



From The Board Room

SECRETARY-TREASURER LITTLE RETIRES

Blanton Little has retired as Secretary-Treasurer of the Real Estate Licensing Board. Mr. Little was named to the position in 1975 following the passing of former Secretary-Treasurer Joe Schweidler.

During his tenure as Secretary-Treasurer, the operations of the Real Estate Licensing Board experienced unprecedented change. Computerization was introduced. The Board office was twice re-located. A full-time attorney was assigned to the Board and an Education Director and Trust Account Auditor added to the staff. And pre-license requirements were strengthened as well as the rules and regulations governing the activities of licensed brokers and salesmen.

Through it all, Blanton earned and maintained the reputation of being a capable administrator and a man of unquestioned principle and integrity. In a world where names often become numbers, he was able to develop a personal relationship and rapport with licensees and consumers.

The Board feels that all those who have come to know and respect Blanton over the years will want to join with them in wishing Blanton and his lovely wife, Lillie, the very best of success and happiness in a much earned and well-deserved retirement.

LATE BULLETIN!

As this Bulletin was going to press, the Governor's Office announced that Fred H. Adams of Cary, N. C. has been appointed to the Licensing Board replacing Mr. William C. Stokes whose term has expired.

FISHER NAMED SECRETARY-TREASURER



Phillip T. Fisher has been named Secretary-Treasurer of the Real Estate Licensing Board, succeeding Blanton Little. Fisher had served as Administrative Assistant to Mr. Little since 1975.

A native of Kannapolis, N. C., he is a 1970 graduate of the University of North Carolina, Chapel Hill. Prior to joining the Licensing Board staff, he was Vice-President of Fisher Real Estate and a real estate instructor at Rowan Technical Institute.

As Administrative Assistant to Mr. Little, Phil was responsible for administering licensing examinations, writing/editing the quarterly Bulletin and other Administrative duties.

He is married to the former Sandy Williams, and is the son of Mrs. G. Bruce Fisher and the late Mr. Fisher of Kannapolis.

GAYLE NAMED ADMINISTRATIVE ASSISTANT



L. Ted Gayle has been named Administrative Assistant to Secretary-Treasurer Fisher. Prior to his appointment as Administrative Assistant, Gayle served as the Board's first Trust Account Auditor.

Ted is a native of Badin, North Carolina, and a graduate of Western Carolina University. He served in the accounting departments of ALCOA and Collins and Aikman Company before joining the Licensing Board staff last year.

Ted is married to the former Margaret Evans, and is the son of Mrs. L. T. Gayle. He and Margaret have four daughters.

BOARD ELECTS OFFICERS



Dee McCandlish has been elected Chairman of the Real Estate Licensing Board for the year beginning August 1, 1981. She is the first woman to serve on the Real Estate Licensing Board, and is also currently serving as President of the Mortgage Bankers Association of the Carolinas. Ms. McCandlish is Regional Vice President and Manager of the Charlotte Branch of First Atlantic Corporation.



A. P. Carlton has been elected Vice Chairman of the Board. Mr. Carlton is a former Chairman of the Board, and has been actively engaged in the real estate business for the past 20 years. He is owner of Interstate Realty, Inc., in Greensboro.

CARLTON ELECTED RELE PRESIDENT

Board Vice Chairman, A. P. Carlton, has been elected President of the Real Estate Licensing Examinations (RELE) Advisory Committee. This Committee consists of one delegate from each of the jurisdictions participating in the Educational Testing Service (ETS) Real Estate Licensing Examination Program. Its function is to provide advice and assistance to ETS in ETS's conduct of the Real Estate Licensing Examination Program.

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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James B. Hunt, Jr., Governor

BOARD MEMBERS

Dee McCandlish Charlotte
Chrm.
A. P. Carlton Greensboro
V. Chrm.
B. Hunt Baxter, Jr. New Bern
James A. Beaty, Jr. Winston-Salem
Bart Bryson Hendersonville
Brantley T. Poole Raleigh
William C. Stokes Reidsville

Phillip T. Fisher Sec'y Treas.
L. Ted Gayle Admin. Asst.

EXAM RESULTS

EXAMINATION - April, 1981

	Passed	Failed
Brokers	161	411
Salesmen	150	91

EXAMINATION - May, 1981

	Passed	Failed
Brokers	99	159
Salesmen	162	73

EXAMINATION - June, 1981

	Passed	Failed
Brokers	104	198
Salesmen	158	151

RENEWAL REPORT

Brokers and Salesmen Renewed
as of July 1, 1981 39,641
Corporations Renewed
as of July 1, 1981 1,925
Total Licensees
as of July 1, 1981 41,566*

*Approximately 87% of all brokers, salesmen and corporations renewed their licenses before the June 30 expiration date.

Field Representatives Certified

The Real Estate Licensing Board is pleased to announce that its three Field Representatives and Trust Account Auditor have been designated Certified Real Estate Investigators by the National Association of Real Estate License Law Officials (NARELLO).

To achieve certification, candidates must complete at least 50 real estate investigations, submit a sample investigative report for evaluation by a review panel, and successfully complete a course of study at the Certified Investigator School sponsored by NARELLO.

The Field Representatives and Trust Account Auditor are shown below receiving their awards from J. Daniel Schroeder (left), Chairman of NARELLO's Investigative & Enforcement Committee.



JAMES CLINARD

Jim is a 15 year veteran of the Board. Before that, he was a patrolman with the State Highway Patrol. He is assigned to the Piedmont District which includes the Triad Area and Raleigh. Jim resides in Colfax with his wife Minnie. They have five children.



RODOLPH HILL

Rodolph has been with the Licensing Board for more than 12 years. Before joining the Board staff, he was a law enforcement officer with the Kinston Police Department. His territory includes the eastern part of the state, from Fayetteville to the sea. Rodolph is a Kinston resident. He and his wife, Dorothy, have two daughters.



EVERETTE JENKINS

Everette has more than eight years service with the Licensing Board. His prior law enforcement experience included 11 years with the State Highway Patrol. He is assigned to the Western part of the state including Charlotte. Everette and his wife, Jo, live in Asheville with their son, David.



TED GAYLE

Ted was named by the Board as their first Trust Account Auditor in January, 1980. During the past 12 months, he has audited more than 250 trust accounts and has appeared before numerous real estate organizations. Ted was recently appointed Administrative Assistant to the Secretary-Treasurer of the Board (See Bulletin, page one).

Trust Account Guidelines

III.

TRUST FUNDS

Definition

The term "trust funds" may be defined as those funds received by a real estate broker or salesman while acting as an agent in a real estate transaction. The most common examples of trust funds are earnest money deposits, down payments, tenant security deposits, rents, and money received from final settlements.

Perhaps equally important to the real estate broker is a clear understanding of what funds are not "trust funds." From the above definition we can deduce that funds which are received in non-real estate transactions and funds which are received in transactions in which the broker is not acting as an agent for some other person(s) should not be considered trust funds. Brokers should not deposit these "non-trust funds" in their "brokerage trust accounts" because to do so would constitute a commingling or mixing of trust funds with non-trust funds. This, in turn, could raise doubt as to whether the account is, in fact, a true trust account, and thus could deprive the depositors of the protections afforded by trust accounts.

IV.

TRUST ACCOUNTS

Definition/Purpose

A "trust account" (or "escrow account") is simply a bank account into which trust funds (and only trust funds) are deposited. It must be a separate custodial account which provides for withdrawal of funds on demand (without prior notice).

By depositing trust funds in a trust account and keeping accurate records that identify each depositor, the funds are protected from being "frozen" (attached) should the broker/trustee become involved in legal action or become incapacitated or die. Also, the Federal Deposit Insurance Corporation will insure each depositor up to \$100,000 (rather than \$100,000 for the entire account). Furthermore, by placing these funds in a separate account, brokers are less likely

to confuse the trust funds with their personal or business funds and inadvertently use these funds (which belong to others) for personal or business purposes.

Opening the Account

Trust accounts must be opened and maintained in either an insured bank or savings and loan association in North Carolina. Brokers who are not using their real estate licenses are not required to open or maintain a trust account, but the account must be available for use by the broker at such time as it is needed.

Only one trust account is required, and all earnest money deposits, tenant security deposits, rents, and other trust funds can be deposited into this one common account. However, brokers who are active in the field of property management often find it helpful to use two trust accounts: A "general sales trust account" for earnest money deposits, settlement proceeds, etc., and a "rental trust account" for tenant security deposits, rents, and related receipts [NOTE: Although it is not required, many property managers elect to maintain an additional "security deposit trust account" for the purpose of separating tenant security deposits from rents and other related receipts.] Also, brokers who are active in selling or leasing their own property, frequently open an additional trust account for funds received in connection with these properties.

A trust account must be designated as 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 bear the words, "Trust Account" or "Escrow Account."

Trust accounts are subject to the same service charges and intangibles taxes as regular checking accounts. Whenever possible, brokers should arrange for the depository to either bill them for these expenses or charge these expenses to the broker's personal or general operating account. But if such arrangements cannot be made, the broker may deposit and maintain in his trust account a maximum of \$100.00 of his personal funds (or such other amount as may be required) to cover such charges; however, brokers must be careful to properly enter and

identify this deposit in their trust account records and to deduct any bank charges as they occur.

Interest-Bearing Trust Accounts

Trust funds may be deposited in an interest-bearing trust account ONLY under the following conditions: (1) The broker must obtain from the persons for whom he is holding the funds written authorization to deposit the funds in an interest-bearing account; (2) the authorization must clearly specify how and to whom the interest will be disbursed; and (3) if the authorization is contained in an offer, contract, lease or other transaction instrument, it must be set forth in a manner which shall draw attention to the authorization and distinguish it from other provisions of the instrument (for example, *italics*, **boldface type**, underlining, a blank _____ to be filled in with the name or party to whom the interest will be paid, or some similar means).

Inasmuch as trust funds must be deposited in a demand account in an insured bank or savings and loan association, the investment of such funds in any type of security, certificate of deposit, government bonds, etc. would be prohibited. (To Be Continued In

Next Issue of Bulletin)

NOTE

The Trust Account Guidelines are printed in their entirety in a booklet which also contains the current North Carolina Real Estate License Law and the current Rules and Regulations of the Real Estate Licensing Board. This booklet can be obtained free-of-charge by writing or calling the Board office at the address and telephone number shown below:

North Carolina Real Estate
Licensing Board
1200 Navaho Drive
P. O. Box 17100
Raleigh, North Carolina 27619
Phone 919/872-3450

When calling upon your office, the Board's Trust Account Auditor will inquire as to whether you have a copy of the Trust Account Guidelines for reference.

Education Report

INSTRUCTOR WORKSHOP

The North Carolina Real Estate Licensing Board held its second annual Real Estate Instructor Workshop in Raleigh on June 3-4, 1981. Attendance at the workshop was outstanding, with 141 representatives present from 69 Board-approved schools. 77 participants were from community colleges and technical institutes; 12 were from colleges and universities; and 41 came from private real estate schools. There were also 11 guest participants, including representatives from Educational Testing Service and two leading real estate publishers.

The objectives of the annual workshops are to provide participants with a working knowledge of good instructional principles, and to provide a forum for the exchange of ideas and the dissemination of practical information to real estate instructors.

The highlight of this year's workshop was a presentation by Dr. J. Robert Cox of the University of North Carolina-Chapel Hill on the subject of "Effective Communication in the Classroom."



Dr. J. Robert Cox delivers keynote presentation.

This year's workshop was again planned and coordinated by Larry A. Outlaw, Education Director for the Licensing Board. Larry was assisted by his secretary, Penny Childress, and also by Mildred Combs and Gloria Williams of the Board staff. A. P. Carlton, Vice Chairman of the Board and Chairman of the Education Committee welcomed the participants and remained available for questions throughout the workshop.

(Continued in column 2)

WALLACE AWARDED SCHWEIDLER SCHOLARSHIP

Marian Wallace of Asheboro has been awarded the Joe Schweidler Memorial Scholarship for the year 1981. This scholarship was established by the Real Estate Licensing Board in honor and memory of Mr. Schweidler who served as Secretary-Treasurer of the Board from 1960 until 1975.

The North Carolina Real Estate Educational Foundation, Inc. administers the scholarship which is awarded to the student who attains the highest scholastic average in Course B at the February Session of the REALTORS' Institute, and consists of the tuition fee for Course C of the Institute.

Mrs. Wallace is a native of Randolph County. Since graduating from Appalachian State University in 1964, Marian has held teaching and librarian positions with East Rowan High School, Asheboro High School, and Asheboro College. In 1976 Marian became associated with Hunt's Realty and Insurance and is currently a REALTOR-Associate in the Asheboro-Randolph Board of REALTORS.

She and her husband, Dave, reside on Pine Grove Drive in Asheboro.

The Real Estate Licensing Board and the Real Estate Educational Foundation congratulate Marian on her achievement and wish her the best of success in her real estate career.



Education Director Larry Outlaw addresses workshop participants.

The Board sincerely appreciates the interest and support of the real estate instructors who make these annual workshops such a tremendous success and who are striving to better themselves and the quality of real estate education in North Carolina.

IT'S YOUR MOVE NOW IN BRAILLE

It's Your Move, a consumer housing publication for North Carolina high school students, has been reproduced in Braille and large type editions for visually impaired students. Funding for the project was provided by the Real Estate Licensing Board, publishers of the manual.

Shown below are Brantley T. Poole (right), Member and former Chairman of the Real Estate Licensing Board, presenting the booklets to Mrs. Joyce M. Kellar of the Governor Morehead School in Raleigh, and Mr. Mark Sumner, Consultant to the Division for Exceptional Children of the N. C. Department of Public Instruction.



It's Your Move was developed by the California State Department of Real Estate in 1976. With their permission, the North Carolina Real Estate Licensing Board in 1979 revised the booklet for use in North Carolina. In the past two years the Licensing Board has printed and distributed more than 100,000 copies of *It's Your Move* free-of-charge to North Carolina public high schools. Beginning this year, private and parochial schools will also receive the booklets.

Response to this booklet has been excellent, with teachers and administrators reporting that it has proven to be an excellent resource material for economics, consumer education, and related courses.

According to Mr. Poole, "The Licensing Board considered the printing of Braille and large-type editions to be absolutely essential in order to ensure that all future real estate consumers would have ready access to this valuable information."

Real estate brokers and salesmen are encouraged to contact their local school officials and administrators to make certain that they are aware of the availability of this timely and important publication.

Back to Basics

At times we all perhaps feel that we are smothering in paperwork, strangling in red tape, drowning in a sea of rules and regulations, and overcome with the complexities and technicalities of modern real estate practice. At these times it is perhaps prudent for today's real estate broker and salesman to pause and reflect for a moment upon their fundamental duties and responsibilities as agents in real estate transactions.

Summarized below are some of the basic acts and services performed by real estate agents during the various phases of real estate sales transactions. While the list is by no means all-inclusive, it does cover many areas of real estate practice which, when neglected, frequently result in dissatisfied clients and customers, costly litigation, disciplinary action by the Real Estate Licensing Board, or all of the above.

LISTINGS

Estimate the value of the property based upon sound appraisal techniques, and avoid over-priced listings.

Record complete and accurate information about the property in your listing agreement, especially the location of the boundary lines of the property, an accurate measurement of the square footage of improvements, utility services, (water, sewerage, etc.) fixtures and any personal property which will be included in the sale, details concerning existing financing, and a list of any defects in the property (leaky roof, defective air conditioner, etc.). If the seller furnishes you information which you have not personally verified, note that fact on each unverified item on your listing sheet.

Then review your listing information with the seller to ensure that you have correctly recorded the data, and carefully explain the terms of the listing agreement to the seller, especially the conditions under which you will be due a commission. [REMEMBER: Your brokerage fee is completely negotiable between you and your principal.]

Upon acceptance of the listing agreement by the seller, give him a copy, and retain a copy for your files. In co-brokered or MLS transactions, make absolutely certain that the property data which you furnish is complete and accurate.

ADVERTISING

Clearly identify yourself in your ads as a real estate broker or brokerage firm;

when selling or leasing your own property, include the words "owner/broker."

If you include financing information, be certain that you comply with the Federal Truth-in-Lending Law. If you quote an interest rate, include the words "variable" or "adjustable" if such is the case.

SHOWING

Be thoroughly familiar with and comply with the requirements of the Federal Fair Housing Act.

Advise potential buyers of any defects in the property of which you are aware. [REMEMBER: The failure to disclose material facts of which you are aware or should reasonably be aware can also constitute misrepresentation.] If you make representations or statements about the property which you have not personally verified, tell the buyer, and identify the source of your information.

OFFER AND EARNEST MONEY

Include all of the essential terms and conditions of the offer in your Offer to Purchase form, especially details concerning any financing which the buyer may require, any repairs or improvements to the property which the buyer may require, any items of personal property being included in the sale, and who will pay the various closing costs. Use a good Offer to Purchase form, such as the one jointly approved by the N. C. Bar Association and the N. C. Association of REALTORS.

For the protection of the seller, attempt to obtain a substantial earnest money deposit, but do not refuse to submit the offer without earnest money. Stipulate in the offer how the earnest money will be used; unless otherwise stated, the earnest money must be held in your trust account in toto until the closing or termination of the transaction. Also, specify what will happen to the earnest money in the event the sale is not closed. [REMEMBER: In the event of a dispute over the disposition of trust funds, hold the funds in your trust account.]

Have the buyer (and spouse) sign the offer in quadruplicate (4 copies) giving the buyer a copy. Then immediately deliver the offer to the seller (or the listing agent for presentation to the seller).

ACCEPTANCE AND TRUST ACCOUNT

Carefully review the offer with the seller, and give him all information in

your possession which could affect his decision to accept or reject the offer.

If the seller rejects the offer, write "Rejected" on it, have the seller initial and date the rejected offer, and promptly return it to the buyer (retaining a copy for your files). If the seller rejects some, but not all, of the terms of the offer, make the necessary changes in the offer, have the seller initial each change, and leave a copy of the counter-offer with the seller. [REMEMBER: A counter-offer constitutes a rejection of the original offer.] Then immediately return the counter-offer to the buyer for his decision as to whether to accept the offer as amended.

Upon acceptance of the offer (or counter-offer), have the accepting party (and spouse) sign it, and give him a copy. Then immediately communicate the acceptance of the offer to the party who made the offer (or counter-offer), and give him a signed copy of the accepted offer (contract), again retaining a copy for your files.

If you have not already deposited the earnest money in your trust account, do so immediately. [Refer to the Licensing Board's Trust Account Guidelines or contact the Board office should you have questions concerning the handling of trust funds.]

FINANCING AND CLOSING

Stay abreast of all available sources and methods of financing. Give the lender correct information concerning the sales price of the property and the actual amount of earnest money and/or down payment to be paid by the buyer. Be certain that the lender explains to the buyer the details concerning the loan for which the buyer is applying. [NOTE: This is especially important if the loan involves some form of variable or adjustable interest rate.]

In advance of the closing, review with the seller and buyer those closing expenses which they will be expected to pay, and at the closing make certain that no unexpected or hidden expenses surface. Also, advise the buyer to have a title search performed (and to have the property surveyed if there is any question as to the boundary lines or possible encroachments). [NOTE: Real estate closings should be conducted only by persons who are competent to handle such matters. Brokers who attempt to

(Continued on page 6)

Legal Report

DISCIPLINARY ACTION

The Real Estate Licensing Board revoked the broker's license of CHARLES L. GALLMAN of Lexington after finding that he made a secret profit at the expense of both buyer and seller in a real estate transaction. The Board determined that Gallman took an option to purchase property listed with him. Prior to exercising the option, he was contacted by two purchasers interested in buying the property. Without disclosing his option, he falsely told them that another offer at a higher price was pending. The buyers offered a still higher price. Without disclosing the new offer, Gallman exercised his option from the sellers at the option price and sold the property to the buyers at the higher price. The true facts were not disclosed to either party.

The Board's revocation, originally effective in September, 1979, was stayed by court order after Gallman appealed to Wake County Superior Court. Judge Edwin S. Preston, Jr., affirmed the Board's action in March, 1980, and Gallman appealed again to the North Carolina Court of Appeals. That Court unanimously upheld the Board's decision in May of 1981.

The Licensing Board revoked the broker's license of GEORGE EUGENE HALL of Hendersonville because of his conviction in the Superior Court of Henderson County of two counts of the felony of taking indecent liberties with children.

The Licensing Board censured broker RANDY A. MAY of Calabash for failing to accompany clients to a subdivision site and failing to assist them, on request, in finding the proper lot. As a result, the clients purchased the wrong lot and in-

curred needless legal and surveying expenses.

The Licensing Board censured broker MILDRED B. RUSSELL of Albemarle for failing to carry out her principal's instructions and failing to communicate with her, failing to collect earnest money as directed, and preparing inconsistent documents in an incompetent manner.

The Licensing Board reprimanded broker HAZEL C. STEPHENSON of Gastonia for improper conduct in obtaining extensions of expired listing agreements.

COURT RULES ON SELF-DEALING

In an important case involving the Real Estate Licensing Board, the North Carolina Court of Appeals has ruled that if a broker attempts to purchase property listed with him, his agency is not automatically terminated, and he remains obligated as a fiduciary to communicate any new or higher offers to his principal.

The case arose after the Licensing Board revoked the broker's license of Charles L. Gallman of Lexington, finding that he optioned property listed with him and then exercised the option after other parties offered him a higher price. Gallman appealed the revocation, contending that his option terminated his agency and allowed him to deal with the prospective purchasers as an owner rather than as a broker.

In a unanimous opinion by Judge Edward B. Clark, the Court of Appeals upheld the Board. Commenting that the real estate license law "prescribes a standard of honesty, truthfulness and integrity" for brokers, the Court first held that "the general rule is that a broker can neither purchase from, nor sell to, his principal unless the latter expressly assents thereto,

or, with full knowledge of all the facts and circumstances, acquiesces in such course."

The Court then stated that "while a option to purchase real estate, given by the seller to a broker employed to sell the property, is generally valid, he cannot enforce the option without making a full disclosure to his principal of any information which he has relating to other prospective sales or the value of the property."

The Court also determined that even if Gallman were not an agent for the buyers, he owed them "a duty of dealing with honesty and integrity." The decision concluded that "the licensing act should not be interpreted to require a licensee to be honest as a broker or salesman while allowing him to be dishonest as an owner."

The Board cautions all licensees that they deal in their principal's property at their peril, and the Board will not hesitate to strictly scrutinize any such self-dealing to make sure that the agent does not take advantage of his position as a fiduciary.

(Continued from page 5)

close real estate transactions themselves will be subject to strict disciplinary action by the Licensing Board in the event of any errors or omissions.]

At the closing, or immediately thereafter, furnish the buyer and seller a complete statement of all receipts and disbursements which occurred in the transaction. Or you may accept statements prepared by the person who closed the transaction (lender, attorney, etc.) provided they cover all receipts and disbursements in the transaction; however, you will be held responsible for the accuracy of such statements. Retain a copy of each closing statement in your files.

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BULK RATE
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