



**NORTH CAROLINA
REAL ESTATE LICENSING BOARD**

Real Estate Bulletin

Volume 12

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Number 4

Council Appointed To Board

Governor James B. Hunt, Jr. has appointed Mr. Thomas Council of Fayetteville to the North Carolina Real Estate Licensing Board. Mr. Council will fill the unexpired term of Mr. James A. Beaty, Jr. who relinquished his membership on the Board upon being named a Special Superior Court Judge.



Thomas Council

Mr. Council is President of Council Real Estate, Inc., a Fayetteville real estate brokerage firm. He is a member of the N. C. Association of REALTORS and has served on the Board of Directors of the Fayetteville Area Board of REALTORS. A graduate of the REALTORS' Institute in Chapel Hill, he has completed numerous courses in real estate brokerage, sales, and appraisal. He is a graduate of Fayetteville State University and received a Masters Degree from Indiana University.

Active in civic and community affairs, he has received many awards and recognitions. He is a member of the Board of Trustees of the Fayetteville State University Foundation, receiving that institution's Alumni

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Legal Information Officer

The Real Estate Licensing Board has created a new staff position of Legal Information Officer. This position was established in response to the ever-increasing number of telephone calls and inquiries received by the Board staff from real estate licensees and consumers regarding real estate practices and the various laws and regulations governing real estate brokers and salesmen.

More than 40 attorneys applied for this position, and after an extensive screening and interview process, Mr. Thomas R. Miller of Durham was employed as the Board's first Legal Information Officer (See adjacent column). He assumed the position effective March 1.

As Legal Information Officer, Tom's duties will include receiving and answering inquiries relating to the provisions of the Real Estate License Law, the Rules and Regulations of the Real Estate Licensing Board, and general brokerage practices; researching and writing advisory opinions on issues of concern to the Board; and assisting the Board's Legal Counsel in handling certain complaints against licensees.

In addition, he will be responsible for planning and conducting seminars, workshops and other education and information programs for the benefit of real estate licensees and the public.

Persons contacting the Board Office are reminded, however, that neither the Legal Information Officer nor any other member of the Board staff can answer questions or give advice concerning legal matters outside the scope of the Board's jurisdiction and authority. Such questions should be referred to a private attorney. □



Thomas R. Miller

Miller Named Legal Information Officer

Mr. Thomas R. Miller has been named by the Real Estate Licensing Board to the newly created position of Legal Information Officer (See "Legal Information Officer" on this page).

A native of Durham, Tom attended Davidson College where he was captain of the Rifle Team. He received his undergraduate degree cum laude in 1978. He then attended the University of North Carolina School of Law where he received his J.D. degree in May of 1981 and was admitted to the North Carolina Bar in September.

Tom is currently single but is engaged to be married in May to Miss Kimberly Jordan. They will reside in Raleigh. □

Trust Account Course

All classes have now been filled for the Board's Trust Account Record-keeping course. The courses will be offered March 15—May 15, and registrants will be notified of the time/place of their course approximately two weeks prior to the course offering.

REAL ESTATE BULLETIN

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

NORTH CAROLINA REAL ESTATE LICENSING BOARD

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James B. Hunt, Jr., Governor

BOARD MEMBERS

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EXAM RESULTS

EXAMINATION—November, 1981

	Passed	Failed
Brokers	88	138
Salesmen	160	80

EXAMINATION—December, 1981

	Passed	Failed
Brokers	74	126
Salesmen	115	55

*EXAMINATION—January, 1982

	Passed	Failed
Brokers	102	154
Salesmen	193	84

* Figures are incomplete. Examinees at certain test centers were re-scheduled because of hazardous weather conditions in the test center area.

COUNCIL

(Continued from Page 1)

Achievement Award in 1972 and its Alumni Award for Leadership and Dedicated Service in 1973. He is currently serving as President of the Fayetteville Housing Corporation and Vice President of the Board of Trustees of Fayetteville Technical Institute. A former member of the Board of Directors of the Fayetteville Area Chamber of Commerce, Mr. Council was named Businessman of

FROM THE MAILBAG

Response to a Recent Inquiry Regarding Abandonment of Claims to Disputed Trust Funds

Dear _____:

We have received your recent letter inquiring as to the procedure which should be followed by brokers in handling disputed trust funds. Of particular interest to you was the situation in which one of the disputing parties appears to have abandoned his claim to the funds, but the broker is unable to locate this person to confirm it. In this regard the Real Estate Licensing Board offers the following suggestions:

First of all, to help avoid potential disputes over the disbursement of trust funds (earnest money deposits, tenant security deposits, etc.), the broker should at the time he receives the funds make every effort to ensure that the buyer and seller (or landlord and tenant) have a clear understanding as to how the funds will be disbursed, especially in the event the transaction does not close. The sales contract or lease should contain clear and concise language to this effect.

If a dispute does arise, the broker should endeavor to assist the parties in reaching a satisfactory settlement. But if the broker is unsuccessful, he must retain the disputed funds in his trust account (Licensing Board Rule .0107(g)).

As to your specific question, if after a reasonable period of time it appears that one of the disputing parties may have abandoned his claim to the funds, then the broker should make every reasonable effort to contact this person to determine whether he is still actively pursuing his claim. A "reasonable period of time" may be 90 days after the last communication with this person concerning the funds. "Reasonable efforts" to contact the person would at least include several telephone calls and letters to the person's last known residence (and business) address.

If after an additional 30 days in attempting to contact this person the broker has received no response from him, then the broker may proceed to disburse the funds to the other party or in such other manner as may be dictated under the terms of the contract or lease. Brokers are warned, however, not to resort to this procedure in an attempt to circumvent in any way the provisions of Rule .0107, nor should a broker at any time disburse trust funds when he knows (or has reason to believe) that a dispute exists as to the disbursement. Furthermore, brokers are cautioned to maintain complete records documenting their efforts to locate the parties to the dispute.

While this will not release the broker from possible future civil liability in the event the disputing party should subsequently reassert his claim, nevertheless the disbursement of funds in accordance with this procedure would not be considered by the Real Estate Licensing Board to constitute an improper disbursement of disputed trust funds under Board Rule .0107(g).

I trust that this satisfactorily answers your question.

Yours very truly,

NORTH CAROLINA REAL ESTATE
LICENSING BOARD

□

the Year in 1974 by the Fayetteville Business League and Citizen of the Year in 1978 by the Omega Fraternity.

He is married to the former Jean-

nette Melvin who is Elementary Supervisor for the Fayetteville City Schools. They have one son, Thomas, age 12. □

Mobile Home Dealer's License

"Is a motor vehicles dealer's license required in order to list and/or sell mobile homes (even if the mobile home is affixed to land)?"

According to the Division of Motor Vehicles, mobile homes are considered motor vehicles, and therefore a motor vehicles dealer's license is generally required in order to advertise or sell them as an agent for another. However, a dealer's license is not required if the owner (or a previous owner) has cancelled the title to the mobile home, and the mobile home and the land to which it is affixed are being sold together.

To cancel the title, the owner must declare to the Registration Section of the Division of Motor Vehicles that the mobile home is on a permanent foundation (with the wheels dismantled), and that he does not intend to operate the mobile home on the highways. This declaration of intent should be in writing and may be in the form of a notation on the face of the title instrument.

When the Division of Motor Vehicles cancels the title, the mobile home becomes part of the real property, and it cannot again be sold as anything but real property until the title is reinstated (for details concerning the reinstatement of titles, owners should be referred to the Division of Motor Vehicles). In addition, once the mobile home becomes a part of the real property, a real estate license would be required in order to sell, lease, etc. it as an agent for another.

It should be pointed out, however, that if the mobile home is to be sold separately from the land on which it sits (even though it is affixed to the real estate and the title has been cancelled), a dealer's license is required.

In summary, a real estate broker without a motor vehicles dealer's license may sell a mobile home as the agent for another only when:

1. The title to the mobile home has been cancelled, and
2. the mobile home and the land on which it sits are sold together.

From The Board Room

The following are summaries of actions taken by the Real Estate Licensing Board since the publication of the last Bulletin. Persons interested in further details concerning these or other actions of the Board should contact the Licensing Board office.

Partial Re-take of Licensing Examinations

November, 1981—The Board adopted a policy whereby license applicants who pass one of the two sections of their licensing examination would not be required to re-take that section on their rescheduled examination. The policy became effective beginning with the March, 1982 examination.

License Renewal Stickers

December, 1981—The Board approved plans to issue "license renewal stickers" to licensees to be affixed to their real estate licenses (See "Rules and Regulations" below). A different colored sticker will be issued each year at the time the license is renewed. Inasmuch as the licenses of brokers and salesmen who are associated with a real estate firm are normally displayed together in the firm's office, it is hoped that the renewal sticker will serve as a reminder to those licensees who have failed to renew their licenses.

Fingerprints Discontinued

December, 1981—The Board voted to discontinue (effective with applications for the March, 1982 licensing examination) its general fingerprint requirement for license applicants, and to instead require fingerprints of only those applicants whose license applications or other information indicate that a more complete and detailed character investigation is warranted.

Business Brokerage

January, 1982—The Board re-

viewed a recent magazine article which described the activities of North Carolina "business brokers" (i.e., persons who price, market, and negotiate the purchase and sale of businesses and business opportunities for others). The Board directed its Legal Counsel to issue a general notice to the public setting forth the Board's position that **persons who act as agents in the purchase, sale, or exchange of businesses in North Carolina which include real estate, leases, or any interest therein must first obtain a North Carolina real estate license.**

Rules and Regulations

January, 1982—The Board ordered a rule-making hearing for the purpose of receiving comments from the public relevant to the proposed amendment of certain rules and regulations of the Board. In general, the subjects and issues to be addressed by the new rules include: Requiring the display of license renewal stickers (Rule .0101); acceptance of license applications based upon a postmark date (Rule .0302); the addition of trust account guidelines to license examination subject matter (Rule .0402); and subjecting persons to certain real estate education as a condition for reinstatement of their licenses (Rule .0505).

(The rule-making hearing was held on March 9, but as of the printing of this Bulletin, a decision had not been made by the Board regarding the adoption of these Rules.)

Contract for Examinations

February, 1982—After soliciting and obtaining bids, the Board approved a contract with Educational Testing Service, the low bidder, to provide real estate licensing examination services to the Board during the period July 1982—June 1983. The contract was approved by the Division of Purchase and Contract of the N. C. Department of Administration in accordance with established procurement procedures for state agencies. □

For further information concerning mobile homes and dealer's licenses, you should contact the Registration Section (919/733-3025) or the License and Theft Section (919/733-7872) of the N. C. Division of Motor Vehicles. □

"Warehousing" Salesman Licenses

Since January, applicants for salesman licenses have no longer been required to have a supervising broker in order to take the licensing examination. However, a designated supervising broker is still required before an **active** license can be issued to a salesman and before the salesman can engage in the real estate business. However, despite this more lenient policy, we find that a number of applicants prefer to have active salesman licenses even though they do not intend to use the license. To obtain an active license, they find a broker who will agree to "sponsor" them and to "warehouse" their license. We are even aware of incidents where the broker gives the license certificate to the salesman. Warehousing the licenses of inactive salesmen and relinquishing possession of licenses to salesmen can have very serious consequences for both the supervising broker and the salesman.

Regarding the broker, there is the danger that the salesman may occasionally engage in licensed activity without the broker's knowledge. For example, "helping" a relative purchase a home, or referring a prospective buyer or seller to another broker upon the promise or expectation of compensation. Should the salesman perform these or any other acts which require a real estate license without his broker's supervision, the broker could be held to be in violation of the License Law.

As to the salesman, should the salesman represent and/or receive any compensation from a broker other than his designated supervising broker, or otherwise operate as a salesman without the supervision of his broker, such salesman may also be considered to be in violation of the License Law.

CAVEAT: Brokers should not agree to sponsor or supervise salesmen unless they in fact intend to exercise proper supervision over the salesman. Failure to properly supervise a salesman can result in loss of licensure to both the supervising broker and the salesman. □

Disciplinary Action

The Real Estate Licensing Board suspended the broker's license of J. EDWARD SWICEGOOD, JR., of Lexington for nine months for mishandling rents collected on behalf of a property owner whose property he managed. The Board found that Swicegood deposited the rents into his business account rather than his escrow account, and two checks issued to the owner for rental proceeds were returned for insufficient funds. After the complaint was investigated, Swicegood repaid the delinquent funds to the owner with interest.

The Licensing Board suspended the broker's license of MARVIN D. DICKENS of Fayetteville for 90 days for using rental security deposits in his escrow account for personal purposes. The Board noted that Mr. Dickens has restored all of the funds in question to his escrow account.

The Licensing Board publicly censured JOHN T. BELL of Goldsboro for engaging in racial discrimination in the marketing and sale of property developed by him in Morehead City. The Board found that Mr. Bell told his sales agents not to sell the properties to black persons. The Board also referred the record of the case to the United States Attorney. Although the Board's action was taken in August, 1981, the decision was stayed while Bell appealed to the Wake County Superior Court. He recently withdrew the appeal.

The Licensing Board reprimanded broker CLAUD LIN BROOKS of Wilkesboro for failing to deposit earnest money in his trust or escrow account within the time required by the Board's regulations, and failing to maintain proper records of the transaction, including a copy of the offer to purchase. □

EXAMINATION SCHEDULE

FILING DATE

June 14	July 24, 1982
July 19	August 28, 1982
August 16	September 25, 1982
September 13	October 23, 1982
October 11	November 20, 1982
November 8	December 18, 1982

NORTH CAROLINA
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