



NORTH CAROLINA
REAL ESTATE LICENSING BOARD

Real Estate Bulletin

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Rules/Regulations Amended/Adopted

(Summary on Page 3)

Trust Account Audits—What To Expect

By
L. Ted Gayle
Trust Account Auditor



**Gayle Named
Trust Account Auditor**

As Trust Account Auditor my primary responsibility will be to verify that real estate brokers (and salesmen) are properly handling and accounting for funds of others which come into their possession. The auditing of your trust account (like an IRS audit of your tax returns) does not imply that you are suspected of any wrong-doing. In most cases, the selection of offices to be audited will be made on a purely random basis with the audit usually taking only ½ day to complete (assuming that your records are in order). The inspections, however, will be made without any prior notice so that if your records are not on hand in your office, then you will be required to immediately retrieve them for my inspection.

The License Law and particularly the Board's Rules and Regulations are quite specific as to the demands placed upon brokers who are acting as trustees, escrow agents, or the temporary custodian of the funds of others, and your compliance with these laws and rules will be of utmost concern to me in conducting my audit.

For example, when I audit your trust account records, I will first of all check to see that your checks and deposit tickets bear the words "Trust Account" or "Escrow Account" and that your bank has designated the account as an escrow or trust account (Rule .0107(c)). If it is an interest-

bearing account, I will also ask to see the required **written** statement signed by the principals authorizing you to place the funds in an interest-bearing account and specifying how the interest is to be disbursed (G.S. 93A-6(a)(12)).

I will then examine your various bank records (checks, deposit tickets, bank statements, etc.) and your transaction records (contracts, closing statements, etc.) to verify among other things that you are depositing trust monies within 72 hours of receipt (Rule .0107(a)); that the money was used for the purpose(s) stated in the contract; and that at no time during the transaction was the trust money commingled with your business or personal funds (G.S. 93A-6(a)(12)).

Although the Board's new Rules regarding the handling and accounting of funds clearly state what the Board considers to be "minimum" trust account records (Rule .0107(d)), the Board has not required that the information be arranged or maintained according to any prescribed format. Nevertheless, the Board does feel that brokers should adopt a complete (yet uncomplicated) method of trust account record-keeping in the form of a **general journal** and individual **transaction ledgers**. In fact, the Winter Quarter 1977 issue of the BULLETIN contained a model of such

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Mr. L. Ted Gayle has been named by the Real Estate Licensing Board to the newly created position of Trust Account Auditor (See "Trust Account Audits" on this page).

A native of Badin, North Carolina, Mr. Gayle attended Western Carolina University where he played football and baseball, graduating in 1954 with a degree in Business Administration.

Following graduation, he was employed by ALCOA in Badin as Property Accounting Clerk. Then in 1960 Mr. Gayle joined Collins & Aikman Corporation where he served for 19 years as Plant Accountant in their Albemarle, Siler City and Old Fort facilities.

Mr. Gayle is married to the former Margaret Evans who is Chief Consultant with the North Carolina Department of Public Instruction, and they have four daughters. □

REAL ESTATE BULLETIN

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Raleigh, North Carolina 27619
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Real Estate Instructor Profile

The applications of real estate pre-licensing course instructors who have been certified by the Board under the instructor certification standards implemented in September, 1979 were analyzed recently by the Education Director. This analysis revealed that we have an exceptionally well-qualified group of individuals teaching prospective North Carolina real estate practitioners.

Of the 210 certified instructors, 90% possess a real estate license, 78% possess a baccalaureate or higher degree, 85% have 2 or more years full-time real estate experience, and at least 68% have 90 or more hours of real estate education in addition to pre-licensing courses and company in-service training.

The Licensing Board salutes those real estate licensees who are giving of their time and energy to help provide a quality pre-licensing education program for the real estate profession. □

Questions and Answers on Trust Accounts

Q. As a broker, where should I deposit trust money received in connection with property in which I have an ownership interest?

A. The Licensing Board has determined that if a broker is the sole personal owner of a property, then trust monies (earnest money, rent collections and security deposits) pertaining to such property should not be placed in that broker's "brokerage trust account" (i.e., the account used to deposit monies received while acting as a broker). But if a broker is part-owner of real estate and is in fact acting as an agent for himself and the other owners, then he may treat it as a normal brokerage transaction and place funds pertaining to such transaction in his brokerage trust account. (If the property is owned by a corporation, obviously the corporation is a separate legal entity from the broker, and the broker may place funds pertaining to said property in his brokerage trust account.)

In short, the Licensing Board's policy against placing funds in a broker's brokerage trust account applies only where the broker is the sole owner of the property.

It should also be noted that the Licensing Board does not object to a broker opening an additional trust or escrow account (separate from his brokerage trust account) for the purpose of receiving trust funds from properties which the broker is the sole personal owner; in fact, such account is required of landlords pursuant to G.S. 42-50 for the deposit of tenant security deposits on residential dwelling units. □

Caveat Emptor

Let the buyer beware! The phrase, while well known, is in professional circles now considered essentially meaningless. The courts are continually striking down the defense of the professional who relies upon the purchaser's responsibility to know what he is buying. Where will it all end? Are professionals required to think for a purchaser?

Frequent industry complaints are heard with regard to the considered impossible burden being placed on real estate brokers. Yet, if we could analyze the overall picture, we would understand that the responsibility (burden) being placed on real estate brokers is nothing more than an industry goal being realized.

Reviewing the decisions handed down by the courts, we frequently find words such as "expert", "superior knowledge", and other words and phrases recognizing real estate brokers and salesmen as professionals. Recognition as a professional has been a long standing goal of the real estate brokerage industry. Recognition as a professional has been sought through rigid licensing standards, pre-licensure educational requirements, and most recently continuing educational requirements.

The easy part's over. Now that we have the recognition, the courts are holding us to professional standards in the services provided to the public. We once could state that we were not aware of material defects, but now, with our acquired technical competence, we are expected to detect and disclose those defects. We once could expect buyers and sellers to fend for themselves following an offer and acceptance, but now we are being held responsible, as the architect of the transaction, through and beyond closing.

We should not be discouraged. Real estate industry people today are well equipped to meet the challenge of required professional standards. Those few who are not qualified or do not exert the necessary effort will fall by the wayside. The forecast for the real estate marketplace is questionable and only those providing the quality of service demanded by the public will survive. That is the "professional service".

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Maine Real Estate News □

Rules and Regulations

Summary of Changes (Effective April 11, 1980)

The Real Estate Licensing Board held a rule-making hearing on February 6, 1980 at its Raleigh offices to afford interested persons an opportunity to present views and arguments regarding certain proposed changes in the Board's Rules and Regulations.

Summarized below are the recent amendments to the Rules and Regulations of the Licensing Board which were subsequently adopted by the Board at its March 6 meeting. These changes will become effective April 11, 1980.

Trust Accounts

Rule .0107, HANDLING AND ACCOUNTING OF FUNDS, was amended by establishing certain record-keeping requirements for trust monies and certain other requirements regarding the proper disposition of disputed trust monies.

Under the new Rule, your trust or escrow account must be designated by your bank (or savings and loan association) as a "Trust Account" or "Escrow Account", and your checks and deposit tickets must likewise bear the words "Trust Account" or "Escrow Account". (If your current supply of checks and deposit tickets do not contain these words, you may add the words by hand or stamp.)

You must also maintain (and retain for three years) records which are sufficient to verify that you are properly using your trust account. These records shall include bank statements, cancelled checks, deposit tickets, and copies of contracts and closing statements; and, at the very minimum, your records must show (1) the date you receive trust monies, (2) the amount, nature and purpose of deposits and from whom received, (3) the date the trust monies are deposited in your trust or escrow account, (4) the amount, date and purpose of withdrawals and to whom paid, and (5) a current running balance. These records must be available for inspection by the Board or its authorized representatives **without prior notice**.

Also, in the event of a dispute over the return or forfeiture of any deposit which you are holding, you must retain the deposit in your trust or escrow account until (1) you have obtained a written release from the parties consenting to its disposition, or (2) until disbursement is ordered by a court of competent jurisdiction.

Fingerprints

Rule .0301, (APPLICATION) FORM, was amended by adding the requirement that applicants for real estate licenses shall furnish fingerprints with their applications. These fingerprints will, in turn, be forwarded to the State Bureau of Investigation for the purpose of retrieving any criminal history record information concerning the applicant.

This amendment was adopted by the Licensing Board in response to concerns expressed by the North Carolina General Assembly and the Governmental Evaluation Commission that the Licensing Board should investigate more thoroughly the ethical background of applicants for real estate licenses.

Re-Examination

Rule .0403, RE-EXAMINATION, was amended by deleting the provision calling for the re-scheduling of applicants who do not appear at their first scheduled examination.

Under the previous Rule, license applicants who **did not appear** for their first scheduled licensing examination were automatically scheduled for a second examination without payment of any additional fee. Noting that 15% to 20% of all applicants did not appear for examination, the Board determined that a substantial savings could be realized by discontinuing its policy of automatically re-scheduling these applicants.

However, applicants who **fail to pass** their first scheduled examination will continue to be re-scheduled for a second examination (the examination to be held two months later) without payment of an additional fee or filing of another application.

Corporations

Rule .0502, CORPORATIONS, was amended by adding the requirement that applicants for corporation real estate licenses shall furnish a copy of their corporate charter with their applications. This will enable the Board to immediately verify that the corporation is authorized to engage in real estate brokerage and will greatly expedite the processing of the application.

License Renewal Fees

Rules .0503, .0504, and .0505 were amended by changing from \$10.00 to \$15.00 the annual fee charged to renew real estate broker and salesman licenses.

Recognizing that existing license fees could no longer support the Board's licensing and regulatory programs, the North Carolina General Assembly recently approved a \$5.00 increase in all real estate license fees (application and renewal fees). While the Licensing Board had hoped to be able to defer the increase in renewal fees until the 1981-82 fiscal year, recent events have made it necessary to immediately implement the increase; these events include unexpected increases in examination costs, additional expenses in carrying out new programs directed or mandated by the General Assembly (e.g. \$100,000 Recovery Fund, more comprehensive investigation of license applicants, etc.), and general increased costs of doing business (postage, printing, rent, etc.).

Despite this \$5.00 increase, your annual license renewal fee remains one of the lowest in the country. (Nationally, the average fee for renewing a real estate broker license is approximately \$28.00 with only eight states charging less than \$15.00.) □

Trust Account Audits
(Continued from Page 1)

a journal which would both satisfy the requirements of the new Rules and meet the needs of most general brokerage agencies; we will upon request mail you a copy of this model for your consideration.

The audit may result in significant changes being made in your accounting procedures and practices or ultimately in disciplinary action by the Board depending upon the nature and severity of any problems discovered. It is, therefore, imperative that you determine prior to my audit that your trust account is being maintained in accordance with the mandates of the License Law and the Board's Rules and Regulations. Ignorance of the law is no excuse!

To conclude on a more positive note, remember that the Field Representatives and I want to help you—not hurt you. Because by helping you to better understand and appreciate your responsibilities to real estate consumers, we are in effect better protecting the interests of such consumers.

I look forward to meeting many of you in the months ahead. □

EXAM RESULTS

EXAMINATION—December, 1979

	Passed	Failed
Brokers	288	435
Salesmen	70	55

EXAMINATION—January, 1980

	Passed	Failed
Brokers	355	237
Salesmen	84	68

Disciplinary Action

The Real Estate Licensing Board revoked the corporation broker's license of HOME SOUTH, INC. of Greensboro for making misrepresentations and false promises through agents. The firm collected "advance fixed-fee commissions" at the time of listing by guaranteeing that the fee would be refunded if the property was not sold. The Board found that the firm was subsequently unable to honor its guarantee.

The Licensing Board suspended the broker's license of WILL A. HUDSON of Raleigh for four months for making substantial and willful misrepresentations, making false promises and violating the Board's statutes and regulations concerning escrow accounts. By consent, the Licensing Board also placed Mr. Hudson on probation for two years wherein he agreed to report regularly to the Board concerning his brokerage and escrow account activity, and consult regularly with his attorneys regarding any complaints.

The Licensing Board continued indefinitely the suspension of the salesman's license of CARL E. HELTON of Charlotte upon finding

that he failed to comply with the Board's previous Consent Order that he repay a \$5,000 escrow deposit to the complainants (see Vol. 10 No. 3 BULLETIN for previous report). Mr. Helton's license is not to be restored until he can demonstrate compliance with the Board's Consent Order.

The Licensing Board suspended the broker's license of DAVID M. McKINNON of Charlotte for sixty days for failing to place earnest money deposits into an escrow account on two occasions, and for altering a contract without the knowledge or consent of one of the parties.

The Licensing Board by Consent Order reprimanded broker ROBERT C. PRESSLEY of Clyde for returning an earnest money deposit to the buyer without the knowledge or consent of the seller, and for using an inadequate contract form that omits clauses that protect the parties. Mr. Pressley has discontinued use of the contract form.

The Licensing Board by Consent Order reprimanded broker CHARLES D. TARLTON of Conover for arranging for secondary financing in an FHA transaction without the knowledge or consent of the lender. □

License Renewal

Final preparations are now being made for the renewal of your real estate license for the coming year. Renewal applications are scheduled to be mailed by May 9.

Remember to (1) make address changes on your application, (2) sign your application, (3) enclose your \$15.00 renewal fee, (4) complete the questionnaire which will be included with your application, and (5) **RENEW EARLY.** □

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REAL ESTATE LICENSING BOARD
P. O. Box 17100
Raleigh, N. C. 27619

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