

VIRGINIA:

Before the Virginia State Bar Disciplinary Board

In the Matter of

Colin Charles Connelly

Attorney at Law

On February 22, 2008, came Colin Charles Connelly and presented to the Board an Affidavit Declaring Consent to Revocation of his license to practice law in the courts of this Commonwealth. By tendering his resignation at a time when disciplinary charges are pending, he admits that the charges in the attached Affidavit In Support of Consent to Revocation are true.

The Board having considered the said Affidavit In Support of Consent to Revocation accepts his resignation. Accordingly, it is ordered that the license to practice law in the courts of this Commonwealth heretofore issued to the said Colin Charles Connelly be and the same hereby is revoked, and that the name of the said Colin Charles Connelly be stricken from the Roll of Attorneys of this Commonwealth.

Enter this Order this 22nd day of February, 2008

For the Virginia State Bar Disciplinary Board

By *Barbara S. Lanier*
Barbara Sayers Lanier, Clerk of the Disciplinary System

AFFIDAVIT OF COLIN CHARLES CONNELLY
IN SUPPORT OF CONSENT TO REVOCATION

1. My name is Colin Charles Connelly. I am a citizen of the Commonwealth of Virginia, am over the age of 18 and am competent to give this affidavit.

2. I was admitted to the practice of law in the Commonwealth of Virginia on September 29, 1983.

3. I hereby present this affidavit in connection with my decision to consent to the revocation of my license to practice law in the Commonwealth of Virginia.

4. The consent I give herein is freely and voluntarily rendered, that I am not being subjected to coercion or duress, and that I am fully aware of the implications of consenting to revocation.

5. I am aware that there are currently pending 11 complaints against me that involve my conduct as an attorney.

6. The nature of those complaints are as follows:

MATTERS PENDING BEFORE THE DISCIPLINARY BOARD

a. VSB Docket No. 06-031-2219

Respondent was the registered agent of City View, LLC ("City View") and provided the company with legal services. City View desired to purchase a parcel of land that it needed to develop other parcels it had acquired adjacent to Mr. Broache's land for a mixed use development. Mr. Broache had his parcel under contract to a different party. Respondent agreed to represent Mr. Broache in the sale of his property to City View but failed to disclose the conflict of interest he had to Mr. Broache. Respondent also failed to adequately explain the nature and import of certain documents Respondent had Mr. Broache sign. Mr. Broache subsequently executed a sales contract in favor of City View in the amount of \$195,000.00 despite the property already being under contract with another party. City View subsequently lent Mr. Broache \$10,000.00, but Respondent prepared and had Mr. Broache sign a promissory note in favor of City View in the amount of \$195,000.00 despite only \$10,000.00 having been loaned. Respondent also had Mr. Broach sign a deed of trust to secure the promissory note with a face value of \$195,000.00. Respondent caused the deed of trust to be filed in the land records of the Circuit Court for the City of Richmond.

b. VSB Docket No. 06-031-0910

RECEIVED Respondent closed a real estate transaction despite knowing that the lender had not fully funded the loan and that there was a shortage of \$262.11 in escrow. Despite

FEB 11 2008

VIRGINIA STATE BAR

going to closing on the transaction, Respondent failed to pay a real estate agent a commission check until almost a week after closing.

- c. VSB Docket Nos. 05-031-2944, 06-031-0692, 06-031-2237, 06-031-4249, 07-031-0147 and 07-031-1109

Respondent's law practice consisted of high volume and high dollar real estate closings. As part of his practice, he maintained a separate and identifiable escrow closing account in accordance with the requirements of the Virginia Consumer Real Estate Settlement Protection Act ("CRESPA"). Respondent maintained that account at SunTrust, account number 201791773 ("Account"). Since at least January of 2004, Respondent failed to adequately maintain the books and records required by Rule 1.15 of the Virginia Rules of Professional Conduct. Further, Respondent failed to adequately balance or reconcile the Account in the manner required by Rule 1.15 of the Virginia Rules of Professional Conduct. As a result of such record keeping deficiencies, Respondent routinely ran an average deficit monthly balance of \$600,000.00 in the Account. From a period of February 4, 2005 through October 12, 2006, the Virginia State Bar received notices that Respondent had items returned due to insufficient funds. During the course of the investigation, Respondent retained the services of Goodman & Company to perform a survey of the Account, but could not determine the exact cause of the shortfall or when it occurred. Respondent used his own funds to subsequently cover the shortfalls in the Account and closed it out. In July of 2006, Respondent opened a new CRESPA account with Wachovia ("Wachovia Account"). The Virginia State Bar has not received any notices of items being returned due to insufficient funds in the Wachovia Account.

- d. VSB Docket No. 07-031-1357

Robert I. Polk, Jr. retained Respondent to represent his interest in a real estate "like kind exchange" transaction pursuant to 26 U.S.C. § 1031 ("1031 Transaction"). Respondent received funds totaling \$348,126.89 ("Client Funds"). At a time when Respondent knew or should have known of the extreme deficits in the Account, Respondent nonetheless deposited the Client Funds into the Account. When Mr. Polk instructed Respondent to disburse the funds in connection with the 1031 Transaction, he was unable to. It was not until Respondent was able to deposit his own personal funds into the account was he able to provide the necessary funds to close the 1031 Transaction.

MATTERS CURRENTLY UNDER INVESTIGATION

- e. VSB Docket No. 07-031-1563

The VSB was notified by SunTrust that the Account had items returned to Respondent due to insufficient funds.

Respondent billed Ms. Lynda McCauley for a deed of gift to her husband and to payoff a prior mortgage as part of a refinancing of her home. A few years later, when Ms. McCauley sold her home, she discovered that neither the deed of gift nor the certificate of satisfaction from the prior refinance was ever recorded.

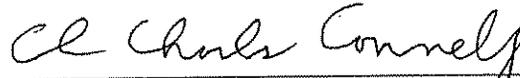
7. I hereby acknowledge the material facts upon which the allegations of Misconduct in Paragraphs 6 a-f of this Affidavit are predicated are true.

8. I hereby consent to the revocation of my license to practice law because I am aware that if the pending disciplinary proceedings based on the allegations of Misconduct were brought or prosecuted to a conclusion, I could not successfully defend them.

9. At all times relevant I have been represented and advised by counsel of my own choosing, David L. Hauck of the law firm of Duane, Hauck & Gnapp, P.C.

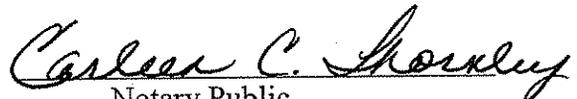
10. In making this affidavit, I am aware that none of the admissions I have made or declared shall be deemed as admission in any proceeding except one relating to my status as a member of the Bar.

11. In making this affidavit, my counsel has conferred with the Office of Bar Counsel. By consent of the Office of Bar Counsel, this revocation shall become effective on February 22, 2008.


Colin Charles Connelly

COMMONWEALTH of VIRGINIA
CITY/COUNTY of Richmond, to wit:

Acknowledged, sworn and subscribed to before me this 8th day of February 2008 by Colin Charles Connelly.


Notary Public

My Commission Expires: 12/31/08

VIRGINIA:

BEFORE THE THIRD DISTRICT COMMITTEE, SECTION I SUBCOMMITTEE
OF THE VIRGINIA STATE BAR

IN THE MATTERS OF
COLIN CHARLES CONNELLY

VSB Docket Nos. 05-031-2944, 06-031-0692, 06-031-0910,
06-031-2219, 06-031-2237, 06-031-4249,
07-031-0147, 07-031-1109, 07-031-1357

SUBCOMMITTEE DETERMINATION
(CERTIFICATION)

On June 7, 2006, a meeting in VSB Docket Nos. 05-031-2944, 06-031-0692, 06-031-0910, 06-031-2219, 06-031-2237 was held before a duly convened Third District Committee Subcommittee consisting of Wayne R. Hairfield, Chair, Larry A. Pochucha, Esquire and Patricia B. Clary, lay person; on October 4, 2006, a meeting in VSB Docket Nos. 06-031-3897, 06-031-4249, 07-031-0147 was held before a duly convened Third District Committee Subcommittee consisting of consisting of H. Martin Robertson, Chair, Rondelle D. Herman and Dr. Diane Reynolds Cane, lay person; and on February 7, 2007, a meeting in VSB Docket Nos. 07-031-1109, 07-031-1357 was held before a duly convened Third District Committee Subcommittee consisting of consisting of Joseph P. Rapisarda, Jr., Chair, Graham C. Daniels, Esquire and Dr. Diane Reynolds Cane, lay person.

Pursuant to Part 6, Section IV, Paragraph 13.G.1.c. of the Rules of the Virginia Supreme Court, the Third District Committee Subcommittee of the Virginia State Bar hereby serves upon the Respondent the following Certification in each of the above referenced matters:

I. FACTS

1. Colin Charles Connelly ("Respondent") was licensed to practice law in the Commonwealth of Virginia in September of 1983.
2. At all times relevant, Respondent has been in active and good standing with the Virginia State Bar and has maintained a law practice in Chesterfield County, Virginia.
3. Randolph O. Broache is the owner of certain parcels of land located in the City of Richmond, Virginia.
4. Specifically, the parcels of land are located at the corners of Semmes Avenue and Cowardin Avenue, just south of the Lee Bridge ("Broache Property").
5. Mr. Broache executed a valid power of attorney in favor of Ms. Pamela Overby, a real estate agent acting on Mr. Broache's behalf in attempting to sell the Broache Property.
6. City View, LLC ("City View") is a Virginia limited liability company.
7. City View is an entity organized and operated for the purpose of, among other things, developing land it acquired adjacent to the Broache Property ("City View Property") and improving the City View Property with certain improvements including, but not limited to condominiums and other structures.
8. Respondent is counsel to City View and prepared all the organizational documents related to City View.
9. Respondent is or was at all times relevant City View's registered agent.
10. Respondent owns a legal and/or equitable interest in City View.
11. Alternatively, Respondent owns a legal and/or equitable interest in the City View Property.

12. Respondent utilized money belonging to other clients from his real estate trust account to purchase a \$25,000.00 interest in City View and/or the City View Property.

13. Certain members of Respondent's immediate family own a legal and/or equitable interest in City View.

14. Certain members of Respondent's immediate family own a legal and/or equitable interest in the City View Property.

15. During all times relevant, Mr. Broache had two contracts of sale for the purchase of the Broache Property, the first dated April 8, 2003, between Mr. Broache and the Amagohs, and a second dated November 22, 2004, between Mr. Broache and Richmond Contractors, LLC.

16. Respondent was the named settlement attorney in the Richmond Contractors, LLC contract.

17. City View desired to purchase the Broache Property. Prior to having purchased such property, City View had already contracted with design professionals to prepare design/construction documents that included the Broache Property.

18. City View instructed Respondent to take steps to acquire the Broache Property.

19. Such contract notwithstanding, Respondent persuaded Mr. Broache to retain him as counsel to represent his interests in the sale of the Broache Property to City View.

20. Respondent had Mr. Broache sign several documents which contained boilerplate language.

20. However, Respondent never advised Mr. Broache that he was counsel to City View, nor did he disclose that he and/or members of his family had an interest in City View.

21. Respondent subsequently had Mr. Broache execute a sales contract dated April 6, 2005 with City View for the purchase of the Broache Property ("City View Contract") at terms

that were less favorable than the initial contract Mr. Broache already had on the property. The purchase price as stated in the City View Contract is \$195,000.00.

22. The City View Contract has never gone to closing.

23. Subsequent to execution of the City View Contract, Mr. Broache advised Respondent that he needed funds to pay certain costs associated with the maintenance of the Broache Property.

24. Respondent gave Mr. Broache a deposit ticket indicating that he made a \$10,000.00 deposit to Mr. Broache's bank account.

25. Respondent told Mr. Broache that he was personally loaning Mr. Broache the money, but the funds actually came from City View.

26. Respondent advised Mr. Broache that in order to protect his \$10,000.00 investment, Mr. Broache would have to sign some documents granting a security interest in the Broache Property.

27. Respondent prepared and subsequently had Mr. Broache sign a promissory note and deed of trust in the amount of \$195,000.00 in favor of City View even though City View has never loaned Mr. Broache \$195,000.00.

28. Respondent also had Mr. Broache sign a deed of trust to secure the bogus promissory note in favor of City View.

29. Respondent is named as the trustee in the deed of trust Mr. Broache signed in favor of City View.

30. Respondent had Mr. Broache sign the documents without fully explaining to him the nature or import of the documents.

31. By having Mr. Broache sign the documents, Respondent obligated Mr. Broache to an indebtedness to City View in the amount of \$195,000.00 even though City View had never lent, funded or provided consideration for the transaction.

32. At all times relevant, Respondent knew that City View had never paid Mr. Broache the consideration stated in the promissory note and deed of trust.

33. Despite such knowledge, and despite knowledge that the City View Contract had not gone to closing, Respondent fraudulently recorded the deed of trust Mr. Broache signed in favor of City View in the land records of the Circuit Court for the City of Richmond.

34. By recording the instrument, Respondent created a fraudulent lien upon the Broache Property.

35. When Ms. Overby discovered the true nature of Respondent's dealings with Mr. Broache, she demanded all documentation related to the City View Contract pursuant to her power of attorney.

36. In an attempt to hide his misdeeds, Respondent evaded Ms. Overby's requests for information and finally provided incomplete and inaccurate records.

37. Ms. Overby demanded that Respondent takes steps to release the Broache Property from the fraudulent deed of trust, but Respondent took no steps to do so.

38. During the course of the investigation, Respondent was interviewed by O. Michael Powell, investigator for the Virginia State Bar.

39. Mr. Powell asked Respondent whether any family members had purchased or acquired an interest in City View.

40. Respondent denied any such interest.

41. Respondent finally admitted to Mr. Powell that a family member had an interest in City View when confronted with the checks said family member used to purchase the interest in City View.

II. NATURE OF MISCONDUCT

Such conduct by Colin Charles Connelly constitutes misconduct in violation of the following provisions of the Rules of Professional Conduct:

RULE 1.3 Diligence

(c) A lawyer shall not intentionally prejudice or damage a client during the course of the professional relationship, except as required or permitted under Rule 1.6 and Rule 3.3.

* * * *

RULE 1.4 Communication

(a) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

(b) A lawyer shall explain a matter to the extent necessary to permit the client to make informed decisions regarding the representation.

(c) A lawyer shall inform the client of facts pertinent to the matter and of communication from another party that may significantly affect settlement or resolution of the matter.

* * * *

RULE 1.7 Conflict of Interest: General Rule

(a) Except as provided for in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

(1) the representation of one client will be directly adverse to another client;
or

(2) there is significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

* * * *

RULE 1.8 Conflict of Interest: Prohibited Transactions

(b) A lawyer shall not use information relating to the representation of a client for the advantage of the lawyer or of a third person or to the disadvantage of the client unless the client consents after consultation, except as permitted or required by Rule 1.6 or Rule 3.3.

* * * *

RULE 4.1 Truthfulness In Statements To Others

In the course of representing a client a lawyer shall not knowingly:

(a) make a false statement of fact or law.

* * * *

RULE 8.1 Bar Admission and Disciplinary Matters

An applicant for admission to the bar, or a lawyer already admitted to the bar, in connection with a bar admission application, any certification required to be filed as a condition of maintaining or renewing a license to practice law, or in connection with a disciplinary matter, shall not:

(a) knowingly make a false statement of material fact;

(b) fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter.

* * * *

RULE 8.4 Misconduct

It is professional misconduct for a lawyer to:

(b) commit a criminal or deliberately wrongful act that reflects adversely on the lawyer's honesty, trustworthiness or fitness to practice law;

(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation which reflects adversely on the lawyer's fitness to practice law.

VSB Docket Number 06-031-0910

Complainant: Judy Korman

I. FACTS

1. Colin Charles Connelly ("Respondent") was licensed to practice law in the Commonwealth of Virginia in September of 1983.

2. At all times relevant, Respondent has been in active and good standing with the Virginia State Bar and has maintained a law practice in Chesterfield County, Virginia.

3. Judy L. Korman ("Korman") is a real estate agent with ReMax, who at all times relevant was working for Century 21.

4. Ms. Korman's client, Therese May ("May"), entered into a sales contract to purchase a new home from Lifestyle Builders and Developers, Inc. (Lifestyle). As part of that contract, Ms. May was obligated to use Respondent as the closing attorney even though she had planned to use her own attorney.

5. The closing took place on August 31, 2005 at Respondent's office.

6. When she arrived at Respondent's office, he arrived for the closing thirty minutes late.

7. At the closing, Respondent advised Ms. May that the numbers were wrong and that he had not received the correct amount from the lender to conduct the closing.

8. Respondent advised Ms. May that they were approximately \$200 short of the necessary funds.

9. The Buyer and the Seller agreed to go forward with the Settlement despite the shortfall.

10. By disbursing the funds at closing, Respondent had a duty to disburse all funds as set forth in the HUD-1. Alternatively, Respondent was under a duty not to close on the transaction and did so anyway.

11. Respondent went ahead and closed the transaction even though he did not have the necessary funds.

12. As part of the HUD-1, Respondent was instructed to pay Ms. Korman her commission check.

13. Approximately one week after the closing occurred, Ms. Korman contacted Respondent's office to inquire why she had not received her commission check.

14. One of Respondent's employees advised Ms. Korman that there was a shortage in the escrow of \$262.11.

15. Several days later, Respondent hand delivered the commission check to Ms. Korman's old office.

16. Ms. Korman states that Respondent never called her personally to discuss the issue of his failure to timely pay the commission check.

II. NATURE OF MISCONDUCT

Such conduct by Colin Charles Connelly constitutes misconduct in violation of the following provisions of the Rules of Professional Conduct:

RULE 1.15 Safekeeping Property

(c) A lawyer shall:

(4) promptly pay or deliver to the client or another as requested by such person the funds, securities, or other properties in the possession of the lawyer which such person is entitled to receive.

Complainants: Trust Account Violations

I. FACTS

1. Colin Charles Connelly ("Respondent") was licensed to practice law in the Commonwealth of Virginia in September of 1983.
2. At all times relevant, Respondent has been in active and good standing with the Virginia State Bar and has maintained a law practice in Chesterfield County, Virginia.
3. Respondent's practice consisted of, among other things, a high volume and high dollar real estate closing practice.
4. Respondent routinely conducted closings for residential real estate purchases.
5. At all times relevant, Respondent provided legal services to clients necessary and incidental to providing legal services for real estate closings.
6. Respondent was at all times relevant a principal and owner of Empire Title Insurance Agency, a company that provided title insurance and related services to clients.
7. As part of his real estate closing practice, Respondent maintained a separate and identifiable escrow closing account in accordance with the requirements of the Virginia Consumer Real Estate Settlement Protection Act ("CRESPA"), Va. Code Ann. § 6.1-2.19, *et seq.*
8. Respondent maintained that account at SunTrust, account number 201791773 ("Account").
9. Respondent also maintained a secondary account at SunTrust, account number 201790335 that he used to conduct real estate closing transactions from time to time ("Secondary Account").

10. Since at least 2004, Respondent failed to adequately maintain books and records of both the Account and Secondary Account, maintain adequate cash receipts journals, cash disbursements journals, subsidiary ledgers, and reconciliation records, perform periodic trial balances and failed to adequately balance and reconcile both the Account and Secondary Account in the manners required by Rule 1.15 of the Virginia Rules of Professional Conduct.

11. As a result of, and in large part due to such record keeping deficiencies, Respondent routinely ran an average deficit monthly balance of approximately \$600,000.00 in the Account.

12. During the time that he was running the deficit, it was not uncommon for Respondent to be holding millions of dollars in funds in the Account.

13. Respondent was able to conceal this shortfall due to the high dollar volume he deposited into the Account to conduct real estate closings.

14. At some point in time, Respondent did not have enough funds in the Account and began bouncing checks.

15. By notice dated February 4, 2005, SunTrust notified the Virginia State Bar that Respondent presented twenty-five items totaling \$52,512.27 that were returned due to insufficient funds in the Account or paid by SunTrust despite the shortfall. As a result of the bounced checks, Respondent's balance in the Account at the time the items were presented was negative \$44,381.82 (VSB Docket No. 05-031-2944).

16. Rather than deposit his own funds to cover the shortfall, Respondent used funds from other matters and other clients to cover the shortfall in the Account.

17. By notice dated August 18, 2005, SunTrust notified the Virginia State Bar that Respondent presented an item totaling \$1,000.00 that was returned due to insufficient funds in the Secondary Account or paid by SunTrust despite the shortfall (VSB Docket No. 06-031-0692).

18. Rather than deposit his own funds to cover the shortfall, Respondent used funds from other matters and other clients to cover the shortfall in the Secondary Account.

19. Despite his knowledge of the shortfall in the account, Respondent did not undertake any audits or take any steps to ensure that the Account was balanced and/or reconciled.

20. By notice dated January 11, 2006, SunTrust notified the Virginia State Bar that Respondent presented nineteen items totaling \$33,851.74 that were returned due to insufficient funds in the Account or paid by SunTrust despite the shortfall. As a result of the bounced checks, Respondent's balance in the Account at the time the items were presented was negative \$8,464.07 (VSB Docket No. 06-031-2237).

21. Rather than deposit his own funds to cover the shortfall, Respondent used funds from other matters and other clients to cover the shortfall in the Account.

22. By notice dated June 22, 2006, SunTrust notified the Virginia State Bar that Respondent presented thirty six items totaling \$45,752.20 that were returned due to insufficient funds in the Account or paid by SunTrust despite the shortfall. As a result of the bounced checks, Respondent's balance in the Account at the time the items were presented was negative \$35,753.48 (VSB Docket No. 06-031-4249).

23. Rather than deposit his own funds to cover the shortfall, Respondent used funds from other matters and other clients to cover the shortfall in the Account.

24. By notice dated July 17, 2006, SunTrust notified the Virginia State Bar that Respondent presented six items totaling \$103,671.12 that were returned due to insufficient funds in the Account or paid by SunTrust despite the shortfall. As a result of the bounced checks, Respondent's balance in the Secondary Account at the time the items were presented was negative \$103,360.12 (VSB Docket No. 07-031-0147).

25. Rather than deposit his own funds to cover the shortfall, Respondent used funds from other matters and other clients to cover the shortfall in the Secondary Account.

26. By notice dated July 18, 2006, SunTrust notified the Virginia State Bar that Respondent presented seven items totaling \$16,910.58 that were returned due to insufficient funds in the Account or paid by SunTrust despite the shortfall. As a result of the bounced checks, Respondent's balance in the Secondary Account at the time the items were presented was negative \$13,271.05 (VSB Docket No. 07-031-0147).

27. Rather than deposit his own funds to cover the shortfall, Respondent used funds from other matters and other clients to cover the shortfall in the Secondary Account.

28. By notice dated October 12, 2006, SunTrust notified the Virginia State Bar that Respondent presented one item totaling \$595.00 that was returned due to insufficient funds in the Account. As a result of the bounced check, Respondent's balance in the Account at the time the items were presented was \$491.80 (VSB Docket No. 07-031-1109).

29. Rather than deposit his own funds to cover the shortfall, Respondent used funds from other matters and other clients to cover the shortfall in the Account.

30. During all times relevant, Respondent failed to adequately train his employees to properly balance and reconcile the Account and Secondary Account.

31. During all times relevant, Respondent failed to adequately perform reconciliations in the Account and Secondary Account.

32. During all times relevant, Respondent failed to institute sufficient controls in the Account and Secondary Account to prevent shortfalls.

33. Despite his knowledge that the Account and Secondary Account contained serious shortfalls, Respondent continued to deposit client funds into said accounts.

34. Upon information and belief, Respondent was advised of the problems by certain members of his staff and deliberately took no remedial action to correct the problem.

35. At some point after SunTrust notified the Virginia State Bar of the shortfalls and returned items in the Account and Secondary Account, Respondent retained the accounting firm of Goodman and Company to undertake an analysis of what was causing the shortfalls in the Account and Secondary Account.

36. As a part of the investigation, Respondent advised the Virginia State Bar that Goodman and Company would be preparing a written report and analysis and that the same would be provided to the Virginia State Bar.

37. Despite repeated demands for the report, Respondent has never provided it, and neither Respondent nor Goodman and Company have been able to give an adequate explanation for the shortfall in the account.

38. In order to continue covering the shortfalls that Respondent created in the Account and Secondary Accounts, he routinely relied on client funds from other matters to cover the defalcations.

II. NATURE OF MISCONDUCT

Such conduct by Colin Charles Connelly constitutes misconduct in violation of the following provisions of the Rules of Professional Conduct:

RULE 1.15 Safekeeping Property

(c) A lawyer shall:

(3) maintain complete records of all funds, securities, and other properties of a client coming into the possession of the lawyer and render appropriate accounts to the client regarding them.

(e) Record-Keeping Requirements, Required Books and Records. As a minimum requirement every lawyer engaged in the private practice of law in Virginia, hereinafter called "lawyer," shall maintain or cause to be maintained, on a current basis, books and records which establish compliance with Rule 1.15(a) and (c). Whether a lawyer or law firm maintains computerized records or a manual

accounting system, such system must produce the records and information required by this Rule.

- (1) In the case of funds held in an escrow account subject to this Rule, the required books and records include:
 - (i) a cash receipts journal or journals listing all funds received, the sources of the receipts and the date of receipts. Checkbook entries of receipts and deposits, if adequately detailed and bound, may constitute a journal for this purpose. If separate cash receipts journals are not maintained for escrow and non-escrow funds, then the consolidated cash receipts journal shall contain separate columns for escrow and non-escrow receipts;
 - (ii) a cash disbursements journal listing and identifying all disbursements from the escrow account. Checkbook entries of disbursements, if adequately detailed and bound, may constitute a journal for this purpose. If separate disbursements journals are not maintained for escrow and non-escrow disbursements then the consolidated disbursements journal shall contain separate columns for escrow and non-escrow disbursements;
 - (iii) subsidiary ledger. A subsidiary ledger containing a separate account for each client and for every other person or entity from whom money has been received in escrow shall be maintained. The ledger account shall by separate columns or otherwise clearly identify escrow funds disbursed, and escrow funds balance on hand. The ledger account for a client or a separate subsidiary ledger account for a client shall clearly indicate all fees paid from trust accounts;
 - (iv) reconciliations and supporting records required under this Rule;
 - (v) the records required under this paragraph shall be preserved for at least five full calendar years following the termination of the fiduciary relationship.
- (2) in the case of funds or property held by a lawyer or law firm as a fiduciary subject to Rule 1.15(d), the required books and records include:
 - (i) an annual summary of all receipts and disbursements and changes in assets comparable to an accounting that would be required of a court supervised fiduciary in the same or similar capacity. Such annual summary shall be in sufficient detail as to allow a reasonable person to determine whether the lawyer is properly discharging the obligations of the fiduciary relationship;

- (ii) original source documents sufficient to substantiate and, when necessary, to explain the annual summary required under (i), above;
 - (iii) the records required under this paragraph shall be preserved for at least five full calendar years following the termination of the fiduciary relationship.
- (f) Required Escrow Accounting Procedures. The following minimum escrow accounting procedures are applicable to all escrow accounts subject to Rule 1.15(a) and (c) by lawyers practicing in Virginia.
 - (4) Periodic trial balance. A regular periodic trial balance of the subsidiary ledger shall be made at least quarter annually, within 30 days after the close of the period and shall show the escrow account balance of the client or other person at the end of each period.
 - (i) The total of the trial balance must agree with the control figure computed by taking the beginning balance, adding the total of monies received in escrow for the period and deducting the total of escrow monies disbursed for the period; and
 - (ii) The trial balance shall identify the preparer and be approved by the lawyer or one of the lawyers in the law firm.
 - (5) Reconciliations.
 - (i) A monthly reconciliation shall be made at month end of the cash balance derived from the cash receipts journal and cash disbursements journal total, the escrow account checkbook balance, and the escrow account bank statement balance;
 - (ii) A periodic reconciliation shall be made at least quarter annually, within 30 days after the close of the period, reconciling cash balances to the subsidiary ledger trial balance;
 - (iii) Reconciliations shall identify the preparer and be approved by the lawyer or one of the lawyers in the law firm.
 - (6) Receipts and disbursements explained. The purpose of all receipts and disbursements of escrow funds reported in the escrow journals and subsidiary ledgers shall be fully explained and supported by adequate records.

* * * *

RULE 5.3 Responsibilities Regarding Nonlawyer Assistants

With respect to a nonlawyer employed or retained by or associated with a lawyer:

- (a) a partner or a lawyer who individually or together with other lawyers possesses managerial authority in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer;
- (b) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and
- (c) a lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if:
 - (1) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or
 - (2) the lawyer is a partner or has managerial authority in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows or should have known of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

* * * *

RULE 8.1 Bar Admission And Disciplinary Matters

An applicant for admission to the bar, or a lawyer already admitted to the bar, in connection with a bar admission application, in connection with any certification required to be filed as a condition of maintaining or renewing a license to practice law, or in connection with a disciplinary matter, shall not:

- (c) fail to respond to a lawful demand for information from an admissions or disciplinary authority, except that this Rule does not require disclosure of information otherwise protected by Rule 1.6.

* * * *

RULE 8.4 Misconduct

It is professional misconduct for a lawyer to:

- (b) commit a criminal or deliberately wrongful act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer;

- (c) engage in professional conduct involving dishonesty, fraud, deceit or misrepresentation which reflects adversely on the lawyer's fitness to practice law.

VSB Docket Numbers 07-031-1357

Complainant: Lisa K. Tully

I. FACTS

1. Colin Charles Connelly ("Respondent") was licensed to practice law in the Commonwealth of Virginia in September of 1983.
2. At all times relevant, Respondent has been in active and good standing with the Virginia State Bar and has maintained a law practice in Chesterfield County, Virginia.
3. Respondent's practice consisted of, among other things, a high volume and high dollar real estate closing practice.
4. Respondent routinely conducted closings for residential real estate purchases.
5. At all times relevant, Respondent provided legal services to clients necessary and incidental to providing legal services for real estate closings.
6. Respondent was at all times relevant a principal and owner of Empire Title Insurance Agency ("Empire Title"), a company that provided title insurance and related services to clients.
7. Empire Title established an account with SunTrust, account number 201754484 ("Empire Title Account").
8. At all times relevant, Respondent was also a principal and owner of a subsidiary company known as Empire Records & Title Services, Inc. ("Empire Records").
9. Upon information and belief, Empire Records was a company that Respondent utilized to perform real estate transactions known as like kind exchanges pursuant to 26 U.S.C. § 1031 as a qualified intermediary.

10. Empire Records established an account with SunTrust, account number 100000738085 ("Empire Records Account").

11. As part of his real estate closing practice, Respondent maintained a separate and identifiable escrow closing account in accordance with the requirements of the Virginia Consumer Real Estate Settlement Protection Act ("CRESPA"), Va. Code Ann. § 6.1-2.19, *et seq.*

12. Respondent maintained that account at SunTrust, account number 201791773 ("Account").

13. Respondent also maintained a secondary account at SunTrust, account number 201790335 that he used to conduct real estate closing transactions from time to time ("Secondary Account").

14. At all times relevant in the year 2006, Respondent knew or had good cause to know that he was running a substantial deficit in the Account of approximately \$600,000.00.

15. Sometime in 2006, Robert I. Polk, Jr. ("Polk"), retained Respondent to conduct a 1031 like kind exchange ("1031 Transaction").

16. In connection with the 1031 Transaction, Respondent received a check dated May 11, 2006 drawn on the account of the law firm of Shell, Johnson, Andrews & Baskervill in the amount of \$44,365.52 ("Shell Check").

17. Respondent waited over a month before depositing the Shell Check into either an escrow account or other account to safeguard the funds.

18. Respondent finally deposited the Shell Check into the Empire Records account.

19. On May 9, 2006 Respondent received additional funds in connection with the 1031 Transaction.

20. Respondent received a check in the amount of \$303,761.37 drawn on the account of attorney Nathan C. Lee ("Lee Check").

21. On May 22, 2006, along with other checks, Respondent or someone acting on his behalf deposited the Lee Check into the Empire Title Account for a combined deposit of \$304,526.37.

22. On May 31, 2006, Respondent or someone acting on his behalf caused a wire transfer of \$303,761.37 from the Empire Title Account to the Account.

23. At the time that transfer was made, Respondent knew that the Account had a shortfall in excess of \$600,000.00.

24. Rather than establish a separate account to ensure that Mr. Polk's money would be safe, Respondent used Mr. Polk's funds to cover existing shortfalls in the Account.

25. Sometime in September of 2006, Mr. Polk purchased property for which the funds he entrusted to Respondent to close the 1031 Transaction would be used.

26. Mr. Polk, either personally or through other attorneys involved in the 1031 Transaction, made demand upon Respondent for the funds.

27. Respondent was unable to comply with the request because the funds for the 1031 Transaction had been used to fund other deposits and transactions in the Account for Respondent's other clients.

28. Respondent finally was able to deposit enough of his own personal funds, which he commingled with other client funds in the Account, and was able to provide the funds for the closing of the 1031 Transaction.

29. Lisa K. Tully is underwriting counsel for LandAmerica Financial Group, Inc. ("LandAmerica").

30. Respondent was at all times relevant an approved closing attorney for LandAmerica.

31. At some point in September of 2006, Ms. Tully was contacted by Jon Tracy, who provided title services to Respondent and Respondent's companies, Empire Records and Empire Title.

32. Mr. Tracy voiced his concern to Ms. Tully over Respondent's handling of the Polk 1031 Transaction.

33. Ms. Tully began an investigation of the 1031 Transaction and Respondent's accounts, including the Account.

34. Ms. Tully and other officials with LandAmerica arranged a meeting with Respondent at his office to discuss the problems with the 1031 Transaction.

35. Ms. Tully was assured that someone from Goodman and Company, the company Respondent retained to audit the Account, would be present.

36. When the LandAmerica officials went to Respondent's office at the appointed time, they had to wait almost an hour.

37. When Respondent finally met with them, no one from Goodman and Company was present.

38. In response to a demand for records, Respondent turned over documents that were not well maintained and not kept in accordance with the requirements of the Rules of Professional Conduct.

39. When questioned by LandAmerica officials, Respondent had no explanation for where the funds he received from Mr. Polk for the 1031 Transaction went.

40. He promised to provide LandAmerica with information concerning the situation but failed to do so.

41. LandAmerica conducted an audit of the Account and discovered a shortfall in excess of \$611,000.00.

42. As a result of Respondent's conduct in the 1031 Transaction and his failure to properly maintain his escrow accounts, LandAmerica terminated Respondent as an approved attorney.

II. NATURE OF MISCONDUCT

Such conduct by Colin Charles Connelly constitutes misconduct in violation of the following provisions of the Rules of Professional Conduct:

RULE 1.15 Safekeeping Property

- (c) A lawyer shall:
 - (2) identify and label securities and properties of a client promptly upon receipt and place them in a safe deposit box or other place of safekeeping as soon as practicable;
 - (3) maintain complete records of all funds, securities, and other properties of a client coming into the possession of the lawyer and render appropriate accounts to the client regarding them; and
 - (4) promptly pay or deliver to the client or another as requested by such person the funds, securities, or other properties in the possession of the lawyer which such person is entitled to receive.
- (e) Record-Keeping Requirements, Required Books and Records. As a minimum requirement every lawyer engaged in the private practice of law in Virginia, hereinafter called "lawyer," shall maintain or cause to be maintained, on a current basis, books and records which establish compliance with Rule 1.15(a) and (c). Whether a lawyer or law firm maintains computerized records or a manual accounting system, such system must produce the records and information required by this Rule.
 - (1) In the case of funds held in an escrow account subject to this Rule, the required books and records include:
 - (i) a cash receipts journal or journals listing all funds received, the sources of the receipts and the date of receipts. Checkbook entries of receipts and deposits, if adequately detailed and bound, may constitute a journal for this purpose. If separate cash receipts journals are not maintained for escrow and non-escrow funds, then the consolidated cash receipts journal shall contain separate columns for escrow and non-escrow receipts;
 - (ii) a cash disbursements journal listing and identifying all disbursements from the escrow account. Checkbook entries of

disbursements, if adequately detailed and bound, may constitute a journal for this purpose. If separate disbursements journals are not maintained for escrow and non-escrow disbursements then the consolidated disbursements journal shall contain separate columns for escrow and non-escrow disbursements;

- (iii) subsidiary ledger: A subsidiary ledger containing a separate account for each client and for every other person or entity from whom money has been received in escrow shall be maintained. The ledger account shall by separate columns or otherwise clearly identify escrow funds disbursed, and escrow funds balance on hand. The ledger account for a client or a separate subsidiary ledger account for a client shall clearly indicate all fees paid from trust accounts;
- (iv) reconciliations and supporting records required under this Rule;
- (v) the records required under this paragraph shall be preserved for at least five full calendar years following the termination of the fiduciary relationship.

(2) in the case of funds or property held by a lawyer or law firm as a fiduciary subject to Rule 1.15(d), the required books and records include:

- (i) an annual summary of all receipts and disbursements and changes in assets comparable to an accounting that would be required of a court supervised fiduciary in the same or similar capacity. Such annual summary shall be in sufficient detail as to allow a reasonable person to determine whether the lawyer is properly discharging the obligations of the fiduciary relationship;
- (ii) original source documents sufficient to substantiate and, when necessary, to explain the annual summary required under (i), above;
- (iii) the records required under this paragraph shall be preserved for at least five full calendar years following the termination of the fiduciary relationship.

(f) Required Escrow Accounting Procedures. The following minimum escrow accounting procedures are applicable to all escrow accounts subject to Rule 1.15(a) and (c) by lawyers practicing in Virginia.

- (4) Periodic trial balance. A regular periodic trial balance of the subsidiary ledger shall be made at least quarter annually, within 30 days after the close of the period and shall show the escrow account balance of the client or other person at the end of each period.

- (i) The total of the trial balance must agree with the control figure computed by taking the beginning balance, adding the total of monies received in escrow for the period and deducting the total of escrow monies disbursed for the period; and
 - (ii) The trial balance shall identify the preparer and be approved by the lawyer or one of the lawyers in the law firm.
- (5) Reconciliations.
- (i) A monthly reconciliation shall be made at month end of the cash balance derived from the cash receipts journal and cash disbursements journal total, the escrow account checkbook balance, and the escrow account bank statement balance;
 - (ii) A periodic reconciliation shall be made at least quarter annually, within 30 days after the close of the period, reconciling cash balances to the subsidiary ledger trial balance;
 - (iii) Reconciliations shall identify the preparer and be approved by the lawyer or one of the lawyers in the law firm.
- (6) Receipts and disbursements explained. The purpose of all receipts and disbursements of escrow funds reported in the escrow journals and subsidiary ledgers shall be fully explained and supported by adequate records.

* * * *

RULE 5.3 Responsibilities Regarding Nonlawyer Assistants

With respect to a nonlawyer employed or retained by or associated with a lawyer:

- (a) a partner or a lawyer who individually or together with other lawyers possesses managerial authority in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer;
- (b) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and
- (c) a lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if:
 - (1) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or

- (2) the lawyer is a partner or has managerial authority in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows or should have known of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

* * * *

RULE 8.4 Misconduct

It is professional misconduct for a lawyer to:

- (b) commit a criminal or deliberately wrongful act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer;
- (c) engage in professional conduct involving dishonesty, fraud, deceit or misrepresentation which reflects adversely on the lawyer's fitness to practice law.

III. CERTIFICATION

Accordingly, it is the decision of the subcommittee to certify the above matters to the Virginia State Bar Disciplinary Board.

THIRD DISTRICT, SECTION I
SUBCOMMITTEE OF THE VIRGINIA
STATE BAR

By Joseph P. Ravicanda, Jr.
Chair, Third District Committee, Section I

CERTIFICATE OF SERVICE

I certify that on this 24th day of May, I mailed by Certified Mail, Return Receipt Requested, a true and correct copy of the foregoing Subcommittee Determination (Certification) to Colin Charles Connelly, Esquire, Respondent, at Connelly & Associates, P.C. 4830 West Hundred Road Chester, VA 23831, the Respondent's last address of record with the Virginia State Bar, and by first class mail, postage prepaid, to David L. Hauck, Respondent's Counsel, at Duane, Hauck & Gnapp, PC, 10 East Franklin Street, Richmond, Virginia 233219-2106.

A handwritten signature in black ink, appearing to be "David L. Hauck", is written over a horizontal line.