



NORTH CAROLINA

REAL ESTATE LICENSING BOARD

Real Estate Bulletin

Volume 12

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Number 3

ADAMS APPOINTED TO BOARD

Governor James B. Hunt, Jr., has appointed Mr. Fred H. Adams of Cary to the North Carolina Real Estate Licensing Board for a term expiring July 31, 1983.



Fred H. Adams

Mr. Adams is Executive Vice President and General Manager of Adams Concrete Products Manufacturing, headquartered in Morrisville, North Carolina.

He is currently serving as President of the Carolina's Concrete Masonry Association and serves on the North Carolina State Design Foundation. Mr. Adams is also a member of the Board of Directors of Raleigh Sales & Marketing Executives and the North Carolina Masonry Council.

He is married to the former Bobbie G. Turlington, and they have three children.

BOARD EMPLOYS TRUST ACCOUNT AUDITORS

Emmet R. Wood of Raleigh and Nancy C. Adams of Greenville, North Carolina have been employed by the Real Estate Licensing Board as Trust Account Auditors. (The Board's previous Auditor, L. Ted Gayle, was recently promoted by the Board to the position of Administrative Assistant.)

Their duties will include making periodic audits of real estate trust accounts and developing and conducting instructional programs for real estate brokers regarding the proper handling of trust funds.



Emmet R. Wood

Emmet is a native of Edenton, North Carolina and a 1974 graduate of North Carolina State University where he completed additional studies in accounting, business law, and federal taxation in 1977. He is both a Certified Public Accountant and a licensed real estate broker. He has been associated with public accounting firms in Raleigh and was an agent for a Raleigh real estate brokerage firm.

Emmet is single and resides in Raleigh.



Nancy C. Adams

Nancy is a graduate of Vanderbilt University and received a second degree in Accounting from East Carolina University in 1980. In May of this year she passed the CPA examination. Prior to joining the Board, she was an examiner for the Federal Home Loan Bank Board where she was in charge of conducting compliance audits at federally insured savings and loan associations.

Nancy and her husband, Ben, reside in Greenville, North Carolina.

FROM THE BULLETIN BOARD . . . Board Chairman **Dee McCandlish** and Vice Chairman **A. P. Carlton** have been re-appointed to the Real Estate Licensing Board by Governor Hunt for terms expiring July 31, 1984 . . . Mr. Carlton has also been elected to the Board of Directors of the National Association of Real Estate License Law Officials (NARELLO), and Board Secretary-Treasurer **Phillip T. Fisher** has been named Chairman of the "NARELLO News" Editing Committee . . . **LATE BULLETIN:** Board Member **James A. Beaty, Jr.** has been appointed by Governor Hunt as a Special Superior Court Judge.

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, Governor

BOARD MEMBERS

Dee McCandlish Charlotte
Chrm.
A. P. Carlton Greensboro
V. Chrm.
Fred H. Adams Cary
B. Hunt Baxter, Jr. New Bern
James A. Beaty, Jr. Winston-Salem
Bart Bryson Hendersonville
Brantley T. Poole Raleigh

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

EXAM RESULTS

EXAMINATION — July, 1981

	Passed	Failed
Brokers	116	300
Salesmen	154	113

EXAMINATION — August, 1981

	Passed	Failed
Brokers	81	176
Salesmen	148	112

EXAMINATION — September, 1981

	Passed	Failed
Brokers	135	238
Salesmen	156	109

EXAMINATION — October, 1981

	Passed	Failed
Brokers	67	152
Salesmen	151	58

EXAMINATION SCHEDULE

Filing Date	Exam Date
December 14, 1981	January 23, 1982
January 18	February 27
February 15	March 27
March 15	April 24
April 13	May 22
May 17	June 26

REAL ESTATE RAFFLES

Faced with the challenges of buying and selling homes in today's real estate market, brokers and homeowners are seeking alternative ways to bring about sales. One such marketing technique which has recently received national attention is the "raffling" of homes, where a civic or charitable organization (Rotary Club, volunteer fire department, etc.) would sell raffle tickets to the public (often with the assistance or participation of a real estate broker) and would then retain all money collected in excess of the sale price of the home and expenses of the sale (including broker commissions).

While the Real Estate Licensing Board does not wish to discourage the use of creative sales techniques, the use of raffles or lotteries in the sale of real estate is of great concern to the Board because of serious legal questions which are raised and because of their negative consequences on the winners of such raffles.

First, it is unsettled whether real estate raffles are legal under any circumstances in North Carolina. Lotteries and raffles are governed by a criminal statute, and opinions differ as to whether a raffle of a house is permitted under the law. Pending a definitive court decision, the district attorneys in the state have taken varying positions as to the legality of real estate raffles. The Board's subsequent comments, therefore, assume that real estate raffles may be legal under some circumstances, but the Board makes no warranty or guarantee whatever that raffles will be permitted in any judicial district in the state. [Persons interested

in raffles should first contact their attorneys.]

What is clear from the statute is that only a recognized tax-exempt organization may conduct a raffle, and that "no person may be compensated in any way for conducting a raffle." Therefore, the Licensing Board takes the position that, assuming a raffle is otherwise legal, real estate agents may participate in such raffles only on a gratuitous basis. No real estate agent may receive any sort of fee, commission or other compensation whatever for participating in or conducting a raffle.

Finally, the Board feels that licensees and the public should be aware of the tax consequences of winning such a raffle. Although any participant in a raffle should consult his own tax adviser, generally the winner of the house will have the fair market value of the house counted as ordinary income to him in the year he wins the raffle; for most winners, this would create a large income tax bill due the following April 15th. Further, when the winner decides to sell the house, his cost basis for capital gains purposes will be the amount of the ticket, rather than the value of the house; in most cases, this will create a large capital gains tax.

The Licensing Board feels that real estate raffles are a dangerous practice, fraught with pitfalls for buyer, seller, and broker alike. The Board therefore strongly discourages its licensees from participating in such activities, and offers them no assurances whatever that such participation is legal.

TIMBER /TIMBER LAND

"Is a real estate broker or salesman license required in order to sell 'timber land' and/or 'standing timber'?" This question was recently posed to the Real Estate Licensing Board in response to a publication wherein certain persons indicated that they were "qualified and especially equipped to handle . . . timber land acquisition & sales" and/or "timber sales."

The Real Estate Licensing Board determined that since it was unaware of any legal distinction between "timber land" and other forms of real estate, then persons who sell (or offer to sell) or who

buy (or offer to buy) timber land as agents for others must be licensed as real estate brokers or salesmen.

As to the question of "standing timber" (i.e., trees which have not been severed from the land), the Board was advised by the Attorney General's Office that persons who engage in the sale of standing timber as an agent for others would be required to be licensed as a real estate broker or salesman.

In short, a real estate license is required in order to sell or purchase "standing timber" or "timber land" as an agent for others.

EDUCATION REPORT

NORTH CAROLINA REAL ESTATE EDUCATORS ASSOCIATION

All licensees interested in real estate education or training at any level will be pleased to learn of the recently-formed North Carolina Real Estate Educators Association (NCREEA). This Association is an independent, non-profit organization made up of individuals involved or concerned with real estate education and training or related research. Members come from universities, colleges, community colleges, private real estate schools, real estate companies, and real estate professional organizations.

The purposes of the NCREEA include the following:

- * To promote and facilitate communications and cooperation among real estate educators.
- * To promote professional standards of competence and performance among real estate educators in particular and real estate practitioners in general.
- * To promote education of real estate consumers and encourage wise and optimal use of real estate resources.
- * To encourage and participate in education-related research intended

to benefit the real estate industry and the general public.

The NCREEA, which was formed upon the request of Board-certified real estate pre-licensing course instructors, plans to publish its first newsletter in early 1982 and to hold its first annual meeting in the Spring of 1982. The interim President of the NCREEA is William K. Gobble of Raleigh.

Persons interested in joining this new Association may do so by mailing a check for \$20 (charter membership dues) to the address shown below. Membership is open to anyone concerned with real estate education.

North Carolina Real Estate
Educators Association

Fred O'Neal, Secretary-Treasurer
Wake Forest Realty
P. O. Box 232
Wake Forest, N. C. 27587

DONATION OF REAL ESTATE BOOKS

The North Carolina Real Estate Licensing Board recently donated a collection of 14 real estate books to the libraries of the 73 community colleges/

technical institutes, colleges/universities, and junior colleges which are approved by the Board to conduct real estate pre-licensing courses. The purpose of this donation is to provide direct support to the real estate education programs of these schools by improving the real estate collection in each school's library. The donated collection, which includes books on a variety of real estate topics, should benefit both students and instructors of real estate courses, as well as members of the local public who have access to the schools' library facilities.

"MOVING WITH KIDS"

The Boy's Town Center for the Study of Youth Development has published as a public service a pamphlet addressed to parents who are planning a move. It is entitled "Moving with Kids: Relocation Hints for Parents with School-Age Children."

Interested persons may obtain reasonable quantities of this pamphlet without charge by writing: Moving with Kids, Division of Communications and Public Service, The Boys Town Center, Boys Town, Nevada 68010.

TRUST ACCOUNT COURSE

A FREE short course in Trust Account Record-keeping will be offered by the Real Estate Licensing Board in several locations around the state. The course is designed to assist those responsible for keeping trust account records to become more proficient. The course will require from three to four hours to complete, and a certificate will be awarded to students who satisfactorily complete the course.

Should you or a representative of your firm wish to attend this course, please indicate below the location preferred, and complete and return the registration form to: North Carolina Real Estate Licensing Board, P. O. Box 17100, Raleigh, North Carolina 27619.

Registrations will be accepted on a "first come - first serve" basis. So ACT NOW! Registrants will be notified later of the exact time and place of the course offering.

TRUST ACCOUNT SHORT COURSE

- | | | | |
|-------------------------------------|---------------------------------------|-------------------------------------|---------------------------------------|
| <input type="checkbox"/> Asheville | <input type="checkbox"/> Charlotte | <input type="checkbox"/> Greensboro | <input type="checkbox"/> Fayetteville |
| <input type="checkbox"/> Hickory | <input type="checkbox"/> Jacksonville | <input type="checkbox"/> Raleigh | <input type="checkbox"/> Shelby |
| <input type="checkbox"/> Wilmington | <input type="checkbox"/> Wilson | | |

Firm Name _____

Address _____

Enrollee Name _____

Enrollee Job Title _____

Trust Account Guidelines

V.

DEPOSITING TRUST FUNDS

Who Should Deposit?

When listing property for sale or lease, a provision should be included in the listing or property management agreement naming the broker as trustee or escrow agent for the purpose of receiving and holding trust funds. Likewise, offers to purchase, sales agreements, leases, etc. should specify in whose account the trust funds will be held so that all persons who have an interest in the funds will know whom to hold responsible for their safekeeping.

Unless otherwise agreed upon by the parties, trust funds received by a "selling broker" in a co-brokered sales transaction should be immediately delivered to the "listing broker" for deposit in the listing broker's trust account. All trust funds received by a licensed real estate broker while associated with or employed by another broker or brokerage firm should, of course, be deposited in the trust account of such broker or firm. All trust funds received by a real estate salesman must be immediately delivered to the salesman's supervising broker.

A broker may transfer possession of trust funds to a bookkeeper, secretary, or some other clerical employee for that person to deposit the funds in a trust account; however, the broker will still be held responsible for the care and custody of such funds. Brokers should closely and diligently supervise the acts of these persons. Periodic audits and bonding of such persons is recommended.

When to Deposit?

Earnest money received on offers to purchase and tenant security deposits received in connection with leases must be deposited in a trust account not later than three banking days following acceptance of the offer to purchase or lease; the date of acceptance must be shown in the purchase or lease agreement. Rents, settlement proceeds, and other trust funds must be deposited in a trust account not later than three banking days following receipt of the funds.

[Certain property managers and management firms require their leasing agents to forward tenant security deposits and rents to a central office where the funds are accounted for and deposited in a trust account. In such cases, tenant security

deposits must be forwarded (delivered or mailed) to such office not later than three banking days following acceptance of the lease, and shall be deposited in a trust account not later than three banking days following their receipt in such office. Similarly, rents must be forwarded by the broker/leasing agent to such central office not later than three banking days following receipt and shall be deposited in a trust account not later than three banking days following their receipt in such office.]

VI.

DISBURSING TRUST FUNDS

Permitted Uses/Access

The instrument creating the trust (sales contract, property management agreement, lease, etc.) should contain a clear and complete statement as to how and under what conditions the trust funds will be disbursed (especially in the event the transaction is not consummated). Brokers may disburse trust funds only for the purpose(s) set forth in this instrument; for example, brokers may not use trust funds to pay for credit reports, surveys, appraisal fees, or other transaction expenses without the consent of both the buyer and the seller, or the landlord and tenant.

Access to trust funds should be limited and carefully controlled. Although a broker may authorize a secretary, a bookkeeper, or some other persons to sign checks withdrawing trust funds, the broker will not escape liability and responsibility for the misuse of the funds by such persons. Again, brokers are advised to closely supervise these persons, and periodic audits and bonding of such persons are recommended.

When to Disburse?

Sales Transactions:

In "sales transactions", brokers will normally disburse trust funds upon the happening of one of the following events:

(1) **Upon revocation or rejection of an offer.** A buyer (offeror) may revoke an offer to purchase at any time prior to being notified of the acceptance of the offer. If the buyer revokes his offer or if the offer is rejected by the seller (offeree), then the broker should immediately return the earnest money to the buyer. However, if the earnest money

is in the form of a personal check which has already been deposited by the broker, the broker should not refund the deposit until the check has cleared.

(2) **Upon termination of a transaction.** If, for some reason, a transaction is not consummated and there is no dispute between the parties as to the disposition of the trust funds, then the broker should disburse the funds according to the provisions of the sales agreement. However, in the event of a dispute over the funds (or if the broker has reason to believe that such a dispute may arise), then the broker must attempt to obtain a written release from the parties consenting to its disposition, and failing this, the broker must retain the funds in his trust account until the dispute is litigated by the parties and disbursement is ordered by the court.

(3) **Upon closing of a transaction.** At the successful conclusion of a real estate transaction, any funds pertaining to the transaction which are on deposit in the broker's trust account will normally be paid to and subsequently disbursed by the person designated to close the transaction (usually an attorney or lending officer).

Occasionally, however, the broker will actually conduct the closing and disburse the funds. In such cases, brokers should not transfer trust funds from their trust account to their general business account for final disbursement, because this would result in a commingling of trust funds and non-trust funds during that period of time in which the trust funds are in the business account. Trust funds should be disbursed directly from the trust account to the persons entitled to such funds.

Furthermore, brokerage fees (when earned) should be disbursed promptly (within 30 days) from the trust account to the broker's business or general operating account, with each commission check clearly indicating the specific transaction to which it applies. The division of the commission with cooperating brokers and salesmen should be handled through the broker's general business account, and brokers should not, of course, withdraw any portion of their commissions prior to closing without the express consent of all parties to the transaction.

(Continued on page 5)

Lease Transactions:

In "lease transactions" (that is, transactions involving the leasing or renting of real estate), the leasing agent or property manager must deposit all rental income (and tenant security deposits) in his trust account; likewise, all disbursements required in connection with the property must be made directly from the trust account to the persons(s) entitled to such funds. In general, disbursements of rental income are made to pay the operating expenses of the leased property (utilities, maintenance, mortgage payments, administrative costs, etc.) with the balance being remitted to the property owner; the scope and extent of the property manager's authority to expend funds on behalf of the owner should be expressly stated in the Property Management Agreement.

Needless to say, the property manager must pay these operating expenses in a timely manner; however, disbursements must not at any time exceed the amount of funds on hand for that particular property or property owner. For example, if the manager has collected only \$300 in rent from property owned by Mr. A, he cannot disburse \$400 from his trust account to repair Mr. A's roof. Although the total of all funds in the trust account may be sufficient to cover the \$400 expenditure, such payment would, of course, result in the disbursement of funds belonging to other persons to pay for Mr. A's roof.

The Property Management Agreement should specify the procedure to follow in situations where disbursements would exceed receipts; for example, the manager may be authorized to withhold from the owner a certain sum of money to be held in reserve, or the manager may agree to pay such expenses from his general operating account and then be reimbursed as rents are collected. The property manager should not, however, place any of his own funds in his trust account to offset such "deficit spending," because this would, of course, constitute a commingling of the property manager's funds with funds which he is holding for others.

Regarding the disposition of tenant security deposits, the property manager or leasing agent should be aware that such deposits may be used only for certain specified purposes, and if not so used, the deposit must be promptly refunded to the tenant (certainly within 30 days after termination of the tenancy). [Brokers acting in the capacity of property managers, leasing agents, etc. should

be thoroughly familiar with the provisions of Chapter 42 Article 6 of the North Carolina General Statutes, entitled "Tenant Security Deposit Act."]

VII.

RECORD-KEEPING AND ACCOUNTING

Trust Account Records

Brokers are required to maintain complete records of all trust account receipts and disbursements, including bank statements, cancelled checks, deposit tickets, closing statements, property management reports and agreements, copies of offers (both accepted and rejected), copies of contracts, and other transaction records. While no particular record-keeping or bookkeeping forms or systems are required, the use of a general journal and individual transaction ledgers is recommended (see pages 37-47). In the event a branch office maintains a separate trust account, a separate bookkeeping system should be maintained in such office.

Although no particular system is required, the broker's trust account records must at least show:

- (1) The date he received the funds;
- (2) the amount, nature and purpose of the funds and from whom the funds were received;
- (3) the date the funds were deposited in the trust account;
- (4) the amount, date and purpose of each withdrawal and to whom the funds were paid; and
- (5) a current running balance.

A trial balance of the trust account journal and ledgers should be prepared at the end of each month, reconciling the journal and ledgers with the trust account bank statement and checkbook. The bank balance (taking into consideration outstanding checks and deposits) and the checkbook balance should equal the total outstanding liability as shown in the journal and the transaction ledgers.

Trust account records must be retained by brokers for at least three years and must be made available for inspection by the Board or its authorized representatives without prior notice. [NOTE: The Real Estate Licensing Board employs a Trust Account Auditor to make "spot inspections" of trust accounts and to assist in the investigation of complaints alleging improper handling of trust funds.]

Closing Statements

Brokers must account for all trust funds which they receive and disburse

during the course of a real estate transaction. In the property management area, this accounting would be in the form of a "property management report", and in sales transactions, a "closing statement" is used.

The "property management report" is simply a periodic accounting to the owner of all funds received and paid out in connection with the owner's property. The major item of income is, of course, rent, and the major expense items include utilities, maintenance expenses, and administrative costs. It is the responsibility of the broker/property manager to see that the property owner receives this income and expense report at such times as are required by the management agreement (usually monthly) and that the report covers all receipts and disbursements handled by the property manager on behalf of the owner. The broker/property manager must also make a full and timely accounting to the tenant regarding the tenant's security deposit (See G.S. 42-52).

The "closing statement" is used in sales transactions to show all receipts and disbursements that the broker has handled for the seller, and all money that the broker has received from the buyer and how such money was disbursed. While it is the broker's responsibility to see that the buyer and seller receive a copy of this statement(s) at the closing of the transaction (or not more than five days after closing), the broker is not required to personally prepare the closing statements. He may instead elect to adopt the statements prepared by the person who closed the transaction (usually an attorney or lending officer) provided such statements account for all funds received and disbursed in the transaction; however, the broker will be held responsible for the correctness of such statements.

Although no specific form or format is required, the property management report and the closing statement must set forth in a clear and concise fashion a complete accounting of all funds received and disbursed by the broker.

NOTE

A complete copy of the Trust Account Guidelines can be obtained free-of-charge from the Board office.

RETURNING SALESMAN LICENSES

The Licensing Board has received complaints from real estate salesmen that their supervising brokers will not return their licenses to the Board office even though they are no longer associated with such broker.

This violation of the Licensing Board's rules can have negative consequences on both the salesman and the broker: It can hamper the salesman's ability to associate with another broker, and it can result in continued liability of the broker for acts performed by the salesman while the salesman's license is in the possession of the broker.

The Board issues this reminder: A supervising broker must return to the Board office the license of any salesman which he supervises immediately upon termination of the salesman's association with such broker. Failure to do so could result in the suspension or revocation of the broker's license. In the event a broker refuses to return such license, the salesman should promptly notify the Board office.



LEGAL REPORT

DISCIPLINARY ACTION

The Real Estate Licensing Board revoked the broker's license of JAMES R. BATTLE of Raleigh for failing to account for funds belonging to others, commingling his principal's funds with his own, failing to maintain and deposit funds of others in a trust account, and acquiring an interest in his principal's property without her informed consent.

The Licensing Board suspended the broker's license of GRAHAM L. CASHWELL of Asheville for ninety days for failing to maintain funds of others in a trust account, and transferring earnest money deposits from his trust account to his operating business account before the transactions ever closed.

The Licensing Board censured broker RAE SLOANE COX of Ocean Isle Beach for failing to protect her principal's interests by allowing the purchaser, an attorney with adverse interests to the seller, to draft the critical documents in a seller-financing transaction, without suggesting that the seller seek legal counsel. The clause drafted by the attorney-purchaser varied from the seller's understanding of the agreement, and litigation resulted.

The Licensing Board reprimanded broker JOHN L. KENNEDY of Fayetteville for altering a deed of trust by adding his name as co-beneficiary or payee to secure indebtedness due him from the seller. Although Mr. Kennedy did not act with any intent to defraud any person, his actions in altering a signed document were improper.

LENDING FUNDS TO SELLERS

The Real Estate Licensing Board has expressed concern over transactions where brokers advance funds to their sellers-principals for expenses such as repairs prior to closing. This creates a potentially dangerous situation where the broker is both a creditor and an agent of his principal. Conflicts of interest can easily result.

The Board is advised that in certain communities, brokers have their names added as co-payees or beneficiaries on deeds of trust given to the sellers in owner-financing transactions. This is done to give the brokers security that the funds they lent their sellers will be repaid. Typically, payments on the deed of trust are made to the broker until the seller's indebtedness to him is satisfied.

In addition to being a potential conflict of interest for the broker, such transactions are dangerous because the deeds of trust generally do not indicate the amount or extent of the broker's interest in the deed of trust. If the deed of trust is payable to "Seller X and Broker Y" without further elaboration, a legal dispute could arise over whether the seller or broker had received all the funds due him.

The Board cautions licensees to scrupulously avoid any situations where conflicts of interest might arise. If it is absolutely necessary that such transactions be entered into, both broker and principal should consult separate legal counsel. The Board will continue to monitor this area, and may have to consider addressing it by regulation if the problem persists.

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