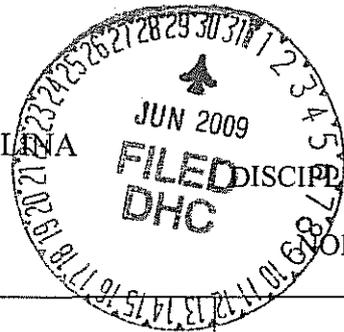


STATE OF NORTH CAROLINA  
WAKE COUNTY



BEFORE THE  
DISCIPLINARY HEARING COMMISSION  
OF THE  
NORTH CAROLINA STATE BAR  
05 DHC 56

THE NORTH CAROLINA STATE BAR,

Plaintiff

v.

RICK F. SHUMATE, Attorney,

Defendant

FINDINGS OF FACT,  
CONCLUSIONS OF LAW, AND  
ORDER OF DISCIPLINE

This matter was heard on May 28, May 29, and June 5, 2009 before a hearing committee of the Disciplinary Hearing Commission composed of the Chair, Tommy W. Jarrett, and members Theodore C. Edwards, II and Johnny A. Freeman. Jennifer A. Porter and Carmen K. Hoyme represented Plaintiff, the North Carolina State Bar. Donald P. Eggleston represented Defendant, Rick F. Shumate.

Defense counsel objected to proceeding with the disciplinary proceeding, arguing the proceeding was stayed under 11 U.S.C. § 362(a) because Defendant had filed for bankruptcy on May 21, 2009. The Chair had earlier considered this issue and ruled the stay did not apply to this disciplinary proceeding because of the exception for state regulatory proceedings found in 11 U.S.C. § 362(b)(4), in orders filed on March 30, 2009 and May 22, 2009. The Chair overruled defense counsel's objection and affirmed his prior rulings.

Based upon the pleadings, the stipulated facts, and the evidence introduced at the hearing, the hearing committee hereby finds by clear, cogent, and convincing evidence the following

#### FINDINGS OF FACT

1. Plaintiff, the North Carolina State Bar ("State Bar"), is a body duly organized under the laws of North Carolina and is the proper party to bring this proceeding under the authority granted it in Chapter 84 of the General Statutes of North Carolina, and the Rules and Regulations of the North Carolina State Bar (Chapter 1 of Title 27 of the North Carolina Administrative Code).

2. Defendant, Rick F. Shumate ("Shumate"), was admitted to the North Carolina State Bar in 1974, and is, and was at all times referred to herein, an attorney at law licensed to practice in North Carolina, subject to the laws of the State of North Carolina, the Rules and Regulations of the North Carolina State Bar and the Revised

Rules of Professional Conduct.

3. Shumate was properly served with process, a hearing in this matter was set, and the matter came before the hearing committee with due notice to all parties.

4. During all or part of the relevant periods referred to herein, Shumate was engaged in the practice of law in the State of North Carolina and maintained a law office in Greensboro, Guilford County, North Carolina.

5. On October 13, 2005, Shumate pled guilty to the felony offense of making a false statement to a federal agent in violation of 18 U.S.C. § 1001(a)(2), count 19 of an indictment in the United States District Court for the Middle District of North Carolina, file number 1:05-CR-230-3.

6. The count of the indictment to which Shumate pled guilty, count 19, stated that Shumate knowingly and willfully made a materially false, fictitious, and fraudulent statement and representation during an interview with the Department of Justice, Federal Bureau of Investigation by stating that, in connection with real estate closings he conducted involving Charles Richardson, Jr. and Phillip Wayne Middlebrooks, he did not realize that individuals purchased multiple properties as primary residences when in truth and in fact he did realize that individuals purchased multiple properties as primary residences.

7. Upon his plea, Shumate was convicted of making a false statement to a federal official in violation of 18 U.S.C. § 1001(a)(2) on June 1, 2006.

8. The offense to which Shumate pled guilty and was convicted is a serious crime showing professional unfitness as defined by Rule .0103(17) of the State Bar Discipline & Disability Rules.

9. This conviction establishes the matters and things alleged therein to which Shumate pled guilty, and this committee is not allowed or permitted and therefore will not look behind the conviction.

10. On or about May 18, 2000 Bridgett M. Rhodes and her husband Darrell Douglas Rhodes (hereinafter "the Rhodes") sold property located at 4801 Governor Moore Street, Efland, NC (hereinafter "the Governor Moore property") to Charles Richardson, Jr., d/b/a C. Richardson and Associates (hereinafter "C.Richardson").

11. The Rhodes sold the Governor Moore property to C.Richardson for approximately \$127,221.07.

12. On that same date of May 18, 2000, C.Richardson sold the Governor Moore property to Zara L. Herbin (hereinafter "Herbin") for approximately \$159,500.00.

13. Shumate was the closing attorney for and conducted the closing of the transaction in which the Governor Moore property was transferred from the Rhodes to C.Richardson (hereinafter "the Rhodes-C.Richardson closing").

14. Shumate was also the closing attorney for and conducted the closing of the transaction in which the Governor Moore property was transferred from C.Richardson to Herbin (hereinafter "the C.Richardson-Herbin closing").

15. Concorde Acceptance Corporation (hereinafter "Concorde") made a loan of \$159,500.00 to Herbin for Herbin's purchase of the Governor Moore property from C.Richardson.

16. Concorde required a commitment from a title insurance company to issue a title insurance policy to it on the title to the Governor Moore property as a condition precedent to loaning Herbin the funds for the C.Richardson-Herbin closing.

17. Shumate prepared a Preliminary Opinion of Title regarding the title to the Governor Moore property and submitted it to Parker Title Insurance Agency, Inc. (hereinafter "Parker Title").

18. Shumate prepared the Preliminary Opinion of Title regarding the title to the Governor Moore property and submitted it to Parker Title in order to obtain the commitment from a title insurance company Concorde required as a condition of making its loan to Herbin.

19. In his Preliminary Opinion of Title regarding the title to the Governor Moore property, Shumate certified that on May 9, 2000 the owner of the Governor Moore property was "C. Richardson and Associates."

20. Neither C.Richardson nor C. Richardson and Associates owned the Governor Moore property on May 9, 2000.

21. On May 9, 2000, the Governor Moore property was owned by the Rhodes.

22. Shumate prepared the deed transferring ownership from the Rhodes to C.Richardson.

23. The deed transferring ownership from the Rhodes to C.Richardson reflects it was signed by the Rhodes on May 18, 2000 and notarized by Ann Shumate.

24. Shumate's office provided the deed transferring ownership of the Governor Moore property from the Rhodes to C.Richardson to the Orange County, North Carolina Register of Deeds office for filing on or about May 19, 2000.

25. The deed transferring ownership of the Governor Moore property from the Rhodes to C.Richardson was filed with the Orange County, North Carolina Register of Deeds office on May 19, 2000.

26. Shumate knew when he certified that the property was owned by C. Richardson and Associates in his Preliminary Opinion of Title for the Governor Moore property that the property was not owned by C.Richardson or C. Richardson and Associates at that time.

27. Based on Shumate's Preliminary Opinion of Title for the Governor Moore property, Parker Title, acting as agent for First American Title Insurance Company (hereinafter "First American"), issued a title commitment to Concorde.

28. The title commitment inaccurately stated C.Richardson was the owner of the property at the commitment date of May 9, 2000.

29. Based upon this title commitment, Concorde considered its condition for a commitment for a title insurance policy satisfied.

30. Shumate prepared a HUD-1 Settlement Statement and disbursed the funds for the C.Richardson-Herbin closing.

31. The HUD-1 Settlement Statement for the C.Richardson-Herbin closing lists various disbursements purportedly made from the funds loaned by Concorde, including a disbursement of \$22,873.12 to C.Richardson.

32. The HUD-1 Settlement Statement for the C.Richardson-Herbin closing reflects that \$126,437.15 was disbursed to GE Capital/0022196299 to pay off a first mortgage.

33. This \$126,437.15 disbursement to GE Capital for account number 0022196299 from the funds loaned by Concorde to Herbin was to pay off a debt owed by the Rhodes, which was secured by a deed of trust on the Governor Moore property.

34. Shumate's preparation of the Preliminary Opinion of Title as described in the second claim for relief served to hide from Concorde the existence of the first closing.

35. On or about May 22, 2000 Mohammad Sabir and his wife, Musarat Shaheen (hereinafter "Sabir/Shahen") sold property located at 404 Elmhurst Avenue, High Point, NC (hereinafter "the Elmhurst Avenue property") to C.Richardson for \$129,000.00.

36. On that same date of May 22, 2000, C.Richardson sold the Elmhurst Avenue property to Herbin for \$175,000.00.

37. Shumate was the closing attorney for and conducted the closing of the transaction in which the Elmhurst Avenue property was transferred from Sabir/Shahen to C.Richardson (hereinafter "the Sabir/Shahen-C.Richardson closing").

38. Shumate was also the closing attorney for and conducted the closing of the transaction in which the Elmhurst Avenue property was transferred from C.Richardson to Herbin (hereinafter "the C.Richardson-Herbin II closing").

39. Shumate prepared a HUD-1 Settlement Statement for the Sabir/Shahen-C.Richardson closing.

40. The HUD-1 Settlement Statement for the Sabir/Shahen-C.Richardson

closing states funds were received from C.Richardson for the closing and lists various disbursements made from such funds.

41. Instead, the funds used to make the disbursements listed on the HUD-1 Settlement Statement for the Sabir/Shahen-C.Richardson closing were funds loaned to Herbin in the C.Richardson-Herbin II closing.

42. US Money Source d/b/a Soluna First (hereinafter "US Money Source") made a loan of \$175,000.00 to Herbin for Herbin's purchase of the Elmhurst Avenue property from C.Richardson.

43. US Money Source required a long form title policy for the title to the Elmhurst Avenue property as a condition precedent to loaning Herbin the funds for the C.Richardson-Herbin II closing.

44. Shumate prepared a Preliminary Opinion of Title regarding the title to the Elmhurst Avenue property and submitted it to Parker Title.

45. Shumate prepared the Preliminary Opinion of Title regarding the title to the Elmhurst Avenue property and submitted it to Parker Title in order to obtain the title insurance policy US Money Source required as a condition of making its loan to Herbin.

46. In his Preliminary Opinion of Title regarding the title to the Elmhurst Avenue property, Shumate certified that on May 8, 2000 the owner of the Elmhurst Avenue property was "C. Richardson and Associates."

47. Neither C.Richardson nor C. Richardson and Associates owned the Elmhurst Avenue property on May 8, 2000.

48. On May 8, 2000 the Elmhurst Avenue property was owned by Sabir/Shahen.

49. Shumate prepared the deed transferring ownership from Sabir/Shahen to C.Richardson.

50. The deed transferring ownership from Sabir/Shahen to C.Richardson was signed by Sabir/Shahen on May 22, 2000 and notarized by Ann Shumate.

51. Shumate's office provided the deed transferring ownership of the Elmhurst Avenue property from Sabir/Shahen to C.Richardson to the Guilford County, North Carolina Register of Deeds office for filing on or about May 23, 2000.

52. The deed transferring ownership of the Elmhurst Avenue property from Sabir/Shahen to C.Richardson was filed on May 23, 2000.

53. Shumate knew when he certified that the property was owned by C. Richardson and Associates in his Preliminary Opinion of Title for the Elmhurst Avenue property that the property was not owned by C.Richardson or C. Richardson and

Associates at that time.

54. Based on Shumate's Preliminary Opinion of Title for the Elmhurst Avenue property, Parker Title issued a title commitment to US Money Source.

55. Based upon this title commitment and in anticipation of a final title insurance policy, US Money Source considered its condition for a title insurance policy satisfied.

56. Shumate prepared a HUD-1 Settlement Statement and disbursed the funds for the C.Richardson-Herbin II closing.

57. The HUD-1 Settlement Statement for the C.Richardson-Herbin II closing lists various disbursements purportedly made from the funds loaned by US Money Source, including disbursements for attorney's fees and expenses totaling \$675.00 to Shumate and a disbursement of \$110,336.52 to C.Richardson.

58. Shumate did not disburse \$110,336.52 to C.Richardson. Shumate disbursed \$36,515.93 to C.Richardson. Shumate disbursed the remaining \$73,820.59 to his trust account.

59. This \$73,820.59 disbursement to Shumate's trust account from the funds loaned by US Money Source to Herbin was used to fund disbursements in the Sabir/Shahen-C.Richardson closing, including an additional \$725.00 disbursement for attorney's fees and expenses to Shumate.

60. The HUD-1 Settlement Statement for the C.Richardson-Herbin II closing failed to show that \$73,820.59 was disbursed to Shumate's trust account to fund disbursements in the Sabir/Shahen-C.Richardson closing.

61. The HUD-1 Settlement Statement for the C.Richardson-Herbin II closing reflects \$55,247.48 was disbursed to Home Savings SSB/Loan #14 for payoff of a first mortgage.

62. This \$55,247.48 disbursement to Home Savings SSB/Loan #14 from the funds loaned by US Money Source to Herbin was to pay off a debt owed by Sabir/Shahen, which was secured by a deed of trust on the Elmhurst Avenue property.

63. Shumate never provided US Money Source with any HUD-1 Settlement Statement for the C.Richardson-Herbin II closing that showed \$73,820.59 was disbursed from US Money Source's loan proceeds into Shumate's trust account.

64. Shumate never provided US Money Source with any HUD-1 Settlement Statement for the C.Richardson-Herbin II closing that showed that US Money Source's funds were being used to fund C.Richardson's purchase of the Elmhurst Avenue property and disbursements in that closing.

65. Shumate's preparation of the Preliminary Opinion of Title and HUD-1

Settlement Statement as described served to hide from US Money Source both the existence of the first closing and that US Money Source's loan proceeds were being used to fund disbursements in the first closing.

66. On or about July 17, 2000 Eric Diddy and wife, Shawn Diddy (hereinafter "the Diddys") sold property located at 4002 Jessup Grove Court, Greensboro NC (hereinafter "the Jessup Grove property") to C.Richardson for \$151,900.00.

67. On that same date of July 17, 2000, C.Richardson sold the Jessup Grove property to Paul Hairston (hereinafter "Hairston") for \$171,500.00.

68. Shumate was the closing attorney for and conducted the closing of the transaction in which the Jessup Grove property was transferred from the Diddys to C.Richardson (hereinafter "the Diddy-C.Richardson closing").

69. Shumate was also the closing attorney for and conducted the closing of the transaction in which the Jessup Grove property was transferred from C.Richardson to Hairston (hereinafter "the C.Richardson-Hairston closing").

70. Shumate prepared a HUD-1 Settlement Statement for the Diddy-C.Richardson closing.

71. The HUD-1 Settlement Statement for the Diddy-C.Richardson closing states \$4,397.91 was received from C.Richardson for the closing, in addition to \$500.00 as a deposit or earnest money previously paid.

72. The HUD-1 Settlement Statement for the Diddy-C.Richardson closing lists various disbursements made from the funds listed as received from C.Richardson for the transaction.

73. Instead, the \$4,397.91 of funds listed on the HUD-1 Settlement Statement for the Diddy-C.Richardson closing as provided by C.Richardson were funds loaned to Hairston in the C.Richardson-Hairston closing.

74. Concorde made a loan of \$171,500.00 to Hairston for Hairston's purchase of the Jessup Grove property from C.Richardson.

75. Concorde required a commitment from a title insurance company to issue a title insurance policy to it on the title to the Jessup Grove property as a condition precedent to loaning Hairston the funds for the C.Richardson-Hairston closing.

76. Shumate prepared a Preliminary Opinion of Title regarding the title to the Jessup Grove property and submitted it to Lawyers Title Insurance Corporation.

77. Shumate prepared the Preliminary Opinion of Title regarding the title to the Jessup Grove property and submitted it to Lawyers Title Insurance Corporation in order to obtain the commitment from a title insurance company Concorde required as a condition of making its loan to Hairston.

78. In his Preliminary Opinion of Title regarding the title to the Jessup Grove property, Shumate certified that on July 5, 2000 the owner of the Jessup Grove property was C.Richardson.

79. C.Richardson did not own the Jessup Grove property on July 5, 2000.

80. On July 5, 2000, the Jessup Grove property was owned by Eric Diddy.

81. Shumate prepared the deed transferring ownership from the Diddys to C.Richardson.

82. The deed transferring ownership from the Diddys to C.Richardson was signed by the Diddys on July 18, 2000 and notarized by Ann Shumate.

83. Shumate's office provided the deed transferring ownership of the Jessup Grove property from the Diddys to C.Richardson to the Guilford County, North Carolina Register of Deeds office for filing on or about July 19, 2000.

84. The deed transferring ownership of the Jessup Grove property from the Diddys to C.Richardson was filed on July 19, 2000.

85. Shumate knew when he certified that the property was owned by C.Richardson in his Preliminary Opinion of Title for the Jessup Grove property that the property was not owned by C.Richardson at that time.

86. Based on Shumate's Preliminary Opinion of Title for the Jessup Grove property, Lawyers Title Insurance Corporation issued a title commitment.

87. The title commitment inaccurately stated C.Richardson was the owner of the property at the commitment date of July 5, 2000.

88. Based upon this title commitment, Concorde considered its condition for a commitment for a title insurance policy satisfied.

89. Shumate prepared a HUD-1 Settlement Statement and disbursed the funds for the C.Richardson-Hairston closing.

90. The HUD-1 Settlement Statement for the C.Richardson-Hairston closing lists various disbursements purportedly made from the funds loaned by Concorde and the other funds listed as received for the closing, including disbursements for attorney's fees and expenses totaling \$650.00 to Shumate and a disbursement of \$18,074.11 to C.Richardson.

91. Shumate did not disburse \$18,074.11 to C.Richardson. Shumate disbursed \$13,676.20 to C.Richardson. Shumate disbursed the remaining \$4,397.97 by check naming Shumate as the payee.

92. This \$4,397.91 disbursement to Shumate from the funds loaned by

Concorde to Hairston was used along with other funds to fund disbursements in the Diddy-C.Richardson closing, including an additional \$750.00 disbursement for attorney's fees and expenses to Shumate.

93. The HUD-1 Settlement Statement for the C.Richardson-Hairston closing failed to show that \$4,397.91 was disbursed to Shumate or that the \$4,397.91 was used to fund disbursements in the Diddy-C.Richardson closing.

94. The HUD-1 Settlement Statement for the C.Richardson-Hairston closing reflects \$148,171.77 was disbursed to Countrywide Home Loans for payoff of a first mortgage.

95. This \$148,171.77 disbursement to Countrywide Home Loans from the funds loaned by Concorde to Hairston was to pay off a debt owed by the Diddys, which was secured by a deed of trust on the Jessup Grove property.

96. Shumate never provided Concorde with any HUD-1 Settlement Statement for the C.Richardson-Hairston closing that showed \$4,397.91 was disbursed to Shumate or Shumate's trust account.

97. Shumate never provided Concorde with any HUD-1 Settlement Statement for the C.Richardson-Hairston closing that showed that Concorde's funds were being used to fund C.Richardson's purchase of the Jessup Grove property and disbursements in that closing.

98. Shumate's preparation of the Preliminary Opinion of Title and HUD-1 Settlement Statement as described served to hide from Concorde both the existence of the first closing and that Concorde's loan proceeds were being used to fund disbursements in the first closing.

99. In July 2000 Trudy E. Smith (hereinafter "Smith") sold property located at 3220 Cross Tree Road, Winston-Salem, NC (hereinafter "the Cross Tree Road property") to C.Richardson and his wife Sharon Richardson (hereinafter jointly referred to as "the Richardsons") for \$198,000.00.

100. The Smith-C.Richardson closing occurred on July 26, 2000.

101. On that same date of July 26, 2000, the Richardsons sold the Cross Tree Road property to Hairston for \$240,000.00.

102. Shumate was the closing attorney for and conducted the closing of the transaction in which the Cross Tree Road property was transferred from Smith to the Richardsons (hereinafter "the Smith-C.Richardson closing").

103. Shumate was also the closing attorney for and conducted the closing of the transaction in which the Cross Tree Road property was transferred from the Richardsons to Hairston (hereinafter "the C.Richardson-Hairston II closing").

104. Shumate prepared a HUD-1 Settlement Statement for the Smith-C.Richardson closing.

105. The HUD-1 Settlement Statement for the Smith-C.Richardson closing states funds were received from C.Richardson for the closing and lists various disbursements made from such funds.

106. Instead, the funds used to make the disbursements listed on the HUD-1 Settlement Statement for the Smith-C.Richardson closing were funds loaned to Hairston in the C.Richardson-Hairston II closing.

107. Wilmington National Finance, Inc. (hereinafter "Wilmington NF") made a loan of \$240,000.00 to Hairston for Hairston's purchase of the Cross Tree Road property from C.Richardson.

108. Wilmington NF required a commitment from a title insurance company to issue a title insurance policy to it on the title to the Cross Tree Road property and certain provisions in the title policy as a condition precedent to loaning Hairston the funds for the C.Richardson-Hairston II closing.

109. Shumate prepared a Preliminary Opinion of Title regarding the title to the Cross Tree Road property and submitted it to Fidelity National Title Insurance Company.

110. Shumate prepared the Preliminary Opinion of Title regarding the title to the Cross Tree Road property and submitted it to Fidelity National Title Insurance Company in order to obtain the commitment from a title insurance company Wilmington NF required as a condition of making its loan to Hairston.

111. In his Preliminary Opinion of Title regarding the title to the Cross Tree Road property, Shumate certified that on July 3, 2000 the owner of the Cross Tree Road property was C.Richardson.

112. C.Richardson did not own the Cross Tree Road property on July 3, 2000.

113. On July 3, 2000, the Cross Tree Road property was owned by Smith.

114. Shumate prepared the deed transferring ownership from Smith to C.Richardson.

115. The deed transferring ownership from Smith to C.Richardson was signed by Smith on July 21, 2000 and notarized by Suzanna S. Parrett.

116. Shumate's office provided the deed transferring ownership of the Cross Tree Road property from Smith to C.Richardson to the Forsyth County, North Carolina Register of Deeds office for filing on or about July 21, 2000.

117. The deed transferring ownership of the Cross Tree Road property from Smith to C.Richardson was filed on July 21, 2000.

118. Shumate knew when he certified that the property was owned by C.Richardson in his Preliminary Opinion of Title for the Cross Tree Road property that the property was not owned by C.Richardson at that time.

119. Based on Shumate's Preliminary Opinion of Title for the Cross Tree Road property, Fidelity National Title Insurance Company issued a title commitment.

120. The title commitment inaccurately stated C.Richardson was the owner of the property at the commitment date of July 3, 2000.

121. Based upon this title commitment, Wilmington NF considered its condition for a commitment for a title insurance policy satisfied.

122. Shumate prepared a HUD-1 Settlement Statement and disbursed the funds for the C.Richardson-Hairston II closing.

123. The HUD-1 Settlement Statement for the C.Richardson-Hairston II closing lists various disbursements purportedly made from the funds loaned by Wilmington NF, including disbursements for attorney's fees and expenses totaling \$650.00 to Shumate and disbursement of \$203,906.22 to C.Richardson.

124. Shumate did not disburse \$203,906.22 to C.Richardson. Shumate disbursed \$34,474.65 to C.Richardson. Shumate disbursed the remaining \$169,431.57 to his trust account.

125. This \$169,431.57 disbursement to Shumate's trust account from the funds loaned by Wilmington NF to Hairston was used to fund disbursements in the Smith-C.Richardson closing, including an additional \$750.00 disbursement for attorney's fees and expenses to Shumate.

126. The HUD-1 Settlement Statement for the C.Richardson-Hairston II closing failed to show that \$169,431.57 was disbursed to Shumate's trust account to fund disbursements in the Smith-C.Richardson closing.

127. The HUD-1 Settlement Statement for the C.Richardson-Hairston II closing reflects \$27,974.43 was disbursed to the Pfefferkorn Company for payoff of a first mortgage.

128. This \$27,974.43 disbursement to the Pfefferkorn Company from the funds loaned by Wilmington NF to Hairston was to pay off a debt owed by Smith, which was secured by a deed of trust on the Cross Tree Road property.

129. Shumate never provided Wilmington NF with any HUD-1 Settlement Statement for the C.Richardson-Hairston II closing that showed \$169,431.57 was disbursed from Wilmington NF's loan proceeds to Shumate's trust account.

130. Shumate never provided Wilmington NF with any HUD-1 Settlement Statement for the C.Richardson-Hairston II closing that showed that Wilmington NF's

funds were being used to fund C.Richardson's purchase of the Cross Tree Road property and disbursements in that closing.

131. Shumate's preparation of the Preliminary Opinion of Title and HUD-1 Settlement Statement as described in the above findings served to hide from Wilmington NF both the existence of the first closing and that Wilmington NF's loan proceeds were being used to fund disbursements in the first closing.

132. On or about July 25, 2000 William Charles Wilde and his wife Kathryn Stroeman-Wilde (hereinafter "the Wildes") sold property located at 3906 SE School Road, Greensboro, NC (hereinafter "the School Road property") to the Richardsons for \$118,500.00.

133. On that same date of July 25, 2000, the Richardsons sold the School Road property to Hairston for \$132,000.00.

134. Shumate was the closing attorney for and conducted the closing of the transaction in which the School Road property was transferred from the Wildes to the Richardsons (hereinafter "the Wildes-C.Richardson closing").

135. Shumate was also the closing attorney for and conducted the closing of the transaction in which the School Road property was transferred from the Richardsons to Hairston (hereinafter "the C.Richardson-Hairston III closing").

136. Shumate disbursed the funds for the Wildes-C.Richardson closing.

137. Shumate's disbursement summary for the Wildes-C.Richardson closing states \$13,066.75 was received from C.Richardson for the closing and lists various disbursements made from such funds.

138. Instead, the funds used to make the disbursements for the Wildes-C.Richardson closing were funds loaned to Hairston in the C.Richardson-Hairston III closing.

139. First Indiana Bank (hereinafter "First Indiana") made two loans to Hairston for Hairston's purchase of the School Road property from C.Richardson, one in the amount of \$105,600.00 and one in the amount of \$26,400.00.

140. First Indiana required a title policy or binder from a title insurance company on the title to the School Road property as a condition precedent to loaning Hairston the funds for the C.Richardson-Hairston III closing.

141. Shumate prepared a Preliminary Opinion of Title regarding the title to the School Road property for First American and submitted it to Parker Title, which was acting as agent for First American.

142. Shumate prepared the Preliminary Opinion of Title regarding the title to the School Road property and submitted it to Parker Title in order to obtain the title

insurance policy or binder First Indiana required as a condition of making its loans to Hairston.

143. In his Preliminary Opinion of Title regarding the title to the School Road property, Shumate certified that on July 5, 2000 the owner of the School Road property was C. Richardson.

144. C.Richardson did not own the School road property on July 5, 2000.

145. On July 5, 2000, the School Road property was owned by the Wildes.

146. Shumate prepared the deed transferring ownership from the Wildes to C.Richardson.

147. The deed transferring ownership from the Wildes to C.Richardson reflects it was signed by the Wildes on July 25, 2000 and notarized by Ann Shumate.

148. Shumate's office provided the deed transferring ownership of the School Road property from the Wildes to C.Richardson to the Guilford County, North Carolina Register of Deeds office for filing on or about July 26, 2000.

149. The deed transferring ownership of the School Road property from the Wildes to C.Richardson was filed with the Guilford County, North Carolina Register of Deeds office on July 26, 2000.

150. Shumate knew when he certified that the property was owned by C.Richardson in his Preliminary Opinion of Title for the School Road property that the property was not owned by C.Richardson at that time.

151. Based on Shumate's Preliminary Opinion of Title for the School Road property, Parker Title issued a title commitment on behalf of First American to First Indiana.

152. The title commitment inaccurately stated C.Richardson was the owner of the property at the commitment date of July 5, 2000.

153. Based upon this title commitment and in anticipation of a final title insurance policy, First Indiana considered its condition for a title insurance policy or binder satisfied.

154. Shumate disbursed the funds from the C.Richardson-Hairston III closing and made various disbursements from the funds loaned by First Indiana to Hairston, including disbursements to Shumate for attorney's fees and expenses in the amount of \$725.00 from the \$105,600.00 loan and in the amount of \$250.00 from the \$26,400.00 loan.

155. A total of \$21,664.80 was designated on Shumate's disbursement summary for the C.Richardson-Hairston III closing as closing proceeds.

156. Shumate did not disburse the \$21,664.80 designated as closing proceeds to C.Richardson. Shumate disbursed \$8,598.05 to C.Richardson. Shumate disbursed the remaining \$13,066.75 to his trust account.

157. This \$13,066.75 disbursement to Shumate's trust account from the funds loaned by First Indiana to Hairston was used to fund disbursements in the Wildes-C.Richardson closing, including an additional \$725.00 disbursement for attorney's fees and expenses to Shumate.

158. Shumate disbursed \$105,874.31 to ABN AMRO Mortgage Group to pay off a first mortgage.

159. This \$105,874.31 disbursement to ABN AMRO Mortgage Group from the funds loaned by First Indiana to Hairston was to pay off a debt owed by the Wildes, which was secured by a deed of trust on the School Road property.

160. Shumate's preparation of the Preliminary Opinion of Title and structuring of disbursements as described in these findings served to hide from First Indiana both the existence of the first closing and that First Indiana's loan proceeds were being used to fund disbursements in the first closing.

161. On or about August 10, 2000 Nell D. Clement (hereinafter "Clement") sold property located at 3400 Sandon Place, Winston-Salem, NC (hereinafter "the Sandon Place property") to C.Richardson for \$180,000.00.

162. On that same date of August 10, 2000, C.Richardson sold the Sandon Place property to Hairston for \$225,000.00.

163. Shumate was the closing attorney for and conducted the closing of the transaction in which the Sandon Place property was transferred from Clement to C.Richardson (hereinafter "the Clement-C.Richardson closing").

164. Shumate was also the closing attorney for and conducted the closing of the transaction in which the Sandon Place property was transferred from C.Richardson to Hairston (hereinafter "the C.Richardson-Hairston IV closing").

165. Shumate prepared a HUD-1 Settlement Statement for the Clement-C.Richardson closing.

166. The HUD-1 Settlement Statement for the Clement-C.Richardson closing states \$181,435.42 was received from C.Richardson for the closing, in addition to the \$500.00 deposit or earnest money previously paid.

167. The HUD-1 Settlement Statement for the Clement-C.Richardson closing lists various disbursements made from the funds listed as received from C.Richardson for the transaction.

168. Instead, the \$181,435.42 of funds listed on the HUD-1 Settlement

Statement for the Clement-C.Richardson closing as provided by C.Richardson were funds loaned to Hairston in the C.Richardson-Hairston IV closing.

169. Maximum Funding Group, Inc. (hereinafter "MFG") made a loan of \$202,500.00 to Hairston for Hairston's purchase of the Sandon Place property from C.Richardson.

170. MFG required a commitment from a title insurance company to issue a title insurance policy to it on the title to the Sandon Place property as a condition precedent to loaning Hairston the funds for the C.Richardson-Hairston IV closing.

171. Shumate prepared a Preliminary Opinion of Title regarding the title to the Sandon Place property and submitted it to Parker Title.

172. Shumate prepared the Preliminary Opinion of Title regarding the title to the Sandon Place property and submitted it to Parker Title in order to obtain the commitment from a title insurance company MFG required as a condition of making its loan to Hairston.

173. In his Preliminary Opinion of Title regarding the title to the Sandon Place property, Shumate certified that on June 28, 2000 the owner of the Sandon Place property was C.Richardson.

174. C.Richardson did not own the Sandon Place property on June 28, 2000.

175. On June 28, 2000, the Sandon Place property was owned by Clement.

176. Shumate prepared the deed transferring ownership from Clement to C.Richardson.

177. The deed transferring ownership from Clement to C.Richardson was signed by an agent acting for Clement under power of attorney on July 15, 2000 and notarized by Ann Shumate.

178. Shumate's office provided the deed transferring ownership of the Sandon Place property from Clement to C.Richardson to the Forsyth County, North Carolina Register of Deeds office for filing on or about August 11, 2000.

179. The deed transferring ownership of the Sandon Place property from Clement to C.Richardson was filed on August 11, 2000.

180. Shumate knew when he certified that the property was owned by C.Richardson in his Preliminary Opinion of Title for the Sandon Place property that the property was not owned by C.Richardson at that time.

181. Based on Shumate's Preliminary Opinion of Title for the Sandon Place property, Parker Title issued a title commitment on behalf of First American.

182. The title commitment inaccurately stated C.Richardson was the owner of the property at the commitment date of June 28, 2000.

183. Based upon this title commitment, MFG considered its condition for a commitment for a title insurance policy satisfied.

184. Shumate prepared a HUD-1 Settlement Statement and disbursed the funds for the C.Richardson-Hairston IV closing.

185. The HUD-1 Settlement Statement for the C.Richardson-Hairston IV closing lists various disbursements purportedly made from the funds loaned by MFG and the other funds listed as received for the closing, including disbursements for attorney's fees and expenses totaling \$750.00 to Shumate and a disbursement of \$207,984.97 to C.Richardson.

186. Shumate did not disburse \$207,984.97 to C.Richardson. Shumate disbursed \$26,549.55 to C.Richardson. Shumate disbursed the remaining \$181,435.42 by check naming Shumate as the payee.

187. This \$181,435.42 disbursement to Shumate from the funds loaned by MFG to Hairston was used to fund disbursements in the Clement-C.Richardson closing, including an additional \$750.00 disbursement for attorney's fees and expenses to Shumate.

188. The HUD-1 Settlement Statement for the C.Richardson-Hairston IV closing failed to show that \$181,435.42 was disbursed to Shumate or that the \$181,435.42 was used to fund disbursements in the Clement-C.Richardson closing.

189. Shumate never provided MFG with any HUD-1 Settlement Statement for the C.Richardson-Hairston IV closing that showed \$181,435.42 was disbursed from MFG's loan proceeds to Shumate or Shumate's trust account.

190. Shumate never provided MFG with any HUD-1 Settlement Statement for the C.Richardson-Hairston IV closing that showed that MFG's funds were being used to fund C.Richardson's purchase of the Sandon Place property and disbursements in that closing.

191. Shumate's preparation of the Preliminary Opinion of Title and HUD-1 Settlement Statement as described in these findings served to hide from MFG both the existence of the first closing and that MFG's loan proceeds were being used to fund disbursements in the first closing.

192. On or about July 17, 2000 Ervin Gray Tucker and his wife Judy M. Tucker (hereinafter "the Tuckers") sold property located at 116 Laura Avenue, Winston-Salem, NC (hereinafter "the 116 Laura Avenue property") to C.Richardson for \$53,333.00.

193. On that same date of July 17, 2000, C.Richardson sold the 116 Laura Avenue property to Anita Siddle (hereinafter "Siddle") for \$80,000.00.

194. Shumate was the closing attorney for and conducted the closing of the transaction in which the 116 Laura Avenue property was transferred from the Tuckers to C.Richardson (hereinafter "the Tuckers-C.Richardson closing").

195. Shumate was also the closing attorney for and conducted the closing of the transaction in which the 116 Laura Avenue property was transferred from C.Richardson to Siddle (hereinafter "the C.Richardson-Siddle closing").

196. Shumate prepared a HUD-1 Settlement Statement for the Tuckers-C.Richardson closing.

197. The HUD-1 Settlement Statement for the Tuckers-C.Richardson closing states \$46,372.10 was received from C.Richardson for the closing, in addition to a \$100.00 deposit or earnest money previously paid.

198. The HUD-1 Settlement Statement for the Tuckers-C.Richardson closing lists various disbursements made from the funds listed as received from C.Richardson for the transaction.

199. Instead, the funds listed on the HUD-1 Settlement Statement for the Tuckers-C.Richardson closing as provided by C.Richardson were funds loaned to Siddle in the C.Richardson-Siddle closing.

200. First Indiana made two loans to Siddle for Siddle's purchase of the 116 Laura Avenue property from C.Richardson, one in the amount of \$64,000.00 and one in the amount of \$16,000.00.

201. First Indiana required a title policy or binder from a title insurance company on the title to the 116 Laura Avenue property as a condition precedent to loaning Siddle the funds for the C.Richardson-Siddle closing.

202. Shumate prepared a Preliminary Opinion of Title regarding the title to the 116 Laura Avenue property for First American and submitted it to Parker Title.

203. Shumate prepared the Preliminary Opinion of Title regarding the title to the 116 Laura Avenue property and submitted it to Parker Title in order to obtain the title insurance policy or binder First Indiana required as a condition of making its loans to Siddle.

204. In his Preliminary Opinion of Title regarding the title to the 116 Laura Avenue property, Shumate certified that on July 3, 2000 the owner of the 116 Laura Avenue property was C.Richardson.

205. C.Richardson did not own the 116 Laura Avenue property on July 3, 2000.

206. On July 3, 2000, the 116 Laura Avenue property was owned by the Tuckers.

207. Shumate prepared the deed transferring ownership from the Tuckers to C.Richardson.

208. The deed transferring ownership from the Tuckers to C.Richardson was signed by the Tuckers on or about July 17<sup>th</sup> or 18<sup>th</sup>, 2000 and notarized by Ann Shumate.

209. Shumate's office provided the deed transferring ownership of the 116 Laura Avenue property from the Tuckers to C.Richardson to the Forsyth County, North Carolina Register of Deeds office for filing on or about July 18, 2000.

210. The deed transferring ownership of the 116 Laura Avenue property from the Tuckers to C.Richardson was filed on July 18, 2000.

211. Shumate knew when he certified that the property was owned by C.Richardson in his Preliminary Opinion of Title for the 116 Laura Avenue property that the property was not owned by C.Richardson at that time.

212. Based on Shumate's Preliminary Opinion of Title for the 116 Laura Avenue property, Parker Title issued a title commitment on behalf of First American.

213. The title commitment inaccurately stated C.Richardson was the owner of the property at the commitment date of July 3, 2000.

214. Based upon this title commitment and in anticipation of a final title insurance policy, First Indiana considered its condition for a commitment for a title insurance policy or binder satisfied.

215. Shumate disbursed the funds from the C.Richardson-Siddle closing and made various disbursements from the funds loaned by First Indiana to Siddle, including disbursements to Shumate for attorney's fees and expenses in the amount of \$996.10 from the \$64,000.00 loan and in the amount of \$297.00 from the \$16,000.00 loan.

216. A total of \$72,104.10 was designated as closing or seller's proceeds on Shumate's disbursement summary for the C.Richardson-Siddle closing.

217. Shumate did not disburse \$72,104.10 to C.Richardson. Shumate disbursed \$22,701.07 to C.Richardson. Shumate disbursed the remainder by two checks from his trust account, both of which named Shumate as the payee and both of which were labeled "Seller's Proceeds." One check to Shumate was in the amount of \$46,472.10 and the other check to Shumate was in the amount of \$2,930.93.

218. The \$46,472.10 disbursement to Shumate from the funds loaned by First Indiana to Siddle was used to fund disbursements in the Tuckers-C.Richardson closing, including an additional \$765.00 disbursement for attorney's fees and expenses to Shumate.

219. Shumate disbursed \$7,153.53 to Piedmont Federal Savings and Loan Association (hereinafter "Piedmont") labeled as pay off a first mortgage.

220. This \$7,153.53 disbursement to Piedmont from the funds loaned by First Indiana to Siddle was to pay off a debt owed by the Tuckers.

221. Shumate's preparation of the Preliminary Opinion of Title and structuring of disbursements as described in these findings served to hide from First Indiana both the existence of the first closing and that First Indiana's loan proceeds were being used to fund disbursements in the first closing.

222. On or about August 3, 2000 the Tuckers sold property located at 128 Laura Avenue, Winston-Salem, NC (hereinafter "the 128 Laura Avenue property") to the Richardsons for approximately \$53,333.00.

223. On that same date of August 3, 2000, the Richardsons sold the 128 Laura Avenue property to Siddle for \$76,000.00.

224. Shumate was the closing attorney for and conducted the closing of the transaction in which the 128 Laura Avenue property was transferred from the Tuckers to the Richardsons (hereinafter "the Tuckers-C.Richardson II closing").

225. Shumate was also the closing attorney for and conducted the closing of the transaction in which the 128 Laura Avenue property was transferred from the Richardsons to Siddle (hereinafter "the C.Richardson-Siddle II closing").

226. Shumate disbursed the funds for the Tuckers-C.Richardson II closing.

227. Shumate's disbursement summary for the Tuckers-C.Richardson II closing states \$42,711.00 was received from C.Richardson for the closing and lists various disbursements made from such funds.

228. Instead, the funds used to make the disbursements for the Tuckers-C.Richardson II closing were funds loaned to Siddle in the C.Richardson-Siddle II closing.

229. Concorde made a loan of \$76,000.00 to Siddle for Siddle's purchase of the 128 Laura Avenue property from C.Richardson.

230. Concorde required a commitment from a title insurance company to issue a title insurance policy to it on the title to the 128 Laura Avenue property as a condition precedent to loaning Siddle the funds for the C.Richardson-Siddle II closing.

231. Shumate prepared a Preliminary Opinion of Title regarding the title to the 128 Laura Avenue property and submitted it to Parker Title.

232. Shumate prepared the Preliminary Opinion of Title regarding the title to the 128 Laura Avenue property and submitted it to Parker Title in order to obtain the commitment from a title insurance company Concorde required as a condition of making its loan to Siddle.

233. In his Preliminary Opinion of Title regarding the title to the 128 Laura Avenue property, Shumate certified that on July 6, 2000 the owner of the 128 Laura Avenue property was C.Richardson.

234. C.Richardson did not own the 128 Laura Avenue property on July 6, 2000.

235. On July 6, 2000, the 128 Laura Avenue property was owned by the Tuckers.

236. Shumate prepared the deed transferring ownership from the Tuckers to C.Richardson.

237. The deed transferring ownership from the Tuckers to C.Richardson was signed by the Tuckers on August 3, 2000 and notarized by Ann Shumate.

238. Shumate's office provided the deed transferring ownership of the 128 Laura Avenue property from the Tuckers to C.Richardson to the Forsyth County, North Carolina Register of Deeds office for filing on or about August 4, 2000.

239. The deed transferring ownership of the 128 Laura Avenue property from the Tuckers to C.Richardson was filed on August 4, 2000.

240. Shumate knew when he certified that the property was owned by C.Richardson in his Preliminary Opinion of Title for the 128 Laura Avenue property that the property was not owned by C.Richardson at that time.

241. Based on Shumate's Preliminary Opinion of Title for the 128 Laura Avenue property, Parker Title issued a title commitment on behalf of First American.

242. The title commitment inaccurately stated C.Richardson was the owner of the property at the commitment date of July 6, 2000.

243. Based upon this title commitment, Concorde considered its condition for a commitment for a title insurance policy satisfied.

244. Shumate prepared a HUD-1 Settlement Statement and disbursed the funds for the C.Richardson-Siddle II closing.

245. The HUD-1 Settlement Statement for the C.Richardson-Siddle II closing lists various disbursements purportedly made from the funds loaned by Concorde and the other funds listed as received for the closing, including disbursements for attorney's fees and expenses totaling \$650.00 to Shumate and a disbursement of \$61,195.60 to C.Richardson.

246. Shumate did not disburse \$61,195.00 to C.Richardson. Shumate disbursed \$18,484.50 to C.Richardson. Shumate disbursed the remaining \$42,711.00 to his trust account.

247. This \$42,711.00 disbursement to Shumate's trust account from the funds loaned by Concorde to Siddle was used to fund disbursements in the Tuckers-C.Richardson II closing, including an additional \$750.00 disbursement for attorney's fees and expenses to Shumate.

248. The HUD-1 Settlement Statement for the C.Richardson-Siddle II closing failed to show that \$42,711.00 was disbursed to Shumate's trust account to fund disbursements in the Tuckers-C.Richardson II closing.

249. The HUD-1 Settlement Statement for the C.Richardson-Siddle II closing reflects \$10,720.00 was disbursed to Piedmont Federal for payoff of a first mortgage.

250. This \$10,720.00 disbursement to Piedmont Federal from the funds loaned by Concorde to Siddle was to pay off a debt owed by the Tuckers.

251. Shumate never provided Concorde with any HUD-1 Settlement Statement for the C.Richardson-Siddle II closing that showed \$42,711.00 was disbursed to Shumate's trust account.

252. Shumate never provided Concorde with any HUD-1 Settlement Statement for the C.Richardson-Siddle II closing that showed that Concorde's funds were being used to fund C.Richardson's purchase of the 128 Laura Avenue property and disbursements in that closing.

253. Shumate's preparation of the Preliminary Opinion of Title and HUD-1 Settlement Statement as described in these findings served to hide from Concorde both the existence of the first closing and that Concorde's loan proceeds were being used to fund disbursements in the first closing.

254. On or about July 20, 2000 Tai Hyun Park and his wife Sook Hui Park (hereinafter "the Parks") sold property located at 820 Skeet Club Road, High Point, NC (hereinafter "the Skeet Club property") to the Richardsons for approximately \$120,000.00.

255. On that same date of July 20, 2000, the Richardsons sold the Skeet Club property to Edward Ward (hereinafter "Ward") for \$144,000.00.

256. Shumate was the closing attorney for and conducted the closing of the transaction in which the Skeet Club property was transferred from the Parks to the Richardsons (hereinafter "the Parks-C.Richardson closing").

257. Shumate was also the closing attorney for and conducted the closing of the transaction in which the Skeet Club property was transferred from the Richardsons to Ward (hereinafter "the C.Richardson-Ward closing").

258. Shumate disbursed the funds for the Parks-C.Richardson closing.

259. Shumate's disbursement summary for the Parks-C.Richardson closing states \$27,044.43 was received from C.Richardson for the closing and lists various disbursements made from such funds.

260. Instead, the funds used to make the disbursements listed on the disbursement summary for the Parks-C.Richardson closing were funds loaned to Ward in the C.Richardson-Ward closing.

261. Associates Home Equity Service (hereinafter "Associates") made a loan of \$139,482.48 to Ward for Ward's purchase of the Skeet Club property from C.Richardson.

262. Associates required a title insurance company to issue a title insurance policy to it on the title to the Skeet Club property as a condition precedent to loaning Ward the funds for the C.Richardson-Ward closing.

263. Shumate prepared a Preliminary Opinion of Title regarding the title to the Skeet Club property and submitted it to Parker Title.

264. Shumate prepared the Preliminary Opinion of Title regarding the title to the Skeet Club property and submitted it to Parker Title in order to obtain the title insurance policy Associates required as a condition of making its loan to Ward.

265. In his Preliminary Opinion of Title regarding the title to the Skeet Club property, Shumate certified that on June 27, 2000 the owner of the Skeet Club property was C. Richardson and Associates.

266. Neither C.Richardson nor C. Richardson and Associates owned the Skeet Club property on June 27, 2000.

267. On June 27, 2000, the Skeet Club property was owned by the Parks.

268. Shumate prepared the deed transferring ownership from the Parks to C.Richardson.

269. The deed transferring ownership from the Parks to C.Richardson was signed by the Parks on July 20, 2000 and notarized by Ann Shumate.

270. Shumate's office provided the deed transferring ownership of the Skeet Club property from the Parks to C.Richardson to the Guilford County, North Carolina Register of Deeds office for filing on or about July 21, 2000.

271. The deed transferring ownership of the Skeet Club property from the Parks to C.Richardson was filed on July 21, 2000.

272. Shumate knew when he certified that the property was owned by C. Richardson and Associates in his Preliminary Opinion of Title for the Skeet Club property that the property was not owned by either C.Richardson or C. Richardson and Associates at that time.

273. Based on Shumate's Preliminary Opinion of Title for the Skeet Club property, Parker Title issued a title commitment on behalf of First American.

274. The title commitment inaccurately stated C. Richardson and Associates was the owner of the property at the commitment date of June 27, 2000.

275. Based upon this title commitment and in anticipation of a final title insurance policy, Associates considered its condition for a title insurance policy satisfied.

276. Shumate prepared a HUD-1 Settlement Statement and disbursed the funds for the C.Richardson-Ward closing.

277. The HUD-1 Settlement Statement for the C.Richardson-Ward closing lists various disbursements purportedly made from the funds loaned by Associates and the other funds listed as received for the closing, including disbursements for attorney's fees and expenses totaling \$675.00 to Shumate and a disbursement of \$48,977.68 to C.Richardson.

278. Shumate did not disburse \$48,977.68 to C.Richardson. Shumate disbursed \$21,933.25 to C.Richardson. Shumate disbursed the remaining \$27,044.43 to his trust account.

279. This \$27,044.43 disbursement to Shumate's trust account from the funds loaned by Associates to Ward was used to fund disbursements in the Parks-C.Richardson closing, including an additional \$750.00 disbursement for attorney's fees and expenses to Shumate.

280. The HUD-1 Settlement Statement for the C.Richardson-Ward closing failed to show that \$27,044.43 was disbursed to Shumate's trust account to fund disbursements in the Parks-C.Richardson closing.

281. The HUD-1 Settlement Statement for the C.Richardson-Ward closing reflects \$92,945.73 was disbursed to GMAC Mortgage Corp for payoff of a first mortgage.

282. This \$92,945.73 disbursement to GMAC Mortgage Corp from the funds loaned by Associates to Ward was to pay off a debt owed by the Parks, secured by a deed of trust on the Skeet Club property.

283. Shumate never provided Associates with any HUD-1 Settlement Statement for the C.Richardson-Ward closing that showed \$27,044.43 was disbursed to Shumate's trust account.

284. Shumate never provided Associates with any HUD-1 Settlement Statement for the C.Richardson-Ward closing that showed that Associates' funds were being used to fund C.Richardson's purchase of the Skeet Club property and disbursements in that closing.

285. Shumate's preparation of the Preliminary Opinion of Title and HUD-1 Settlement Statement as described in these findings served to hide from Associates both the existence of the first closing and that Associates' loan proceeds were being used to fund disbursements in the first closing.

286. On or about September 13, 2000 Thomas Lee Mangum and his wife Tammy L. Mangum (hereinafter "the Mangums") sold property located at 3612 Martin Avenue, Greensboro, NC (hereinafter "the Martin Avenue property") to the Richardsons for approximately \$54,000.00.

287. On that same date of September 13, 2000, the Richardsons sold the Martin Avenue property to Murry Leach (hereinafter "Leach") for \$75,000.00.

288. Shumate was the closing attorney for and conducted the closing of the transaction in which the Martin Avenue property was transferred from the Mangums to the Richardsons (hereinafter "the Mangums-C.Richardson closing").

289. Shumate was also the closing attorney for and conducted the closing of the transaction in which the Martin Avenue property was transferred from the Richardsons to Leach (hereinafter "the C.Richardson-Leach closing").

290. Shumate prepared a HUD-1 Settlement Statement for the Mangums-C.Richardson closing.

291. The HUD-1 Settlement Statement for the Mangums-C.Richardson closing states \$4,077.65 was received from C.Richardson for the closing, in addition to the \$100.00 deposit or earnest money previously paid, and various disbursements made from such funds.

292. Instead, the funds used to make the disbursements listed on the HUD-1 Settlement Statement for the Mangums-C.Richardson closing were funds loaned to Leach in the C.Richardson-Leach closing.

293. Associates made a loan of \$76,500.00 to Leach for Leach's purchase of the Martin Avenue property from C.Richardson.

294. Associates required a title insurance company to issue a title insurance policy to it on the title to the Martin Avenue property as a condition precedent to loaning Leach the funds for the C.Richardson-Leach closing.

295. Shumate prepared a Preliminary Opinion of Title regarding the title to the Martin Avenue property and submitted it to Parker Title.

296. Shumate prepared the Preliminary Opinion of Title regarding the title to the Martin Avenue property and submitted it to Parker Title in order to obtain the title insurance policy Associates required as a condition of making its loan to Leach.

297. In his Preliminary Opinion of Title regarding the title to the Martin

Avenue property, Shumate certified that August 18, 2000 the owner of the Martin Avenue property was C.Richardson.

298. C.Richardson did not own the Martin Avenue property on August 18, 2000.

299. On August 18, 2000, the Martin Avenue property was owned by the Mangums.

300. Shumate prepared the deed transferring ownership from the Mangums to C.Richardson.

301. The deed transferring ownership from the Mangums to C.Richardson was signed by the Mangums on September 13, 2000 and notarized by Brittany V. Bottomley.

302. Shumate's office provided the deed transferring ownership of the Martin Avenue property from the Mangums to C.Richardson to the Guilford County, North Carolina Register of Deeds office for filing on or about September 14, 2000.

303. The deed transferring ownership of the Martin Avenue property from the Mangums to C.Richardson was filed on September 14, 2000.

304. Shumate knew when he certified that the property was owned by C.Richardson in his Preliminary Opinion of Title for the Martin Avenue property that the property was not owned by C.Richardson at that time.

305. Based on Shumate's Preliminary Opinion of Title for the Martin Avenue property, Parker Title issued a title commitment on behalf of First American.

306. The title commitment inaccurately stated C.Richardson was the owner of the property at the commitment date of August 18, 2000.

307. Based upon this title commitment and in anticipation of a final title insurance policy, Associates considered its condition for a title insurance policy satisfied.

308. Shumate prepared a HUD-1 Settlement Statement and disbursed the funds for the C.Richardson-Leach closing.

309. The HUD-1 Settlement Statement for the C.Richardson-Leach closing lists various disbursements purportedly made from the funds loaned by Associates and the other funds listed as received for the closing, including disbursements for attorney's fees and expenses totaling \$754.75 to Shumate and a disbursement of \$20,619.90 to C.Richardson.

310. Shumate did not disburse \$20,619.90 to C.Richardson. Shumate disbursed \$13,309.81 to C.Richardson. Shumate disbursed the remaining \$7,310.09 in two checks with himself as payee, one in the amount of \$3,232.44 and one in the amount of \$4,077.65.

311. The \$4,077.65 disbursement to Shumate from the funds loaned by Associates to Leach was used to fund disbursements in the Mangums-C.Richardson closing, including an additional \$625.00 disbursement for attorney's fees and expenses to Shumate.

312. The \$3,232.44 disbursement to Shumate from the funds loaned by Associates to Leach was used to partially reimburse Shumate's trust account for a deficit created when a deposit on behalf of Hairston from C.Richardson in the C.Richardson-Hairston IV closing was credited to Shumate's trust account on about August 11, 2000 and then debited from the account as a return item on about August 23, 2000.

313. The HUD-1 Settlement Statement for the C.Richardson-Leach closing failed to show that \$7,310.09 was disbursed to Shumate or that the funds were used to fund disbursements in the Mangums-C.Richardson closing and to partially reimburse Shumate's trust account for a deficit created in the C.Richardson-Hairston IV closing.

314. The HUD-1 Settlement Statement for the C.Richardson-Leach closing reflects \$36,604.74 was disbursed to Bank of America for payoff of a first mortgage.

315. This \$36,604.74 disbursement to Bank of America from the funds loaned by Associates to Leach was to pay off a debt owed by the Mangums, secured by a deed of trust on the Martin Avenue property.

316. The HUD-1 Settlement Statement for the C.Richardson-Leach closing reflects \$13,871.75 was disbursed to First Union National Bank for payoff of a second mortgage.

317. This \$13,871.75 disbursement to First Union National Bank from the funds loaned by Associates to Leach was to pay off a debt owed by the Mangums, secured by a deed of trust on the Martin Avenue property.

318. Shumate never provided Associates with any HUD-1 Settlement Statement for the C.Richardson-Leach closing that showed that \$7,310.09 was disbursed to Shumate or deposited into Shumate's trust account.

319. Shumate never provided Associates with any HUD-1 Settlement Statement for the C.Richardson-Leach closing that showed that Associate's funds were being used to fund C.Richardson's purchase of the Martin Avenue and disbursements in that closing.

320. Shumate never provided Associates with any HUD-1 Settlement Statement for the C.Richardson-Leach closing that showed that Associate's funds were being used to partially reimburse Shumate's trust account for a deficit created in the C.Richardson-Hairston IV closing.

321. Shumate's preparation of the Preliminary Opinion of Title and HUD-1 Settlement Statement as described in this claim for relief served to hide from Associates both the existence of the first closing and that Associate's loan proceeds were being used

to fund disbursements in the first closing.

322. The Real Estate Settlement Procedures Act (hereinafter "RESPA"), 12 U.S.C. § 2601, et seq., requires that the HUD-1 Settlement Statement itemize the actual charges that either the borrower or seller will pay at settlement.

323. Shumate supervised and/or oversaw Hairston's signing and/or execution of closing documents on behalf of the lender at the C.Richardson-Hairston II closing described herein, and as was alleged in the Fifth Claim for Relief, including but not limited to the HUD-1 Settlement Statement, the promissory note, the deed of trust, and an owner occupancy agreement.

324. The deed of trust signed by Hairston for Wilmington NF in the C.Richardson-Hairston II closing contained a provision that the borrower (Hairston) shall occupy, establish, and use the property as borrower's principal residence within sixty days after execution of the deed of trust and shall continue to occupy the property as principal residence for at least one year.

325. Shumate knew the deed of trust contained this provision regarding principal residency at the time of the C.Richardson-Hairston II closing.

326. The owner occupancy agreement signed by Hairston for Wilmington NF in the C.Richardson-Hairston II closing contained an agreement by Hairston that the Cross Tree Road property was or would be used as his principal residence, and acknowledged that the lender would not have agreed to make the loan if the property were not to be owner-occupied.

327. Shumate knew the owner occupancy agreement contained this provision regarding principal residency at the time of the C.Richardson-Hairston II closing.

328. Shumate supervised and/or oversaw Hairston's signing and/or execution of closing documents on behalf of the lender at the C.Richardson-Hairston III closing described herein, and as alleged in the Sixth Claim for Relief, including but not limited to the HUD-1 Settlement Statement, the promissory note, and two deeds of trust.

329. Both deeds of trust signed by Hairston for First Indiana in the C.Richardson-Hairston III closing contained a provision that the borrower (Hairston) shall occupy, establish, and use the property as borrower's principal residence within sixty days after execution of the deed of trust and shall continue to occupy the property as principal residence for at least one year.

330. Shumate knew the deeds of trust contained this provision regarding principal residency at the time of the C.Richardson-Hairston III closing.

331. Shumate supervised and/or oversaw Hairston's signing and/or execution of closing documents on behalf of the lender at the C.Richardson-Hairston IV closing described herein, and as alleged in the Seventh Claim for Relief, including but not limited to the HUD-1 Settlement Statement, the promissory note, the deed of trust, and a

borrower certifications form.

332. The deed of trust signed by Hairston for MFG in the C.Richardson-Hairston IV closing contained a provision that the borrower (Hairston) shall occupy, establish, and use the property as borrower's principal residence within sixty days after execution of the deed of trust and shall continue to occupy the property as principal residence for at least one year.

333. Shumate knew the deed of trust contained this provision regarding principal residency at the time of the C.Richardson-Hairston IV closing.

334. The borrower certifications form signed by Hairston for MFG in the C.Richardson-Hairston IV closing contained a certification that the Sandon Place property was or would be his primary residence.

335. Shumate knew the borrower certifications form contained this provision regarding primary residency at the time of the C.Richardson-Hairston IV closing.

336. Shumate supervised and/or oversaw Siddle's signing and/or execution of closing documents on behalf of the lender at the C.Richardson-Siddle closing described herein, and as alleged in the Eighth Claim for Relief, including but not limited to the HUD-1 Settlement Statements, the promissory notes, the deeds of trust, and the occupancy affidavit.

337. The deeds of trust signed by Siddle for First Indiana in the C.Richardson-Siddle closing contained a provision that the borrower (Siddle) shall occupy, establish, and use the property as borrower's principal residence within sixty days after execution of the deed of trust and shall continue to occupy the property as principal residence for at least one year.

338. Shumate knew the deeds of trust contained this provision regarding principal residency at the time of the C.Richardson-Siddle closing.

339. The occupancy affidavit signed by Siddle for First Indiana in the C.Richardson-Siddle closing acknowledged that it was a condition of First Indiana's loan that she occupy the 116 Laura Avenue property as her home and certified that she was acting in good faith and would immediately occupy the 116 Laura Avenue property as her primary residence and home.

340. Shumate knew the occupancy affidavit contained these provisions regarding occupancy at the time of the C.Richardson-Siddle closing.

341. Shumate supervised and/or oversaw Siddle's signing and/or execution of closing documents on behalf of the lender at the C.Richardson-Siddle II closing described herein, and as alleged in the Ninth Claim for Relief, including but not limited to the HUD-1 Settlement Statement, the promissory note, the deed of trust, and a borrower's closing affidavit.

342. The deed of trust signed by Siddle for Concorde in the C.Richardson-Siddle II closing contained a provision that the borrower (Siddle) shall occupy, establish, and use the property as borrower's principal residence within sixty days after execution of the deed of trust and shall continue to occupy the property as principal residence for at least one year.

343. Shumate knew the deed of trust contained this provision regarding principal residency at the time of the C.Richardson-Siddle II closing.

344. The borrower's closing affidavit signed by Siddle for Concorde in the C.Richardson-Siddle II closing contained a certification that the 128 Laura Avenue property was or would be her primary residence.

345. Shumate knew the borrower's closing affidavit contained this provision regarding primary residency at the time of the C.Richardson-Siddle II closing.

346. Shumate knew that the statements and certifications regarding primary residency and intent to occupy the properties being made by Hairston in the closings of C.Richardson-Hairston II, C.Richardson-Hairston III, and C.Richardson-Hairston IV, and by Siddle in the closings of C.Richardson-Siddle I and C.Richardson-Siddle II were false.

347. Shumate's actions constituted assistance to Hairston and Siddle in making the above described false statements and certifications regarding primary residency and intent to occupy the properties.

Based upon the foregoing Findings of Fact, the hearing committee enters the following

#### CONCLUSIONS OF LAW

1. All the parties are properly before the hearing committee and the committee has jurisdiction over the Defendant, Rick F. Shumate, and the subject matter.

2. Defendant's conduct, as set out in the Findings of Fact above, constitutes grounds for discipline pursuant to N.C. Gen. Stat. § 84-28(b)(1) for his conviction of one count of making a false statement to a federal agent in violation of 18 U.S.C. § 1001(a)(2), a criminal offense showing professional unfitness.

3. Defendant's conduct, as set out in the Findings of Fact above, constitutes grounds for discipline pursuant to N.C. Gen. Stat. § 84-28(b)(2), for engaging in conduct in violation of the Rules of Professional Conduct in effect at the time of his actions as follows:

- a. By engaging in the criminal offense for which he was convicted, Shumate committed a criminal act that reflect adversely upon his honesty, trustworthiness or fitness as a lawyer in violation of

Revised Rule 8.4(b) and engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Revised Rule 8.4(c);

- b. By falsely certifying in his Preliminary Opinion of Title for the Governor Moore property that C. Richardson and Associates owned the Governor Moore property on May 9, 2000, Shumate engaged in conduct involving deceit and misrepresentation in violation of Rule 8.4(c);
- c. By submitting a false Preliminary Opinion of Title to Parker Title Insurance Company to obtain a title commitment which satisfied a condition for Concorde to loan funds to Herbin, Shumate engaged in conduct involving deceit and misrepresentation in violation of Rule 8.4(c);
- d. By preparing the Preliminary Opinion of Title in a manner that served to hide the Rhodes-C.Richardson closing from Concorde, Shumate engaged in conduct involving deceit and misrepresentation in violation of Rule 8.4(c);
- e. By falsely certifying in his Preliminary Opinion of Title for the Elmhurst Avenue property that C.Richardson and Associates owned the Elmhurst Avenue property on May 8, 2000, Shumate engaged in conduct involving deceit and misrepresentation in violation of Rule 8.4(c);
- f. By submitting a false Preliminary Opinion of Title to Parker Title Insurance Company to obtain a title commitment which satisfied a condition for US Money Source to loan funds to Herbin, Shumate engaged in conduct involving deceit and misrepresentation in violation of Rule 8.4(c);
- g. By preparing and signing HUD-1 Settlement Statements that falsely represented receipt of funds and/or falsely represented the disbursement of funds for those transactions, Shumate engaged in conduct involving deceit and misrepresentation in violation of Rule 8.4(c);
- h. By providing an inaccurate HUD-1 Settlement Statement to US Money Source for the C.Richardson-Herbin II closing that failed to show that funds loaned to Herbin were being used to fund disbursements from the Sabir/Shaheen-C.Richardson closing, Shumate engaged in conduct involving deceit and misrepresentation in violation of Rule 8.4(c);
- i. By disbursing funds loaned by US Money Source in a manner

- differing from the disbursements listed on the HUD-1 Settlement Statement Shumate provided to US Money Source, Shumate engaged in conduct involving deceit and misrepresentation in violation of Rule 8.4(c);
- j. By preparing the Preliminary Opinion of Title and HUD-1 Settlement Statement in a manner that served to hide the Sabir/Shahen-C.Richardson closing from US Money Source, Shumate engaged in conduct involving deceit and misrepresentation in violation of Rule 8.4(c);
  - k. By falsely certifying in his Preliminary Opinion of Title for the Jessup Grove property that C.Richardson owned the Jessup Grove property on July 5, 2000, Shumate engaged in conduct involving deceit and misrepresentation in violation of Rule 8.4(c);
  - l. By submitting a false Preliminary Opinion of Title to Lawyers Title Insurance Corporation to obtain a title commitment which satisfied a condition for Concorde to loan funds to Hairston, Shumate engaged in conduct involving deceit and misrepresentation in violation of Rule 8.4(c);
  - m. By preparing and signing HUD-1 Settlement Statements that falsely represented receipt of funds and/or falsely represented the disbursement of funds for those transactions, Shumate engaged in conduct involving deceit and misrepresentation in violation of Rule 8.4(c);
  - n. By providing an inaccurate HUD-1 Settlement Statement to Concorde for the C.Richardson-Hairston closing that failed to show that funds loaned to Hairston were being used to fund disbursements from the Diddy-C.Richardson closing, Shumate engaged in conduct involving deceit and misrepresentation in violation of Rule 8.4(c);
  - o. By disbursing funds loaned by Concorde in a manner differing from the disbursements listed on the HUD-1 Settlement Statement Shumate provided to Concorde, Shumate engaged in conduct involving deceit and misrepresentation in violation of Rule 8.4(c);
  - p. By preparing the Preliminary Opinion of Title and HUD-1 Settlement Statement in a manner that served to hide the Diddy-C.Richardson closing from Concorde, Shumate engaged in conduct involving deceit and misrepresentation in violation of Rule 8.4(c);
  - q. By falsely certifying in his Preliminary Opinion of Title for the Cross Tree Road property that C.Richardson owned the Cross Tree

- Road property on July 3, 2000, Shumate engaged in conduct involving deceit and misrepresentation in violation of Rule 8.4(c);
- r. By submitting a false Preliminary Opinion of Title to Fidelity National Title Insurance Company to obtain a title commitment which satisfied a condition for Wilmington NF to loan funds to Hairston, Shumate engaged in conduct involving deceit and misrepresentation in violation of Rule 8.4(c);
  - s. By preparing and signing HUD-1 Settlement Statements that falsely represented receipt of funds and/or falsely represented the disbursement of funds for those transactions, Shumate engaged in conduct involving deceit and misrepresentation in violation of Rule 8.4(c);
  - t. By providing an inaccurate HUD-1 Settlement Statement to Wilmington NF for the C.Richardson-Hairston II closing that failed to show that funds loaned to Hairston were being used to fund disbursements from the Smith-C.Richardson closing, Shumate engaged in conduct involving deceit and misrepresentation in violation of Rule 8.4(c);
  - u. By disbursing funds loaned by Wilmington NF in a manner differing from the disbursements listed on the HUD-1 Settlement Statement Shumate provided to Wilmington NF, Shumate engaged in conduct involving deceit and misrepresentation in violation of Rule 8.4(c);
  - v. By preparing the Preliminary Opinion of Title and HUD-1 Settlement Statement in a manner that served to hide the Smith-C.Richardson closing from Wilmington NF, Shumate engaged in conduct involving deceit and misrepresentation in violation of Rule 8.4(c);
  - w. By falsely certifying in his Preliminary Opinion of Title for the School Road property that C. Richardson owned the School Road property on July 5, 2000, Shumate engaged in conduct involving deceit and misrepresentation in violation of Rule 8.4(c);
  - x. By submitting a false Preliminary Opinion of Title to Parker Title Insurance Company to obtain a title commitment which satisfied a condition for First Indiana to loan funds to Hairston, Shumate engaged in conduct involving deceit and misrepresentation in violation of Rule 8.4(c);
  - y. By preparing the preliminary opinion of title in a manner that served to hide the Wildes-C.Richardson closing from First Indiana,

- Shumate engaged in conduct involving deceit and misrepresentation in violation of Rule 8.4(c);
- z. By using funds loaned by First Indiana to Hairston for his purchase of the School Road property to fund disbursements in the Wildes-C.Richardson closing, Shumate engaged in conduct involving deceit and misrepresentation in violation of Rule 8.4(c);
  - aa. By falsely certifying in his Preliminary Opinion of Title for the Sandon Place property that C.Richardson owned the Sandon Place property on June 28, 2000, Shumate engaged in conduct involving deceit and misrepresentation in violation of Rule 8.4(c);
  - bb. By submitting a false Preliminary Opinion of Title to Parker Title to obtain a title commitment which satisfied a condition for MFG to loan funds to Hairston, Shumate engaged in conduct involving deceit and misrepresentation in violation of Rule 8.4(c);
  - cc. By preparing and signing HUD-1 Settlement Statements that falsely represented receipt of funds and/or falsely represented the disbursement of funds for those transactions, Shumate engaged in conduct involving deceit and misrepresentation in violation of Rule 8.4(c);
  - dd. By providing an inaccurate HUD-1 Settlement Statement to MFG for the C.Richardson-Hairston IV closing that failed to show that funds loaned to Hairston were being used to fund disbursements from the Clement-C.Richardson closing, Shumate engaged in conduct involving deceit and misrepresentation in violation of Rule 8.4(c);
  - ee. By disbursing funds loaned by MFG in a manner differing from the disbursements listed on the HUD-1 Settlement Statement Shumate provided to MFG, Shumate engaged in conduct involving deceit and misrepresentation in violation of Rule 8.4(c);
  - ff. By preparing the Preliminary Opinion of Title and HUD-1 Settlement Statement in a manner that served to hide the Clement-C.Richardson closing from MFG, Shumate engaged in conduct involving deceit and misrepresentation in violation of Rule 8.4(c);
  - gg. By falsely certifying in his Preliminary Opinion of Title for the 116 Laura Avenue property that C.Richardson owned the 116 Laura Avenue property on July 3, 2000, Shumate engaged in conduct involving deceit and misrepresentation in violation of Rule 8.4(c);

- hh. By submitting a false Preliminary Opinion of Title to Parker Title to obtain a title commitment which satisfied a condition for First Indiana to loan funds to Siddle, Shumate engaged in conduct involving deceit and misrepresentation in violation of Rule 8.4(c);
- ii. By preparing the preliminary opinion of title in a manner that served to hide the Tuckers-C.Richardson closing from First Indiana, Shumate engaged in conduct involving deceit and misrepresentation in violation of Rule 8.4(c);
- jj. By using funds loaned by First Indiana to Siddle for her purchase of the 116 Laura Avenue property to fund disbursements in the Tuckers-C.Richardson closing, Shumate engaged in conduct involving deceit and misrepresentation in violation of Rule 8.4(c);
- kk. By falsely certifying in his Preliminary Opinion of Title for the 128 Laura Avenue property that C.Richardson owned the 128 Laura Avenue property on July 6, 2000, Shumate engaged in conduct involving deceit and misrepresentation in violation of Rule 8.4(c);
- ll. By submitting a false Preliminary Opinion of Title to Parker Title to obtain a title commitment which satisfied a condition for Concorde to loan funds to Siddle, Shumate engaged in conduct involving deceit and misrepresentation in violation of Rule 8.4(c);
- mm. By preparing and signing HUD-1 Settlement Statements that falsely represented receipt of funds and/or falsely represented the disbursement of funds for those transactions, Shumate engaged in conduct involving deceit and misrepresentation in violation of Rule 8.4(c);
- nn. By providing an inaccurate HUD-1 Settlement Statement to Concorde for the C.Richardson-Siddle II closing that failed to show that funds loaned to Siddle were being used to fund disbursements from the Tuckers-C.Richardson II closing, Shumate engaged in conduct involving deceit and misrepresentation in violation of Rule 8.4(c);
- oo. By disbursing funds loaned by Concorde in a manner differing from the disbursements listed on the HUD-1 Settlement Statement Shumate provided to Concorde, Shumate engaged in conduct involving deceit and misrepresentation in violation of Rule 8.4(c);
- pp. By preparing the Preliminary Opinion of Title and HUD-1 Settlement Statement in a manner that served to hide the Tuckers-C.Richardson II closing from Concorde, Shumate engaged in

- conduct involving deceit and misrepresentation in violation of Rule 8.4(c);
- qq. By falsely certifying in his Preliminary Opinion of Title for the Skeet Club property that C. Richardson and Associates owned the Skeet Club property on June 27, 2000, Shumate engaged in conduct involving deceit and misrepresentation in violation of Rule 8.4(c);
  - rr. By submitting a false Preliminary Opinion of Title to Parker Title to obtain a title commitment which satisfied a condition for Associates to loan funds to Ward, Shumate engaged in conduct involving deceit and misrepresentation in violation of Rule 8.4(c);
  - ss. By preparing and signing HUD-1 Settlement Statements that falsely represented receipt of funds and/or falsely represented the disbursement of funds for those transactions, Shumate engaged in conduct involving deceit and misrepresentation in violation of Rule 8.4(c);
  - tt. By providing an inaccurate HUD-1 Settlement Statement to Associates for the C.Richardson-Ward closing that failed to show that funds loaned to Ward were being used to fund disbursements from the Parks-C.Richardson closing, Shumate engaged in conduct involving deceit and misrepresentation in violation of Rule 8.4(c);
  - uu. By disbursing funds loaned by Associates in a manner differing from the disbursements listed on the HUD-1 Settlement Statement Shumate provided to Associates, Shumate engaged in conduct involving deceit and misrepresentation in violation of Rule 8.4(c);
  - vv. By preparing the Preliminary Opinion of Title and HUD-1 Settlement Statement in a manner that served to hide the Parks-C.Richardson closing from Associates, Shumate engaged in conduct involving deceit and misrepresentation in violation of Rule 8.4(c);
  - ww. By falsely certifying in his Preliminary Opinion of Title for the Martin Avenue property that C.Richardson owned the Martin Avenue property on August 18, 2000, Shumate engaged in conduct involving deceit and misrepresentation in violation of Rule 8.4(c);
  - xx. By submitting a false Preliminary Opinion of Title to Parker Title to obtain a title commitment which satisfied a condition for Associates to loan funds to Leach, Shumate engaged in conduct involving deceit and misrepresentation in violation of Rule 8.4(c);

- yy. By preparing and signing HUD-1 Settlement Statements that falsely represented receipt of funds and/or falsely represented the disbursement of funds for those transactions, Shumate engaged in conduct involving deceit and misrepresentation in violation of Rule 8.4(c);
- zz. By providing an inaccurate HUD-1 Settlement Statement to Associates for the C.Richardson-Leach closing that failed to show that funds loaned to Leach were being used to fund disbursements from the Mangums-C.Richardson closing and to reimburse his trust account from a shortfall created in the C.Richardson-Hairston IV closing, Shumate engaged in conduct involving deceit and misrepresentation in violation of Rule 8.4(c);
- aaa. By disbursing funds loaned by Associates in a manner differing from the disbursements listed on the HUD-1 Settlement Statement Shumate provided to Associates, Shumate engaged in conduct involving deceit and misrepresentation in violation of Rule 8.4(c);
- bbb. By preparing the Preliminary Opinion of Title and HUD-1 Settlement Statement in a manner that served to hide the Mangums-C.Richardson closing from Associates, Shumate engaged in conduct involving deceit and misrepresentation in violation of Rule 8.4(c); and
- ccc. By closing multiple primary residency loans for the same borrowers and thereby assisting the borrowers with making false statements to the lenders regarding the borrowers' occupancy or intent to occupy the properties, Shumate engaged in conduct involving deceit and misrepresentation in violation of Rule 8.4(c).

Based upon the foregoing Findings of Fact and Conclusions of Law and upon the evidence and arguments presented at the hearing concerning appropriate discipline, the hearing committee hereby finds by clear, cogent, and convincing evidence the following additional

#### FINDINGS OF FACT REGARDING DISCIPLINE

1. Shumate has been previously disciplined by the Disciplinary Hearing Commission of the North Carolina State Bar in case number 04 DHC 7, for willfully and unlawfully failing to timely file his 2000 state income tax return and willfully and unlawfully failing to timely pay state income taxes for 1997, 1998, 1999, and 2000. Shumate's law license was suspended for thirty days, with the suspension stayed for one year.

2. Title insurance companies, banks and/or lending institutions are not normally thought of as vulnerable entities. Nevertheless, the title companies and banks were not present at the closings addressed in this order. They relied upon the closing attorney to carry out the closing in an ethical, lawful, and proper manner, and because they relied upon the closing attorney they did not have any other representative present at the closings. These institutions are particularly vulnerable to the conduct of attorneys that circumvent or knowingly facilitate others in the circumvention of safeguards employed to avoid fraud by others.

3. The title insurance companies and lenders expected Shumate to properly certify the ownership of the property. Title insurance companies are required by statute to have an independent attorney examine title and provide a title opinion before they can issue title insurance policies. The title insurance companies relied on Shumate to fulfill that statutory requirement for the title insurance policies issued in the closings described in this order. The title insurance companies and the lenders relied on Shumate to provide truthful information to the title insurance companies so that the title commitments would accurately state the current owner of the properties. Shumate's failure to properly certify the ownership of the property evaded safeguards and failed to meet the standards expected of a closing attorney.

4. The lenders relied on the HUD-1 Settlement Statements to accurately reflect receipt and disbursement of funds in these closings. The lenders required that they be provided with the HUD-1 Settlement Statement prior to closing, for review and approval. Shumate provided HUD-1 Settlement Statements to the lenders for the closings discussed in this order, prior to the closings for lender review and approval. Shumate's failure to receive and disburse funds as reflected on the HUD-1 Settlement Statements evaded the safeguards relied upon by the lenders.

5. The lenders provided closing instructions to Shumate. If the requirements in the closing instructions were not met, the lender would not make the loan to the borrower. Shumate circumvented the lenders' attempt through the closings instructions to ensure the loan at issue was one it was willing to make. The false preliminary opinions of title Shumate provided to the title insurance companies resulted in false information on the title commitments that hid the first part of the flip transactions from the lenders.

6. Shumate learned of his indictment when contacted by a newspaper reporter. Shumate's criminal charges were a matter of public knowledge at least in the Greensboro area where Shumate lives. His conviction is a matter of public record.

7. The loans in six out of the ten closings addressed in this order have been foreclosed upon at a loss to the holders of the notes and deeds of trust.

8. Shumate engaged in conduct involving misrepresentation and deceit over a substantial period of time.

9. There was no evidence presented at the hearing that Shumate acknowledged the wrongful nature of his conduct.

10. Clients are entitled to attorneys they can trust. Shumate, by engaging in conduct involving misrepresentation and deceit over a substantial period of time, has shown himself to be untrustworthy. When an attorney violates that trust, it harms the public and the profession.

11. Shumate suffered from untreated alcoholism during the time of the closings addressed in this order. The alcoholism was a physical illness. It also had a mental element, with an obsessive need for alcohol and with denial related to it.

12. Shumate currently has a physical disability arising from esophageal cancer, which was diagnosed in February 2008. The cancer and resulting disability had nothing to do with the conduct addressed in this order but it did add to the delay in the conclusion of these disciplinary proceedings.

13. Some of the delay in the conclusion of these disciplinary proceedings resulted from Shumate's incarceration, serving the sentence imposed by the federal judge for Shumate's conviction for the false statement.

14. Shumate's law license was placed on interim suspension effective January 1, 2006, pending conclusion of this disciplinary proceeding.

15. The hearing committee has carefully considered all of the different forms of discipline available to it, including admonition, reprimand, censure, suspension, and disbarment, in considering the appropriate discipline to impose in this case.

Based upon the foregoing Findings of Fact, Conclusions of Law, Findings of Fact Regarding Discipline, and upon the evidence and arguments presented at the hearing concerning appropriate discipline, the hearing committee hereby enters the following additional

#### CONCLUSIONS REGARDING DISCIPLINE

1. Shumate's misconduct is aggravated by the following factors listed in 27 N.C. Admin. Code 1B § .0114(w)(1):

- a. Prior disciplinary offense;
- b. Selfish motive;
- c. A pattern of misconduct;
- d. Multiple offenses;
- e. Refusal to acknowledge the wrongful nature of his conduct;

- f. Vulnerability of victims, the lenders and title insurance companies;  
and
- g. Substantial experience in the practice of law.

2. Shumate's misconduct is mitigated by the following factor listed in 27 N.C. Admin. Code 1B § .0114(w)(2):

- a. Personal or emotional problems stemming from alcoholism during the time of the closings addressed in this order;
- b. Physical or mental disability or impairment stemming from alcoholism during the time of the closings addressed in this order;  
and
- c. Delay in disciplinary proceedings through no fault of Defendant, due to esophageal cancer.

3. The aggravating factors outweigh the mitigating factors.

4. Some of the delay in these disciplinary proceedings resulted from Shumate's incarceration. That sentence was imposed because of Shumate's misconduct, and, therefore, it and the resulting delay should not be deemed in any way to be a mitigating factor.

5. Shumate's conduct resulted in significant harm to his clients, the lenders, and to the public. Shumate's conduct evaded safeguards relied upon by the lenders and the title insurance companies. Six of the ten loans went into default and resulted in foreclosure, at a loss to the holder of the notes and deeds of trust.

6. Shumate's conduct resulted in significant harm to the profession, due to the public nature of and newspaper publicity from his criminal charges and conviction.

7. Shumate's conduct, involving misrepresentation and deceit over a substantial period of time, resulted in significant harm to his clients and the profession and posed potential significant harm to the public that may have sought to retain him or those who may have dealt with him in other capacities. When an attorney violates the trust clients and others should be able to have in attorneys, it harms the public and the profession. Furthermore, the lack of acknowledgement by Shumate of the wrongful nature of his conduct poses potential significant harm to the public and the profession.

8. The hearing committee has considered all lesser forms of sanctions available to it and finds that disbarment is the only appropriate discipline in this case, for the following reasons:

- a. Shumate committed misdeeds involving moral turpitude and violations of the public trust, including fraudulent conduct, material misrepresentations, and deceit. Misconduct involving misrepresentations and deceit are among the most serious that an attorney can commit. Such offenses demonstrate that the offending attorney is not trustworthy. Clients are entitled to have trustworthy attorneys;
- b. Entry of an order imposing lesser discipline than disbarment would fail to acknowledge the seriousness of the offenses committed by Shumate and would send the wrong message to attorneys and the public regarding the conduct expected of members of the North Carolina State Bar; and
- c. The protection of the public and the legal profession requires that Shumate not be permitted to resume the practice of law until he demonstrates the following: that he has reformed; that he understands his obligations to his clients, the public, and the legal profession; and that permitting him to practice law will not be detrimental to the public or the integrity and standing of the legal profession or the administration of justice.

9. The hearing committee is impressed with the way Shumate has courageously fought his alcoholism. Accordingly, and in recognition of this, the hearing committee determines it is appropriate to make the disbarment retroactive to the effective date of the interim suspension of Shumate's law license.

Based upon the foregoing Findings of Fact, Conclusions of Law, and Findings of Fact Regarding Discipline, and Conclusions Regarding Discipline, the hearing committee hereby enters the following

#### ORDER OF DISCIPLINE

1. Defendant, Rick F. Shumate, is hereby DISBARRED from the practice of law in North Carolina.

2. The effective date of the disbarment under this order is made retroactive to January 1, 2006.

3. The costs of this action are taxed to Defendant, including costs of the depositions taken in this case as allowed by statute. The deposition costs were incurred necessarily for the prosecution of this proceeding. Defendant will receive a statement of costs from the State Bar. Defendant must pay these costs prior to submitting any

application for reinstatement, unless this obligation is discharged by the United States Bankruptcy Court.

Signed by the Chair with the consent of the other hearing committee members,  
this the 29 day of June 2009.

  
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Tommy W. Jarrett, Chair  
Disciplinary Hearing Committee