



NORTH CAROLINA

REAL ESTATE LICENSING BOARD

Real Estate Bulletin

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From The Board Room

Board Wins National Award

The North Carolina Real Estate Licensing Board has been named winner of the 1980 Division A Education Award presented by the National Association of Real Estate License Law Officials. This award recognizes outstanding achievement by real estate commissions and licensing boards in the area of real estate education.



Education Committee Chairman, A. P. Carlton, and Education Director, Larry Outlaw, with Education Award.

The award followed an evaluation of the various education and information programs conducted by the North Carolina Real Estate Licensing Board for real estate agents, consumers, and applicants for real estate licenses. These programs include publication of a real estate textbook, a quarterly bulletin, and a manual for high school students. The Board has also developed a standardized curriculum for the more than 90 schools which offer pre-license real estate courses, and instructors for these courses must be certified by the Board. The Real Estate Licensing Board also sponsors workshops for real estate instructors and provides financial support for research projects relating to the real estate business.

Other award winners were the Kentucky Real Estate Commission in Division B and the New Mexico Real Estate Commission in Division C.

Board Presents Program To Realtors

The Real Estate Licensing Board presented a program entitled "Pitfalls to Avoid—Problems and Complaints" to the North Carolina Association of REALTORS at their 59th Annual Convention in Charlotte.

Board Member B. Hunt Baxter, Jr. began the 90-minute program by introducing the members of the Real Estate Licensing Board and staff and by outlining the primary functions and responsibilities of the Board. Harry H. Harkins, Jr., the Board's legal counsel, then presented several examples of the types of complaints frequently filed against real estate brokers and salesmen, and the audience was given an opportunity to make comments and ask questions of Mr. Harkins and the Board.

Also during the program, Board Chairman Brantley Poole and Board Member A. P. Carlton made a special presentation to former Board Member J. Bart Hall of Belmont in recognition of his 15 years service on the Real Estate Licensing Board.



J. Bart Hall (center) receives plaque from Board Chairman Poole (left) and Board Member Carlton.

Mr. Hall was a member of the first Real Estate Licensing Board appointed by Governor Hodges in 1957. He served as a member (and Chairman) of the Board until 1972.

Mr. Hall's wife, Virginia, was present for the surprise presentation.

Unlicensed Activity

The Real Estate Licensing Board is stepping up its efforts to prevent unlicensed persons from engaging in real estate brokerage. This action is in response to what appears to be an increase in the number of incidents of unlicensed real estate activity, especially in resort developments where condominiums and vacation homes are offered for sale or rent (including "time share" sales).

To better assess the magnitude of the problem and to warn potential buyers of some of the risks involved in dealing with unlicensed persons, the Board prepared a press release which was distributed to more than 60 North Carolina newspapers. In addition, the North Carolina Association of REALTORS carried the article in their publication, the **Tar Heel REALTOR**, to encourage licensed brokers and salesmen to report any suspected cases of unlicensed activity. As a result of this publicity, a number of reports of alleged unlicensed activity have been received by the Board and are now under investigation.

Persons who are aware of or suspect such violations are asked to notify the Licensing Board office. □

On The Inside . . .

Trust Fund Committee Meeting
Auctioning Real Estate
Recovery Fund Pays Claim

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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Recovery Fund Pays Claim

The Real Estate Licensing Board announces the first payment from the North Carolina Real Estate Recovery Fund. The Fund was created by the 1979 General Assembly to provide for compensation to persons victimized by dishonest real estate agents who misapply trust funds.

The Board paid \$5,000 to Mr. and Mrs. T. Mitchell Langdon of Benson. The Langdons gave former broker Irvin A. Staton of Tarboro earnest money to purchase a farm listed with Staton. Staton put the funds in his escrow account, but later spent the money for personal needs. The Langdons obtained a judgment against Staton which was unsatisfied. Payment from the Recovery Fund was ordered by the Edgecombe County Superior Court.

The Recovery Fund consists of \$100,000 transferred from the Board's reserve funds, and was thus created
(Continued on Page 4)

Open Invitation to Attend Meeting of Trust Fund Study Committee

The Trust Fund Study Committee of the Real Estate Licensing Board will hold a public meeting at the office of the Real Estate Licensing Board, 1200 Navaho Drive, Raleigh, North Carolina on January 21, 1981 at 2:00 p.m. The purpose of this meeting will be to discuss matters relating to the handling and accounting of trust funds by real estate brokers and salesmen.

The Committee has been charged by the Licensing Board to conduct a study of all current rules and policies of the Board pertaining to the maintenance of trust funds; to invite comments from licensees and other interested persons concerning its current rules and policies; and to make recommendations as to any changes which should be considered by the Licensing Board in its current rules and policies. Should the Board determine that the adoption, repeal, or amendment of any Rule is in order, the Board will publish a notice of such proposed action in a future issue of the **Real Estate Bulletin**, and (pursuant to G.S. 150A) a rule-making hearing will be conducted.

Persons wishing to comment on the Board's current rules and policies governing the handling of trust funds are invited to attend this public meeting of the Study Committee. Or you may send written comments to the Board at the following address: North Carolina Real Estate Licensing Board, P. O. Box 17100, Raleigh, North Carolina 27619. □

Disciplinary Action

The Real Estate Licensing Board revoked the broker's license of CALVIN C. HENSON of Franklin for converting escrow funds to his own use. The Board found that Henson received a check for \$54,000 from a lender representing mortgage loan proceeds. Henson deposited the check in his escrow account, but used some of the funds for personal expenses. His trust account check to the seller was returned for insufficient funds.

The Licensing Board revoked the broker's license of SHIRLEY T. COX of Sanford for engaging in "contract kiting". The Board found that she encouraged and assisted home purchasers to give false information to a lending institution to enable them to obtain a larger loan. The Board found that she told the buyers to tell the lender that the sale price was higher than the contract amount, and that they had made a larger earnest money deposit than was actually paid.

Although the Board's order of revocation was originally effective in August of 1979, the order was stayed while Mrs. Cox appealed to the Superior Court of Wake County.

Judge Harry C. Canaday affirmed the Board's order in November, 1979, but Mrs. Cox appealed further to the North Carolina Court of Appeals. That court affirmed the order in June, 1980, and the North Carolina Supreme Court refused to review the decision on September 15, 1980.

The Licensing Board revoked the broker's license of DAVID G. BOUTWELL, formerly of Kinston, for failing to deposit \$10,000 in earnest money in an escrow account, and converting the funds to his own use. He subsequently failed to account for said funds to his client.

The Licensing Board by Consent Order reprimanded broker PATRICIA S. RAINES of Charlotte for failing to collect an earnest money deposit specified in a contract of sale.

The Licensing Board by Consent Order reprimanded broker E. E. (GENE) FISHER of Charlotte for failing to retain copies of a listing agreement and sales contract for at least three years, as required by the Board's regulations.

The Licensing Board by Consent Order reprimanded broker DONALD
(Continued on Page 4)

Auctioning Real Estate

Both the Real Estate Licensing Board and the Auctioneer Licensing Board are constantly being asked "What licenses are required in order to be able to sell real estate at auction, and what laws and rules must be followed when conducting these auctions?" The following discussion addresses and attempts to answer these questions.

Licenses Required

Simply stated, anyone who auctions or offers to auction real estate belonging to others must be licensed both as a real estate broker (G.S. 93A) and as an auctioneer (G.S. 85B).¹

There is only one way in which an individual can by himself (herself) sell real estate at auction: He must obtain both a real estate broker license and an auctioneer license which requires (among other things) passing both licensing examinations. However, to avoid the examination requirement, real estate brokers and auctioneers can, under certain conditions, cooperate or team up with each other for the purpose of conducting auctions involving real estate. There are two ways in which this can be done:

One way is for the real estate broker to contract with the property owner to conduct the entire auction (i.e., to auction both the real estate and the personal property). To do so, however, the broker must first obtain an auction **firm** license (no examination required) and then employ a licensed auctioneer to cry the sale. Under this cooperative arrangement, the "broker/auction firm" would advertise the auction, describe at the auction the property to be sold, maintain and account for all monies received at the auction, deliver the various documents to the parties, and perform other functions normally associated with conducting auctions and brokering real estate; he cannot, however, cry any bids. The auctioneer would cry the bids for both the real and the personal property and could

also assist the "broker/auction firm" by performing any of the above acts or similar acts with respect to any personal property to be sold.

Real estate brokers and auctioneers can also cooperate by **jointly conducting** auctions involving the sale of real estate and personal property; once again, however, the broker must first obtain an auction **firm** license and employ an auctioneer to cry bids for him. Under this arrangement, the property owner would employ the auctioneer to auction his personal property and the "broker/auction firm" to auction his real estate. Each person would confine his activities to that property for which he has been employed to sell (remember, the auctioneer must cry all bids), and all joint advertising for the auction must clearly indicate that the real estate will be handled by the broker and the personal property handled by the auctioneer.

Real Estate brokers and auctioneers are cautioned, however, not to enter into other forms of cooperative arrangements involving the sale of real estate at auction—especially arrangements where an auctioneer pays a broker for the use of his (or her) name, and then proceeds to auction real estate under the license of the broker; arrangements such as this are improper both from the standpoint of the auctioneer and the broker and can result in criminal prosecution and/or disciplinary action by the respective licensing authorities.

Rules to Follow

Assuming that the person auctioning the real estate has obtained both of the required licenses (real estate broker license and auctioneer or auction firm license), he may now wonder "Which laws and rules must I follow when selling real estate at auction—the Real Estate License Law and the Rules and Regulations of the Licensing Board, or the Auctioneers Law and the Rules and Regulations of the Auctioneer Licensing Board?" The answer is that **the laws and rules of both the Real Estate Licensing Board and the Auctioneer Licensing Board must be followed when selling real estate at auction.**

Although they are quite similar, the laws and rules governing the activities of real estate brokers will, in certain instances, be stricter than those governing auctioneers (and vice versa). In those instances, you will be held to the stricter of the two standards. Listed below are several examples of where the stricter standards apply.

When selling real estate at auction, **YOU MUST:**

1) Deliver to the property owner (within five days of execution and prior to conducting the auction) a copy of the required written agreement containing the terms and conditions of employment.

2) Include your business name, street address, telephone number and auctioneer's (or auction firm) license number in all written advertisements for the auction. If you have been employed to sell both the real and personal property, you may also include in the advertising the name and license number of the auctioneer whom you have hired to cry the sale—but not his telephone number or address. However, if the seller has contracted separately with the auctioneer to sell his personal property, then the name, address, telephone number and license number of the auctioneer **must** appear in the advertising. (Remember, the ad must clearly indicate that the real estate will be handled by the broker and the personal property by the auctioneer.)

3) Have your auctioneer or auction firm license available at the auction.

4) Deliver to the buyer and the seller (within five days from execution) copies of any sales agreements, offers, or contracts affecting real property.

5) Deposit in a trust account or escrow account (within 72 hours of receipt) all monies which you have received from others in connection with the sale of real estate at auction; the account must be designated a "Trust Account" or "Escrow Account" by the bank or savings and loan association in which the account is located, and all deposit tickets and checks drawn on the account must

(Continued on Page 4)

¹ Certain exemptions from licensing are provided for in the Real Estate License Law and the Auctioneer Law; inquiries concerning these exemptions should be addressed to the North Carolina Real Estate Licensing Board and to the North Carolina Auctioneer Licensing Board.

Auctions

(Continued from Page 3)

bear the words "Trust Account" or "Escrow Account".

6) Refrain from depositing the funds of others in an interest bearing account UNLESS you have received written authorization to do so from the persons for whom you are holding the funds AND UNLESS the written authorization specifies how and to whom you are to disburse the interest.

7) Maintain complete records of all real estate trust account receipts and disbursements; these records may be inspected by the Real Estate Licensing Board or its representatives without prior notice.

8) Deliver to the buyer and seller (at or within five days after closing) a statement showing all receipts and disbursements which you have handled in connection with the auction sale.

9) Pay over within a reasonable time (not to exceed 30 days) money which you have received from others through the auction sale; however, in the event of a dispute over the return or forfeiture of any deposit which you are holding in regard to the real estate, you must retain the deposit in your trust or escrow account until you have either obtained a written release from the parties consenting to its disposition or until disbursement is ordered by a court.

10) Retain for three years records of all transactions conducted by you in the capacity of "broker/auctioneer" or "broker/auction firm".

Summary

Any person who auctions or offers to auction real estate for others must hold both a real estate broker license and an auctioneer or auction firm license. A real estate broker can qualify to conduct auctions involving real estate by either (1) obtaining an auctioneer license (examination required) or by (2) obtaining an auction firm license (no examination required) and employing a licensed auctioneer to cry the sale. An auctioneer cannot conduct an auction involving real estate until he has obtained a real estate broker license (examination required).

Persons selling real estate at auction must comply with the laws and rules of both the Real Estate Licensing Board and the Auctioneer Licensing Board. Copies of these laws and regulations are available from these agencies, and inquiries concerning licensing requirements should be directed to them.

Contact: The North Carolina Auctioneer Licensing Board, Suite 306—Haworth Building, 3509 Haworth Drive, Raleigh, North Carolina 27609 (Phone 919/733-2182). □

Disciplinary Action

(Continued from Page 2)

H. DUSSAULT, JR., of Elizabeth City for failing to deposit earnest money in his escrow account within 72 hours of receipt, and for failing to maintain proper trust account records.

The Licensing Board suspended the broker's license of JACK P. JURNEY of Chapel Hill for six months for failing to deposit in his escrow account an earnest money check for \$8,500, and later returning said check uncashed to the buyer without the knowledge of the seller.

The Licensing Board censured broker BILLY DALE STANCIL of Banner Elk for allowing unlicensed persons to engage in property management for others. □

Recovery Fund Pays Claim

(Continued from Page 2)

out of licensee fees. The North Carolina Association of REALTORS sponsored the legislation creating the Fund. The Licensing Board hopes that payments from the Fund will help to partially compensate for the tiny minority of licensees who abuse their license privileges. □

Court Ruling Expands Board Jurisdiction

The North Carolina Court of Appeals has ruled that the Real Estate Licensing Board has power to discipline licensees for misconduct when they sell property owned by a corporation in which the licensee owns stock.

The decision arose in an appeal filed by Shirley T. Cox of Sanford, after the Board revoked her broker's license. She argued that the Board lacked jurisdiction to discipline her because she was selling her own property and not acting as a broker for others. The court held that a corporation is a separate and distinct entity from its stockholders, and that Mrs. Cox was selling property owned by an entity different from herself.

The court also noted that after the case arose, the General Assembly amended the license law to permit the Board to discipline licensees for misconduct incurred in the sale of property owned by them. Thus, the "owner exemption" on which Mrs. Cox attempted to rely is no longer available to any licensees.

The North Carolina Supreme Court denied Mrs. Cox's petition for further review. □

EXAM RESULTS

EXAMINATION—August, 1980		
	Passed	Failed
Brokers	203	175
Salesmen	57	35
EXAMINATION—September, 1980		
	Passed	Failed
Brokers	386	180
Salesmen	60	52

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