



NORTH CAROLINA

REAL ESTATE LICENSING BOARD

Real Estate Bulletin

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Questionnaire Results

Reported below are the results of our recent licensee questionnaire (the questionnaire forms accompanied your license renewal application).

Your response to this questionnaire was excellent: 82% of all persons who renewed their real estate licenses completed and returned their questionnaires; more than 33,500 completed questionnaires were received in our office. The Licensing Board did not, however, keep any record of individual responses to questions.

The data obtained from this survey has enabled the Licensing Board to gain a better understanding of the make-up of the real estate brokerage industry in North Carolina, and we think that you, too, will find the results of this questionnaire both interesting and informative.

Since some persons did not answer every question on their questionnaire, the responses (shown below in **bold type**) are based upon the total number of persons who answered the question. All percentages were rounded to the nearest whole per cent.

Responses

1. What is your sex?

63% Male
37% Female

2. What is your age?

14% 18-29
45% 30-45
30% 46-60
11% Over 60

3. Which of the following best describes your racial/ethnic background?

4% Black
95% White
1% Other

4. What is your general educational background?

3% Did not graduate from high school
22% High school graduate
35% Completed 1-3 years of college
28% College graduate
8% Possess graduate degree
4% Possess post-graduate degree

5. What type of license do you have?

90% Broker
10% Salesman

6. How many years have you been a practicing Broker or Salesman?

39% Less than 2 years
30% 2-5 years
17% 6-10 years
6% 11-15 years
8% 16 or more years

7. How would you classify the amount of time you devote to your practice?

23% Full time
4% 75% of your time
7% 50% of your time
24% 25% of your time
42% None of your time

8. How many closed sales were you involved in (either as listing or selling agent) during the past 6 months?

58% 0
20% 1-4
11% 5-10
8% 11-20
3% More than 20

BOARD ELECTS OFFICERS



Brantley T. Poole has been elected Chairman of the Real Estate Licensing Board for the year beginning August 1, 1980. Mr. Poole was recently

re-appointed to the Board by Governor Hunt for a term expiring July 31, 1983. Mr. Poole is owner of Poole Realty Company in Raleigh.



Dee McCandlish has been elected Vice Chairman of the Board. Appointed in 1978, Ms. McCandlish is the first woman to serve on the Real

Estate Licensing Board. Ms. McCandlish is Regional Vice President and Manager of the Charlotte Branch of First Atlantic Corporation.

Observations

1. Approximately $\frac{3}{4}$ of all licensees are male.
2. Approximately $\frac{1}{2}$ of all licensees are between the ages of 30 and 45. Also, there are nearly as many licensees over the age of 60 as there are under the age of 30.
3. 95% of all licensees are white.
4. $\frac{3}{4}$ of all licensees have completed at least 1 year of college, and more than $\frac{1}{4}$ are college graduates. There are more college graduates than high school graduates.

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REAL ESTATE BULLETIN

Published quarterly as a service to real estate licensees to promote a better understanding of the Real Estate Licensing Law, Rules and Regulations, and proficiency in ethical real estate practice. The articles published herein shall not be reprinted or reproduced in any other publication without specific reference being made to their original publication in the North Carolina Real Estate Licensing Board Real Estate Bulletin.

NORTH CAROLINA REAL ESTATE LICENSING BOARD

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James B. Hunt, Jr., Governor

BOARD MEMBERS

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Chrm.

Dee McCandlish Charlotte
V. Chrm.

B. Hunt Baxter, Jr. New Bern

James A. Beaty, Jr. Winston-Salem

Bart Bryson Hendersonville

A. P. Carlton Greensboro

William C. Stokes Reidsville

Blanton Little Sec'y Treas.

Phillip T. Fisher Admin. Asst.

LICENSE STATISTICS

Brokers and Salesmen
as of July 1, 1980 38,085
Corporations
as of July 1, 1980 1,886
Total Licensees
as of July 1, 1980 39,971*

* Approximately 86% of all brokers, salesmen, and corporations renewed their licenses for 1980-81, and the Board is continuing to receive and process a number of late renewals.

EXAM RESULTS

EXAMINATION—June, 1980

	Passed	Failed
Brokers	300	94
Salesmen	58	54

EXAMINATION—July, 1980

	Passed	Failed
Brokers	428	367
Salesmen	73	58

Questions and Answers on Trust Account Audits

By L. Ted Gayle

Trust Account Auditor

Q. How are brokers selected for audit?

A. Brokers are selected at random from a roster maintained by the Board. Firms are selected without regard to the size of the firm. Usually the auditor will select a particular geographical location and then spend approximately one week auditing firms within a 50-mile radius of that location. (Our best estimate is that you will have a one-in-five (20%) chance of being audited within the next 12 months.)

Q. Will I receive advance notice that my firm has been selected for audit?

A. Trust account audits are scheduled without prior notification to the firm that is to be audited.

Q. How detailed will the audit be?

A. There are three general types of audits:

(1) The "Spot Audit"—This type of audit is simply a record examination where the auditor will determine if the broker has established a trust account; the account number; the depository; the transaction references to checks, deposit slips and other related documents; the types of records maintained; and the general condition of the records. The "spot check" audit generally requires from one to two hours to complete.

(2) The Random Trust Account Audit—This audit encompasses all of the above plus a random selection of transactions (usually from five to fifteen). Trust monies received in connection with these transactions will be traced from receipt to deposit to disbursement. Listing agreements, offers to purchase or purchase contracts, and closing statements will be compared to assure that the broker has complied with the Real Estate License Law and the Rules and Regulations of the Licensing Board in the handling and accounting of these funds. A bank reconciliation may also be attempted by the auditor. The random audit will generally take from two to five hours to complete, depending upon the number of transactions selected and the check activity within each transaction.

(3) The Complete Trust Account Audit—This audit resembles the Random Trust Audit except that all transactions within a particular time frame are audited (rather than a selected sample of transactions); the time frame will usually be a six-month or twelve-month period. The time required to perform a complete audit would depend upon the number of transactions involved.

Q. Will my license be suspended or revoked by the auditor based upon his findings?

A. The auditor does not have the authority to suspend or revoke a real estate license. However, he does have the obligation to report to the Licensing Board any apparent violations of the license law and/or the Board's rules and regulations.

Q. How will I know the results of my audit?

A. Following the audit, the auditor will discuss with the broker any problems which he found. If the broker's records are in poor condition and there are numerous problems, the auditor may order a follow-up audit to determine if the broker has corrected these problems. A personal follow-up letter will also be mailed to all brokers who have been audited, pointing out any problems found during the audit; a copy of the follow-up letter will be placed in the broker's file for reference in future audits.

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COURTS RULE ON ISSUE OF MISREPRESENTATIONS

Summarized below are several recent court cases involving misrepresentations in real estate transactions. These cases illustrate what appears to be the current trend in judicial thought away from the traditional concept of "caveat emptor" (Let the buyer beware) and towards the more modern, consumer-oriented philosophy of "caveat licensee" (Let the licensee beware).

WASHINGTON—Summary of Facts: A "listing broker" gave a "selling broker" an incorrect description of the boundary lines of a property. Although information on file with the listing service clearly contradicted the listing broker's statements to the selling broker, the selling broker relied on the listing broker's statements and transmitted the incorrect information to a buyer. The buyer discovered the error after closing the transaction, and subsequently filed suit against both the listing and selling brokers, alleging misrepresentations. **Decision:** The court ruled in favor of the buyer, stating that the listing broker (although an agent of the seller) was, nevertheless, liable to the third party for the misrepresentations; that the listing broker was also liable for the actions of his subagent (i.e., the selling broker) whom he authorized to transmit the incorrect information; and that the selling broker was also liable because he failed to exercise reasonable care and skill to discover the error.

MAINE—Summary of Facts: A purchaser of a lot filed suit against a seller for fraudulently representing that the lot had been approved for installation of a septic tank; the purchaser made no independent inquiry to determine the accuracy of this representation. **Decision:** The court ruled in favor of the purchaser, stating in part that "A plaintiff may justifiably rely on the fraudulent misrepresentation of a defendant, whether made intentionally or recklessly, without investigating the truth or falsity of the representation. Reliance is unjustified only if the plaintiff knows the representation is false or its falsity is obvious to him". (Although the defendant in this case was the seller, the same reasoning

would also seem to apply equally to agents of a seller.)

IDAHO—Summary of Fact: A broker had made representations to a buyer which were based upon incorrect information supplied by a seller. The buyer filed suit against the broker for making misrepresentations, but the broker claimed that he was only acting as a "conduit" for information flowing from the seller to the buyer. **Decision:** The court, in its ruling, stated that "(T)he real estate agent (broker) will be liable to a prospective purchaser if he knew or should have known that the representations were inaccurate or if he could have, by reasonable investigation, determined the accuracy of the representations."

ALABAMA—Summary of Facts: A seller who knew his house had a faulty septic tank did not reveal this defect to his broker. A subsequent buyer of the property filed suit against both the seller and the broker for failure to disclose this defect. **Decision:** The court ruled in favor of the buyer stating that although the broker did not have actual knowledge of the defect, the broker (as agent for the seller) was obligated to learn about any deficiencies and to inform prospective buyers of such defects.

TEXAS—Summary of Facts: A broker who was selling his own property failed to advise the purchaser that the foundation of the structure on the property had settled and needed repairs. The purchaser subsequently filed suit against the broker/seller. **Decision:** The court ruled in favor of the purchaser, stating that a seller has a duty to reveal known defects to purchasers. (Although the defendant in this case was a seller, the same reasoning would also seem to apply equally to agents of a seller.)

NORTH CAROLINA—Summary of Facts: A purchaser of a house and lot filed suit against a builder, alleging that the builder had failed to disclose that the house had been built on "disturbed soil" (the house was constructed over a large hole filled with debris and then covered with clay). **Decision:** The court ruled that "Since this defect in the lot and

the house . . . was not apparent to plaintiffs (the purchasers) and not within the reach of their diligent attention and observation, defendant (builder) was under a duty to disclose this information to plaintiffs". (Although the defendant in this case was a builder/seller, the North Carolina Supreme Court held in a related case that a real estate agent would also have come within the rule applied in this case if the agent knew or had reason to believe that the builder had constructed the house on "disturbed soil" yet withheld this fact from the purchasers.)

Although several of the cases cited above were not decided on the basis of North Carolina law, North Carolina real estate brokers and salesmen should be well aware of the principles set forth in all of these decisions: These principles, simply stated, are (1) that a real estate agent who intentionally or unintentionally gives a purchaser incorrect or incomplete information may be held liable for such statements even though the source of the incorrect information was the seller or another broker, and even though the purchaser could have verified the information himself; (2) that a seller and his agent have an affirmative duty to disclose to prospective purchasers any latent (hidden) defects connected with the property (for example, faulty septic tank, leaky basement, etc.) about which they are aware or should reasonably be aware; and (3) that although a real estate agent owes his primary loyalty to his principal, (usually the seller), the agent must treat all parties in the transaction fairly.

Furthermore, if a licensee has actual knowledge of material facts regarding a property (or should reasonably have known of such facts), but the licensee fails to disclose these facts to a prospective purchaser, then such nondisclosure may subject the licensee to disciplinary action by the North Carolina Real Estate Licensing Board.

—From information published in the Idaho Real Estate, California Real Estate Bulletin, Mississippi Real Estate Hotline, and the Washington Real Estate News. □

Disciplinary Action

The Real Estate Licensing Board revoked the broker's license of JAMES L. GREESON of Fayetteville for converting escrow funds to his own use. The Board found that Greeson collected rents as property manager for owners, used said funds to pay his personal bills, and failed to remit funds due to the owners.

The Licensing Board by Consent Order revoked the broker's license of JOSEPH A. BEASLEY of Danbury. Beasley did not contest allegations that he contacted the high bidder at a real estate auction and threatened to upset the bid and force up the sale price unless the high bidder paid beasley \$1,000.

The Licensing Board revoked the broker's license of ROBERT J. STEWART of Greensboro for failing to deposit earnest money in a trust account and failing to account for same. The Board also found that he failed to present an offer to purchase to the owner of the property.

The Licensing Board suspended the broker's license of EDWARD GOLDBERG of Avon, Hatteras Island, for four months for depositing funds of others in an interest-bearing savings account without the knowledge or written consent of his principals, and without written provision for the disbursement of interest earned. The Board also found that Goldberg commingled his clients' funds with his own by failing to withdraw commissions from his escrow account when earned and by paying for repairs to his clients' property from his own funds. Goldberg also failed to deposit trust funds in an escrow account within 72 hours of receipt.

The Licensing Board suspended the broker's license of RONALD D. SEVERE of Raleigh for 60 days for

depositing his clients' funds in "money market" mutual funds and in interest-earning savings accounts, all without the knowledge or written consent of his principals and without written provision for the disbursement of income earned. Severe also failed to deposit trust funds in an escrow account within 72 hours of receipt and failed to retain records of transactions for the required three-year period.

The Licensing Board reprimanded JAMES DOUGLAS STORIE of Banner Elk for allowing an unlicensed person to manage and work in his real estate office and to hold himself out as an agent for the business.

The Licensing Board reprimanded STEPHEN J. EVANS of Greenville for failing to deposit earnest money in his trust account within 72 hours of receipt. ☐

Questionnaire

(Continued From Page 1)

- and there are more licensees with post-graduate degrees (Ph.D's, LLB's, etc.) than there are licensees who did not graduate from high school.
5. 90% of all licensees are brokers.
 6. More than $\frac{2}{3}$ of all licensees have been practicing brokers or salesmen for less than 5 years, and most of these have been practicing for less than 2 years, if at all.
 7. Less than $\frac{1}{4}$ of all licensees are full-time brokers and salesmen; $\frac{1}{2}$ are part-time brokers or salesmen; and over 40% devote no time to real estate.
 8. Nearly 3 out of every 5 licensees stated that they were not involved in any closed sales during the past 6 months. ☐

Questions and Answers

(Continued from Page 2)

- Q. Is it necessary to respond to the audit follow-up letter?
- A. **A response to the audit follow-up letter is not required, but it would reflect the broker's good intentions to correct the problems uncovered by the audit.**
- Q. Is there anything that I can do to prepare for the auditor?
- A. **To prepare for an audit, it is suggested that brokers review the Real Estate License Law and the Rules and Regulations of the Licensing Board and determine if their records meet all requirements; also re-read past issues of the Real Estate Bulletin, especially articles relating to trust accounts. Make certain that all records are up-to-date, and should you feel that your records are not adequate, write the Board for help in establishing a simple journal/ledger system. (Don't be afraid that your inquiry might trigger an audit of your firm!) ☐**

Board to License Schools

The N. C. General Assembly amended the Real Estate License Law in June to authorize the Real Estate Licensing Board to license private real estate schools. The Board will begin licensing and regulating these schools on October 1.

NORTH CAROLINA
REAL ESTATE LICENSING BOARD
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