



Trust Account Rules & Guidelines Adopted

TRUST ACCOUNT RULES

The Real Estate Licensing Board at its April meeting amended its Rules governing the handling of trust funds. These changes became effective June 1, 1981. The Board's action followed an April 1 rule-making hearing during which Members of the Board received comments from interested persons concerning the proposed changes.

"72-Hour Rule" Amended

Under Rule .0107(a) as amended, brokers may now "hold" earnest money deposits and tenant security deposits until the offer to purchase or the lease has been accepted; these monies must then be deposited in a trust or escrow account not later than three banking days after acceptance of the offer, with the date of such acceptance being clearly set forth in the purchase or lease agreement.

All other trust funds (rents, settlement proceeds, etc.) must be deposited not later than three banking days following their receipt.

Interest-Bearing Trust Accounts

Rule .0107(b) as adopted, restates the requirement in the Real Estate License Law that before earnest money deposits, tenant security deposits, rents, etc. can be placed in an interest-bearing trust account, the broker must first obtain written permission from all persons who have an interest in the money; this written authorization must specify how the interest will be disbursed and who will receive it.

The new Rule also goes on to state that if a broker wishes to include the authorization in the offer to purchase, or the lease, or in some other transaction instrument, the broker must present the authorization in such a way as to distinguish it from other provisions of the instrument; that is, the broker cannot "bury" the authorization in the instrument.

For a complete reprint of the new Rules, see the boldprint sections on pages 4 and 5 of this Bulletin. □

TRUST ACCOUNT GUIDELINES

In addition to revising its trust account **Rules and Regulations** (See previous article), the Licensing Board has also adopted (effective June 1, 1981) a set of trust account "**guidelines**" to give brokers certain basic, essential information in the area of trust fund handling and record-keeping.

Legal requirements governing trust funds and accounts. How to open and maintain a trust account. The conditions under which trust monies can be deposited into an interest-bearing account. Who should deposit and disburse trust monies? When should trust monies be deposited and disbursed? Record-keeping and accounting requirements. These are some of the topics addressed in the "guidelines".

The "guidelines" also contain sample Journal and Ledger forms with examples of how various types of deposits and withdrawals should be recorded in your books and records.

Beginning with this issue of the **Real Estate Bulletin**, the Trust Account Guidelines will be reprinted in their entirety. Or you may obtain a complete copy of the "guidelines" together with the current Real Estate License Law and Board Rules and Regulations by contacting the Board office or by sending in the **Order Form** found on page six of this **Bulletin**. □

HAVE YOU RECEIVED YOUR RENEWAL APPLICATION?

On May 15 application forms were mailed to all licensed North Carolina real estate brokers, salesmen, and corporations for the renewal of their real estate licenses for the period July 1, 1981 through June 30, 1982. If you have not yet received your application form, immediately contact the Board office for a duplicate form.

When completing your application form, remember to (1) give us your current business name and address, (2) enclose the proper renewal fee, (3) sign the form, and (4) return it to our office so that it will be received by June 30.

All North Carolina real estate licenses expire on June 30, 1981. □

On The Inside . . .

Advertising Variable Rate Loans
Trust Account Guidelines
And More.

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.

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Reciprocity

Oklahoma has been added to the list of states where North Carolina brokers and salesmen may obtain real estate licenses without passing a licensing examination. However, the Kentucky Real Estate Commission has been forced to cancel its reciprocal licensing agreement with North Carolina and other states.

Also, the Real Estate Licensing Board has agreed to once again extend licensing privileges to Virginia brokers and salesmen (effective July 1, 1981). The Board's action followed the recent passage of an amendment to the Virginia Real Estate License Law permitting North Carolina (and other) brokers to obtain nonresident Virginia licenses without maintaining an office in Virginia.

For more information concerning reciprocal licensing agreements, contact the Board office. □

Advertising Variable Rate Loans

The following is a recent letter from the Chairman of the North Carolina Real Estate Licensing Board to Mr. Chet W. Snow, President of the North Carolina Association of REALTORS, setting forth the Licensing Board's position regarding the advertising of variable rate loans. All licensees should be aware of the requirements for advertising such financing.

Dear Chet:

The Real Estate Licensing Board has noticed that many real estate brokers are now advertising that certain "special financing" is available to their customers. For example, their ads will state "12 3/8% mortgage money available" or "12 3/8% special financing". However, upon investigation we have found that the interest rates referred to in the advertisements are actually only the "face rate of interest", and that they are, in fact, "variable" or "adjustable" rates which are subject to increase over the life of the loan.

While the Board does not wish to restrict in any way the advertisement or promotion of these new and innovative forms of mortgage loans, nevertheless we are of the opinion that such advertising should clearly disclose to the reader that the interest rate is subject to change—a fact which would be of considerable importance to most potential borrowers.

Therefore, the Board wishes to inform brokers that

WHEN ADVERTISING INTEREST RATES WHICH ARE SUBJECT TO INCREASE DURING THE TERM OF THE LOAN, THE WORDS "VARIABLE RATE" OR "ADJUSTABLE RATE" OR SIMILAR WORDS MUST BE USED TO ACCURATELY DESCRIBE THE TYPE OF FINANCING BEING OFFERED. [ALSO, THE RATE MUST BE STATED AS AN "ANNUAL PERCENTAGE RATE", USING THAT EXACT TERM (Federal Regulation Z¹).]

The Real Estate Licensing Board would very much appreciate your assistance in disseminating this information to the members of your Association.

With best wishes I remain

Yours very truly,

BRANTLEY POOLE

Chairman

North Carolina Real Estate Licensing Board

¹ According to the Board of Governors of the Federal Reserve System, the annual percentage rate for variable rate loans should be calculated and disclosed using the rate in effect at the time the transaction is consummated. (For further information regarding Regulation Z, contact the Federal Reserve Board, Division of Consumer and Community Affairs, 20th and C Streets, Washington, D. C. 20551, Phone: 202/452-3867.)

EXAMINATION SCHEDULE

FILING DATE	EXAM DATE
May 18	June 27, 1981
June 15	July 25, 1981
July 13	August 22, 1981
August 17	September 26, 1981
September 14	October 24, 1981
October 12	November 21, 1981
November 9	December 19, 1981

Unlicensed Activity Prosecuted

Following a complaint by the Real Estate Licensing Board, Scott Williams, Jr., of Chapel Hill was convicted in Orange County District Court of acting as a real estate broker without a license. The Board believes that this is the first time in a decade that the criminal statute prohibiting unlicensed real estate activity has been invoked.

Mr. Williams arranged to manage rental property owned by another individual for compensation. The property owner did not know Mr. Williams

was not licensed. Mr. Williams leased the property to tenants and received commissions. After funds due both the owner and tenants were not paid over when due, the owner contacted the Licensing Board.

Judge Stanley Peele sentenced Mr. Williams to 25 days in jail, suspended for 18 months on condition that he not violate the license law, pay all civil judgments entered against him, (by the owner and tenants) and pay the court costs. □

EXAM RESULTS		
EXAMINATION—February, 1981		
	Passed	Failed
Brokers	244	674
Salesmen	112	73
EXAMINATION—March, 1981		
	Passed	Failed
Brokers	233	564
Salesmen	80	91
LICENSES		
As of April 30, 1981		
Brokers		40,681
Salesmen		4,665
Corporations		2,281
Total		47,627

(Staple Here)

North Carolina Real Estate Licensing Board
P. O. Box 17100
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Trust Account Guidelines

I.

Introduction

"Trust"—the one word which perhaps best describes the relationship of the real estate broker (or salesman) to his clients and customers. The seller **trusts** the broker to promote his best interests in the sale of his property. The investor **trusts** the broker/property manager to manage his property and protect his investment. The buyer **trusts** the broker to provide complete and accurate information concerning the property which he is considering buying. But perhaps nowhere is the broker's position of trust more clearly illustrated than in his/her role as custodian of the funds of others; i.e., "**trust funds**".

The following information is being provided for the purpose of assisting North Carolina real estate brokers in understanding and carrying out their duties and responsibilities as trustees for the funds of others. It is suggested that both licensees and persons studying for real estate licenses carefully study this material, and that practicing brokers review and evaluate their current procedures in light of this information.

While it is recognized that no single treatment of this subject can possibly answer all questions or address all situations which the broker may encounter in this area, nevertheless, an attempt has been made to deal with those questions which most frequently arise and those situations most often encountered during the course of "typical" real estate transactions. In addition, the specialized area of property management has been given separate treatment where it was deemed necessary.

Brokers are reminded that any questions or problems involving the handling and/or accounting of trust funds should be directed to the Real Estate Licensing Board office in Raleigh.

II.

Legal Requirements

It is often said that a home represents the largest single invest-

ment (the most expensive purchase) that most people will ever make; likewise, rental payments and security deposits represent a substantial financial investment on the part of tenants. Consequently, during the course of real estate transactions, sizable sums of money change hands, a great deal of which passes through the hands of the real estate broker. Recognizing the very serious consequences of the broker's actions as a trustee for these funds, the North Carolina General Assembly included a number of provisions in the Real Estate License Law (G.S. 93A) specifically designed to govern the activities of real estate brokers acting in the capacity of trustee.

In general, these provisions require brokers to deposit trust monies in an escrow or trust account (separate from the broker's general or operating account); to maintain complete records of deposits and withdrawals; and to make a final accounting to the persons for whom he is holding the funds. Specifically, Section 93A-6(a) of the License Law empowers the Real Estate Licensing Board to suspend or revoke the license of any real estate broker or salesman where the licensee is deemed to be guilty of:

"(7) Failing, within a reasonable time, to account for or to remit any monies coming into his possession which belong to others, or

(12) Commingling the money or other property of his principals with his own or failure to maintain and deposit in a trust or escrow account in an insured bank or savings and loan association in North Carolina all money received by a real estate broker acting in said capacity, or as escrow agent, or the temporary custodian of the funds of others, in a real estate transaction; provided, such accounts shall not bear interest unless the principals authorize in writing the

deposit be made in an interest bearing account and also provide for the disbursement of the interest thereon.

(14) Failure by a real estate broker to deliver to the seller in every real estate transaction wherein he acts as a real estate broker, at the time such transaction is consummated, a complete detailed closing statement showing all of the receipts and disbursements handled by such broker for the seller; also failure to deliver to the buyer a complete statement showing all money received in the transaction from such buyer and how and for what the same were disbursed."

Also,

"(e) Each broker shall maintain complete records showing the deposit, maintenance, and withdrawal of money or other property owned by his principals or held in escrow or trust for his principals. The Board may inspect these records of each broker periodically without prior notice and may also inspect the records whenever the Board determines that the records are pertinent to the conduct of the investigation of any specific complaint against a licensee."

In addition, the Real Estate Licensing Board has adopted rules and regulations to enable it to administer the statutes at the operating level. Specifically, these rules are as follows:

.0107 Handling and Accounting of Funds

(a) All monies received by a real estate broker acting in his fiduciary capacity shall be deposited in a trust or escrow account

(Continued on Page 5)

(Continued from Page 4)

not later than three banking days following receipt of such monies except that earnest money deposits received on offers to purchase real estate and tenant security deposits received in connection with real estate leases shall be deposited in a trust or escrow account not later than three banking days following acceptance of such offer to purchase or lease; the date of acceptance of such offer to purchase or lease shall be set forth in the purchase or lease agreement. All monies received by a real estate salesman shall be delivered immediately to the broker by whom he is employed.

(b) In the event monies received by a real estate broker while acting in a fiduciary capacity are deposited in a trust or escrow account which bears interest, such broker shall first secure from all parties having an interest in the monies written authorization for the deposit of such monies in an interest-bearing account. Such authorization shall also specify how and to whom the interest will be disbursed, and if contained in an offer, contract, lease, or other transaction instrument, such authorization shall be set forth in a clear and conspicuous manner

which shall distinguish it from other provisions of the instrument.

(c) Closing statements shall be furnished to the buyer and the seller in the transaction at the closing or not more than five days after closing.

(d) Trust or escrow accounts shall be so designated by the bank or savings and loan association in which the account is located, and all deposit tickets and checks drawn on said account shall bear the words "Trust Account" or "Escrow Account".

(e) Real estate brokers shall maintain records sufficient to verify the adequacy and proper use of their trust accounts, and shall retain bank statements, cancelled checks, deposit tickets, copies of contracts, closing statements and any other documents necessary and sufficient to verify and explain record entries. Minimum trust account records include the following information:

- (1) The date the broker received trust monies; and
- (2) The amount, nature and purpose of deposits and from whom received; and

(3) The date trust monies are deposited in the trust or escrow account; and

(4) The amount, date and purpose of withdrawals and to whom paid; and

(5) A current running balance of trust monies held by the broker.

(f) All trust account records shall be made available for inspection by the Board or its authorized representatives without prior notice.

(g) In the event of a dispute over the return or forfeiture of any deposit held by a broker, the broker shall retain said deposit in his trust or escrow account until he has obtained a written release from the parties consenting to its disposition or until disbursement is ordered by a court of competent jurisdiction.

The Licensing Board considers violations of these laws and rules to be a particularly serious matter; in fact, more brokers and salesmen are disciplined for trust funds violations than for any other single type of offense.

**(To Be Continued In
Next Issue of Bulletin)**

Disciplinary Action

The Real Estate Licensing Board revoked the broker's license of BOBBY R. ROBERTS of Durham because of his conviction in U. S. District Court of the felony of misapplying the funds of a federally insured savings and loan association, and because of his conviction in the Superior Court of Orange County of the felony of obtaining money through false pretenses in a real estate transaction.

The Licensing Board revoked the broker's license of RICHARD I. CALVERT of Gastonia because of his conviction in the Superior Court of Gaston County of three counts of embezzlement.

The Licensing Board by Consent Order revoked the broker's license of PERRY E. McCOTTER, JR., of Pamlico County for various violations of the

real estate license law.

The Licensing Board suspended the broker's license of EUDORA (LEE) THOMPSON of Greensboro for two years for arranging to receive commissions from both buyer and seller in a transaction without disclosure to either, and for endorsing her former employing broker's name on a commission check payable to both parties without the knowledge or consent of such broker.

The Licensing Board suspended the broker's license of JOANNE P. SLEDGE of Wilmington for thirty days for violating the Board's trust account regulations and for issuing checks on her trust account before checks deposited into said account cleared, thus causing three overdrafts. The over-

drafts were subsequently corrected. The Board also ordered Sledge to submit to instruction by the Board's Trust Account Auditor.

The Licensing Board suspended the broker's license of LONNIE D. HALL of Spring Lake for thirty days for failing to collect an earnest money deposit and preparing a closing statement reflecting that it had been collected. Hall did not have a bookkeeping system adequate to detect the deficit. The Board also ordered Hall and his bookkeeper to submit to instruction by the Board's Trust Account Auditor.

The Licensing Board reprimanded broker BOBBY J. PRESSLEY of Charlotte for making improper sexual advances to a prospective home buyer without her consent. □

Attention Property Managers

Trust Account Auditor Ted Gayle has found that an alarming number of property managers are engaging in a highly improper practice: In short, they are using one client's money (rental income) to pay another client's expenses.

For example, the property manager will spend \$700.00 to repair Owner A's roof, when he has col-

lected only \$200.00 in rent from Owner A's property(ies). The balance (\$500.00) comes from rents which he has collected from properties owned by his other clients.

Property managers are cautioned to immediately discontinue this practice. (Acceptable alternative methods are described in the Board's Trust Account Guidelines.) ☐

RENEW EARLY

And Avoid The June 30 Rush

Trust Account Guidelines Order Form

Instructions

1. Cut along dotted lines.
2. Fold down in half so that Board's address is showing.
3. Staple or tape at the bottom.
4. Affix 18¢ postage stamp.

If your mailing address is different than shown on this Bulletin (below), enter your current address here:

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