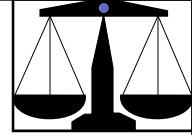
The article on page 3 summarizes the Board's Advisory Council September and November meetings, and the Advisory Council's recommendations for modifying the post license education program for new salespersons. The article on page 4 provides answers to common questions asked by licensees about earnest money deposits. The Board's disciplinary actions from its September and November meetings are listed on pages 5-7. Fair Housing actions from the September and November meetings and the 2011 Education Committee statistics are on page 8.

Please contact the Board staff or me at REBoard@dpor.virginia.gov or 804-367-8526 with your ideas and concerns about real estate in Virginia.

Cliff Wells, Chairman



DISCIPLINARY ACTIONS



The Real Estate Board (the Board) licenses or certifies real estate salespersons, brokers, firms, proprietary schools and pre-license instructors. If a complaint is filed against a licensee who is subject to the laws and regulations of the Board, the complaint is reviewed by the Compliance and Investigations Division (CID) of DPOR to determine if a violation of these laws or regulations may have occurred. If there is probable cause of a violation, an investigation is initiated. If the investigation reveals that one or more violations may have occurred, the licensee receives notice to appear at an informal fact-finding conference (IFF) to address these alleged violations.

In some cases the licensee may be offered a pre-IFF Consent Order. A Consent Order is an agreement between the licensee and the Board consisting of specific violations and sanctions. Pre-IFF Consent Orders eliminate the time and expense associated with conducting an IFF.

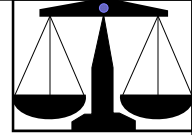
If an IFF is held, a recommendation from the IFF hearing officer consisting of proposed violations and sanctions is submitted to the Board for consideration at its next meeting. The Board can take the following disciplinary actions against a licensee: assess a monetary penalty; suspend or revoke a license; place an individual on probation; require additional education; or deny renewal. A licensee can continue to practice throughout the disciplinary process until the Board either revokes or suspends his license.

THE FOLLOWING DISCIPLINARY ACTIONS RENDERED BY THE BOARD AT ITS SEPTEMBER and NOVEMBER 2011 MEETINGS CAN BE VIEWED AT: www.dpor.virginia.gov. Click on "License Lookup." Then click on "Search Disciplinary Actions Occurring since April 1, 2002." Then enter the Case Number in the blank "Search" box. Then click on the "Search" button. Then click on the highlighted "File Number." The Order and Report of Findings for that case will appear.

<u>Case Number</u>	<u>Licensee</u>	<u>Violations & Sanctions</u>
2011-04327	Jodi D. Robinson Richmond, VA	18 VAC 135-20-260 - Unworthiness & Incompetence \$150 Board Costs, License Revocation
2011-04993	Pamela H. Wiggins Fairfax, VA	18 VAC 135-20-310 - Delivery of Instruments \$600 Monetary Penalty, 3 hours Continuing Education
2011-03893	Pamela H. Wiggins Fairfax, VA	§54.1-2135.A.2 - Failure to Exercise Ordinary Care when Engaged to Manage Real Estate \$900 Monetary Penalty, \$150 Board Costs, 3 hours Continuing Education
2011-04616	Dina L. Thomas Williamsburg, VA	§54.1-2131.A.4 - Failure to Exercise Ordinary Care when Engaged by a Tenant \$400 Monetary Penalty, \$150 Board Costs, 2 hours Continuing Education
2011-04401	Jaime B. Palacios Falls Church, VA	18 VAC 135-20-180 - Maintenance & Management Escrow Accounts 18 VAC 135-20-220 - Disclosure of Brokerage Relationships 18 VAC 135-20-260 - Unworthiness & Incompetence 18 VAC 135-20-270 - Conflict of Interest \$150 Board Costs, License Revocation
2011-04408	Dori M. Matthews Fairfax, VA	§54.1-2131.A.4 - Failure to Exercise Ordinary Care when Engaged by a Tenant \$500 Monetary Penalty, \$150 Board Costs, 3 hours Continuing Education



DISCIPLINARY ACTIONS (Cont.)



<u>Case Number</u>	<u>Licensee</u>	<u>Violations & Sanctions</u>
2011-03319	Keri E. Wilfong Waynesboro, VA	§54.1-2132.A.4 - Failure to Exercise Ordinary Care when Engaged by a Buyer \$400 Monetary Penalty, \$150 Board Costs, 3 hours Continuing Ed.
2011-03016	Leonor M. Perez Fairfax, VA	18 VAC 135-20-260 - Unworthiness & Incompetence 18 VAC 135-20-185 - Maintenance & Management Financial Records License Revocation
2011-03409	Henry T. Thrasher Virginia Beach, VA	18 VAC 135-20-185 - Maintenance and Management of Financial Records (2 counts) \$200 Monetary Penalty, \$150 Board Costs
2011-03061	W. Ann Rowan Virginia Beach, VA	§54.1-2131.A.4 - Failure to Exercise Ordinary Care when Engaged by a Tenant \$500 Monetary Penalty, \$150 Board Costs
2011-03253	Jeanette M. Childress Huddleston, VA	§54.1-2132.A.4 - Failure to Exercise Ordinary Care when Engaged by a Buyer \$500 Monetary Penalty, \$150 Board Costs, 3 hours Continuing Ed.
2011-03257	Jean E. Favors Newport News, VA	18 VAC 135-20-260 - Unworthiness & Incompetence \$1500 Monetary Penalty, \$150 Board Costs, Two-year License Probation with Quarterly Reporting to the Board
2011-04727	Kathryn Carraway Suffolk, VA	§ 54.1-2112 et seq - Virginia Real Estate Transaction Recovery Act Claim approved for \$8,094, License Revocation
2012-00107	Anjolle M. Scott Newport News, VA	18 VAC 135-20-300 - Misrepresentation/Omission \$650 Monetary Penalty, \$150 Board Costs, 4 hours Continuing Ed.
2011-04694	Olisaemeka B. Akpati Fairfax, VA	18 VAC 135-20-180 - Maintenance & Management Escrow Accounts 18 VAC 135-20-310 - Delivery of Instruments \$1000 Monetary Penalty, \$150 Board Costs, 4 hours Continuing Ed.
2011-04880	Thomas C Hickey Chesapeake, VA	18 VAC 135-20-260 - Unworthiness & Incompetence (2 counts) \$1500 Monetary Penalty, \$150 Board Costs, One-year License Probation with Quarterly Reporting to the Board, 6 hours Continuing Education
2011-04950	Gaston A. Prudencio Ashburn, VA	18 VAC 135-20-260 - Unworthiness & Incompetence (2 counts) \$2500 Monetary Penalty, \$150 Board Costs, 6 hours Continuing Ed.
2011-04908	Heather R. Hagerman Fredericksburg, VA	18 VAC 135-20-180 - Maintenance & Management Escrow Accounts \$300 Monetary Penalty, \$150 Board Costs
2011-04484	William A. West, Sr. Virginia Beach, VA	18 VAC 135-20-180 - Maintenance & Management Escrow Accounts 18 VAC 135-20-310 - Delivery of Instruments \$1000 Monetary Penalty, \$150 Board Costs, 3 hours Continuing Ed.
2011-04285	Marilyn V. Sundy Williamsburg, VA	18 VAC 135-20-260 - Unworthiness & Incompetence \$1100 Monetary Penalty, \$150 Board Costs



DISCIPLINARY ACTIONS (Cont.)



<u>Case Number</u>	<u>Licensee</u>	<u>Violations & Sanctions</u>
2011-02080	Joyce A. Leckie Woodbridge, VA	18 VAC 135-20-260 - Unworthiness & Incompetence (2 counts) 18 VAC 135-20-250 - Response to Inquiry of the Board \$2800 Monetary Penalty, License Revocation
2011-02928	David W. Hess Cedar Bluff, VA	18 VAC 135-20-260 - Unworthiness & Incompetence License Revocation
2011-03732	James T. High, III Clifton, VA	18 VAC 135-20-185 - Maintenance & Management of Financial Records 18 VAC 135-20-240 - Provision of Records to the Board 18 VAC 135-20-260 - Unworthiness & Incompetence (2 counts) \$5750 Monetary Penalty, License Revocation
2010-04776	Randolph S. Morrison Virginia Beach, VA	18 VAC 135-20-210 - Disclosure of Interest 18 VAC 135-20-220 - Disclosure of Brokerage Relationships (7 counts) 18 VAC 135-20-270 - Conflict of Interest (7 counts) 18 VAC 135-20-280 - Improper Brokerage Commission 18 VAC 135-20-310 - Delivery of Instruments License Revocation, License Probation, 6 hours Continuing Education, Pass Salesperson License Examination
2011-04058	Kayvan Mehrbakhsh Vienna, VA	18 VAC 135-20-290 - Improper Dealing \$200 Monetary Penalty, \$150 Board Costs, 2 hours Continuing Ed.
2010-03104	Myra S. Arendt Virginia Beach, VA	§54.1-2133.A.4 - Failure to Exercise Ordinary Care when Engaged by Landlords to Lease Property \$450 Monetary Penalty, \$150 Board Costs, 4 hours Continuing Ed.
2011-04986	Miguel A. Calvo Fairfax, VA	18 VAC 135-20-180 - Maintenance & Management of Escrow Accounts \$500 Monetary Penalty, \$150 Board Costs, 3 hours Continuing Ed.
2011-03888	Susanne A. Haas Manakin-Sabot, VA	18-VAC 135-20-310 - Delivery of Instruments §54.1-2132.A.4 - Failure to Exercise Ordinary Care when Engaged by a Buyer (2 counts) \$1400 Monetary Penalty, \$150 Board Costs, 4 hours Continuing Ed.
2011-04595	Juan M. Piniella Stafford, VA	18 VAC 135-20-180 - Maintenance & Management Escrow Accounts \$350 Monetary Penalty, \$150 Board Costs, 3 hours Continuing Ed.
2011-04951	Ging-Hwang F. Tsoa Ashburn, VA	18 VAC 135-20-180 - Maintenance & Management Escrow Accounts \$500 Monetary Penalty, \$150 Board Costs, 8 hours Continuing Ed.
2012-00099	Anne D. Albright Centreville, VA	18 VAC 135-20-180 - Maintenance & Management Escrow Accounts \$350 Monetary Penalty, \$150 Board Costs

Real Estate Board Education Committee - 2011 Statistics

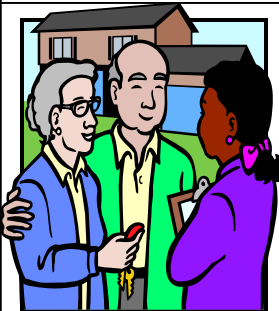
<u>Application Type</u>	<u># Reviewed</u>	<u># Approved</u>	<u># Denied</u>
Proprietary Schools	22	20	2
Previously Approved CE Courses	53	53	0
Original CE Courses	660	639	21
Previously Approved PLE Courses	45	45	0
Original PLE Courses	523	514	9
Pre-license Salesperson Courses	8	8	0
Pre-license Broker Courses	0	0	0
Pre-license Course Instructors	41	40	1
Previously approved CE/PLE Instructors	98	97	1
Residential Standard Agency Courses	6	6	0
Totals	1456	1422	34

Other Business

The Board determined the broker pre-license education completed by broker reciprocal applicants from Arizona (90), Colorado (120), District of Columbia (135), Delaware (96), Florida (132), Indiana (54), Maryland (135), North Carolina (90), New Jersey (150), Oklahoma (90), Oregon (150), Pennsylvania (240), Tennessee (120) and West Virginia (90) is comparable in content and duration and scope to the broker pre-license education required by the Board. The number of hours in parenthesis after each state indicates the number of hours of credit the Board will accept toward the Board's 180 classroom-hour broker pre-license education requirement.

The Board determined that online education courses may consist of no more than 40% of quiz and final examination materials to ensure that a minimally acceptable amount of course content is covered in the course. This applies only to new online course applications received by the Board.

Fair Housing Cases



The Fair Housing Board administers and enforces the Virginia Fair Housing Law, although the Real Estate Board is responsible for fair housing cases involving real estate licensees or their employees. Each board investigates housing discrimination through the Virginia Fair Housing Office at DPOR. All fair housing cases must attempt conciliation – an alternative dispute resolution approach using informal negotiation. Successful conciliation agreements are public unless both parties request and agree to a confidentiality clause. If conciliation is unsuccessful in resolving the complaint, the Board determines if reasonable cause exists to support a charge of discrimination. In cases where the Board determines reasonable cause and issues a charge of discrimination, the Attorney General's Office brings civil suit in circuit court seeking relief for the complainant. The following fair housing actions were rendered by the Board at its September and November 2011 meetings:

<u>Case Number</u>	<u>Case Name</u>	<u>Action</u>
2010-04087	Holly Burdell and Larry Barfield v. Cindy Hornsby, The Hornsby Homefront, LLC, and Callebs Realty, Inc.	Conciliation Agreement
2011-03816	Shirley Thomas v. JRK Residential America, LLC	Discrimination by refusing to make reasonable accommodations on fees based upon disability.
2011-03817	Housing Opportunities Made Equal v. JRK Residential America, LLC	Discrimination by refusing to make reasonable accommodations based upon disability.
2011-04349	Veronica Chrisp v. JRK Residential America, LLC	Discrimination by refusing to make reasonable accommodations based upon disability.