



NORTH CAROLINA
REAL ESTATE LICENSING BOARD

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*North Carolina Real Estate License Law
25th Anniversary
1957-1982*

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

A. P. Carlton Greensboro
Chrm.
Bart Bryson Hendersonville
V. Chrm.
Fred H. Adams Cary
B. Hunt Baxter, Jr. New Bern
Thomas Council Fayetteville
Dee McCandlish Charlotte
Brantley T. Poole Raleigh
Phillip T. Fisher Exec. Director
L. Ted Gayle Admin. Director

EXAM RESULTS

EXAMINATION—April, 1982

	Passed	Failed
Brokers	77	175
Salesmen	145	102

EXAMINATION—May, 1982

	Passed	Failed
Brokers	124	149
Salesmen	146	98

EXAMINATION—June, 1982

	Passed	Failed
Brokers	96	210
Salesmen	122	104

(Includes persons taking only one section of examination.)

RENEWAL REPORT

Brokers and Salesmen Renewed
as of July 1, 1982 ... 41,523
Corporations Renewed
as of July 1, 1982 ... 1,944
Total Licenses
as of July 1, 1982 ... 43,467

Approximately 88% of all brokers, salesmen and corporations renewed their licenses before the June 30 expiration date. Last year, 87% had renewed their licenses by that date.

MEET YOUR LICENSING BOARD



From left to right, seated, A. P. Carlton (Chairman), Bart Bryson (Vice-Chairman), standing, B. Hunt Baxter, Jr., Thomas Council, Dee McCandlish, Brantley T. Poole, Fred H. Adams.

SOUTH CAROLINA RECIPROCITY

The North Carolina Real Estate Licensing Board and the South Carolina Real Estate Commission have entered into a formal reciprocal licensing agreement whereby North Carolina real estate brokers and salesmen can under certain conditions qualify for nonresident South Carolina real estate licenses without having to pass South Carolina's real estate licensing examination. This formal agreement clarifies the terms and conditions of the verbal agreement under which the South Carolina Commission and the North Carolina Board have for many years operated.

Among other things, the Agreement requires North Carolina brokers to maintain a place of business in North Carolina. It prohibits North Carolina brokers from maintaining a place of business in South Carolina unless a resident South Carolina broker is placed in charge of such office. And it prohibits North Carolina brokers and salesmen from being employed by or associated in business with a resident South Carolina broker or brokerage firm.

Licenses issued under this Agreement to North Carolina brokers and salesmen become invalid should the North Carolina licensee establish residence in South Carolina.

Of course, the same terms and conditions apply to South Carolina brokers and salesmen applying for nonresident North Carolina real estate licenses.

BOARD ELECTS OFFICERS

A. P. Carlton of Greensboro has been elected Chairman of the Real Estate Licensing Board for the year beginning August 1, 1982. Mr. Carlton is a former Chairman of the Board and is recently retired from the real estate business after more than 25 years of active involvement.

Mr. Carlton is currently serving on the Board of Directors of the National Association of Real Estate License Law Officials and has just recently completed a one-year term as President of Educational Testing Service's Real Estate Licensing Examinations Advisory Committee.

Bart Bryson of Hendersonville has been elected Vice Chairman of the Board for the coming year. Mr. Bryson is owner of Realty World-Bryson Realty.

A Member of the Appraisal Institute (MAI), he is immediate past President of Chapter 40 of the American Institute of Real Estate Appraisers and a member of the Society of Real Estate Appraisers. He is also active in real estate education, serving as Chairman of the Licensing Board's Education Committee and has taught numerous courses in real estate appraisal and brokerage at various educational institutions. □

A copy of the complete Reciprocal Licensing Agreement is available from the Licensing Board office upon request.

The North Carolina Real Estate Licensing Board takes pride in introducing to you the members of its staff. With a combined total of more than 100 years of service with the Board, they stand ready to assist real estate consumers and licensees in every possible way. [NOTE: Years of service with Board indicated in parenthesis ().]

To expedite the handling of your questions and problems, we suggest that you refer to this article when contacting the Board office so that your inquiry can be promptly directed to the appropriate staff member.

ADMINISTRATIVE



Phillip T. Fisher (7), Executive Director, is the chief executive officer of the Board responsible for the overall conduct of Board programs and operations. He is also editor of the *Real Estate Bulletin*.



L. Ted Gayle (2½), Administrative Director, administers the licensing program. Ted also works closely with the Board's Trust Account Auditors and was instrumental in planning and conducting the Trust Account Workshops.



Mary Frances Whitley (3½), Financial Officer, processes and maintains all of the Board's financial records and supervises the secretarial and clerical staff. She also acts as Recording Secretary at Board Meetings.



Jeanette Hamm (6) is secretary to the Executive and Administrative Directors. Jeanette also assists in the production and distribution of the Board's publication, *It's Your Move*, and other projects.

LEGAL



Harry H. Harkins, Jr. (3½), Legal Counsel, is an Assistant Attorney General assigned to the Board. Harry advises the Board on legal matters and handles complaints against real estate licensees.

MEET THE STAFF



Thomas R. Miller (6 months), Legal Information Officer, answers inquiries from the public and licensees and performs legal research on topics relating to the License Law, Board Rules, and brokerage practices.



Nancy Ross (4), Legal Secretary, is secretary to the Board's Legal Counsel. In addition to typing the legal documents, Nancy maintains all files and records pertaining to complaints against licensees.

EDUCATIONAL



Larry Outlaw (3½), Education Director, is responsible for developing and administering the Board's education programs and co-ordinating the licensing examination program.



Penny Childress (4¼), is secretary to the Education Director and Trust Account Auditors. Penny types all reports/correspondence and maintains files on education and trust account matters.

INVESTIGATIVE



James K. Clinard (16), Field Representative, investigates complaints against licensees in the Piedmont area (includes Triad area and Raleigh). Before joining the Board, Jim was a patrolman for the State Highway Patrol.



Rodolph Hill (13½), Field Representative, investigates complaints in the eastern area of the state (Fayetteville to the sea). Rodolph was a law enforcement officer in Kinston before joining the Board.



Everett Jenkins (9¼), Field Representative, investigates complaints in the western part of the state (Charlotte west). His prior law enforcement experience included 11 years with the State Highway Patrol.

AUDITORS



Nancy C. Adams (9 months), Trust Account Auditor, audits real estate trust accounts on a statewide basis. Nancy is a licensed real estate broker and has successfully passed her CPA examination.



Emmet R. Wood (9 months), Trust Account Auditor, is both a CPA and a licensed real estate broker, having been previously associated with public accounting and real estate brokerage firms in Raleigh.

LICENSE APPLICATIONS



Gloria Williams (11), Application Processor, reviews and processes all applications for broker and salesman licenses and coordinates with the testing service the scheduling of applicants for examination.

LICENSING/RECORDS



Naomi Cottle (8¼), Records Clerk, is responsible for maintaining and updating all files and records on licensees. Naomi also supervises the processing of all license renewal applications.



Vickie Crouse (3½), Salesman/Corporation Clerk, reviews and processes applications for corporation licenses and requests for transfer of salesman licenses. Vickie also issues all real estate licenses.



Mildred Combs (5¼), Clerical Assistant, assists in the processing of license applications, the filing of records, and the issuance of licenses, as well as other clerk-typist activities.

RECEPTIONIST



Carrie Worthington (3), Receptionist, receives phone calls, answers questions or refers callers to other staff members. Carrie also coordinates press releases and assists in a variety of other activities.

ANSWERLINE

Thomas R. Miller
Legal Information Officer

During my first six months as Legal Information Officer for the Real Estate Licensing Board, I have responded to dozens of your questions over the telephone and through the mail. Since the following questions have come up fairly frequently, I thought that they may be of interest to all licensees. If you desire further information concerning any of these questions, please feel free to contact me.

- Q. Although I have a real estate license, can I still advertise the sale of my personal residence as being "FOR SALE BY OWNER"?
- A. **Yes. Licensing Board Rule .0105 requires that an advertisement reveal that a sale is broker-handled only when the broker is selling real estate that belongs to another person. When a broker or salesman is selling his own property, Rule .0105 does not apply. However, the Licensing Board strongly recommends that when a broker or salesman advertises the sale of his own property, he reveal that he is a licensed real estate broker or salesman. This will serve to eliminate the surprise consumers experience when they discover that the seller is a licensed broker or salesman and will put them on notice that the seller possesses special expertise in real estate matters.**
- Q. I have a real estate salesman's license. I have recently terminated my association with my previous supervising broker, and I am now looking for employment with a new supervising broker. While my license is temporarily inactive, may I receive payment from my previous broker for transactions I handled while associated with him?
- A. **Yes. Although Section 93A-6(a)(5) of the License Law prohibits a salesman from accepting a commission or other valuable consideration from any person other than his supervising or employing broker, the salesman can continue to receive compensation from a former broker for services performed while in that broker's employ.**
- Q. As a business broker, I know that I must have a real estate license to handle the sale of a business that will involve the sale of real estate. But must I also have a real estate license if the business will only involve the renegotiation of a lease?
- A. **Yes. The Real Estate Licensing Board maintains that if the sale of a business involves the transfer of an interest in real property, then the person handling the sale must have a real estate license. Therefore, since a leasehold is an interest in real property, a business broker who handles the sale of a business involving the transfer of a lease must have a real estate license.**
- Q. I am a licensed real estate broker working at a condominium and time-sharing development. Many property owners at this development have friends who might also be interested in purchasing units. May I offer to compensate these property owners for referring their friends to me, so long as the compensation is not conditioned upon a sale of the property?
- A. **No. Section 93A-6(a)(9) of the License Law makes it unlawful for real estate licensees to pay a commission or valuable consideration to any person for acts or services performed in violation of the Real Estate License Law. Since the referring of prospective purchasers of real estate to real estate brokers is an act for which a real estate license is required, it would be unlawful for a broker to pay a referral fee to an unlicensed person whether conditioned upon a sale or not.**

Whenever you have a question concerning the Real Estate License Law or Licensing Board Rules, do not hesitate to contact me. ☐

1982 Instructor Workshop

The third annual Real Estate Instructor Workshop was held in Raleigh on June 21-22, 1982. This year's workshop, which was co-sponsored by the North Carolina Real Estate Licensing Board and the new North Carolina Real Estate Educators Association, again proved to be extremely successful. There were 115 workshop participants representing various schools and organizations involved with real estate education. Also in attendance were several guest participants and representatives from two leading real estate publishers.

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

Some of the major topics addressed at this year's workshop were:

- Pre-Licensing Education Update
- How to Prepare and Analyze Examinations
- Classroom Communications (Body Language)
- New Developments in Real Estate Financing
- Timesharing in North Carolina
- Duties and Responsibilities of Real Estate Agents
- Open Discussions on Standards for School Licensure/Approval and Licensing Requirements

The second day featured the first annual meeting of the North Carolina Real Estate Educators Association (NCREEA), which was highlighted by a decision to affiliate with the [National] Real Estate Educators Association. The newly elected president of the NCREEA for 1982-83 is Linda L. Johnson of Appalachian State University. NCREEA membership now stands at 162 and the future for this new organization is very bright.

In view of the continued success of these annual instructor workshops, the Licensing Board and the NCREEA plan to continue sponsoring this event in the future. The support of the dedicated real estate educators who make these workshops so successful is greatly appreciated by the Licensing Board. ☐

BROKERING REAL ESTATE IN DIFFICULT TIMES

From the title of this article, you may be under the impression that it contains some secret formula for success or survival in today's difficult real estate market. It does not. Instead, it is designed and intended to bring to your attention some of the pitfalls which face real estate brokers and salesmen who are trying to cope with dwindling profits and the baffling array of financing techniques which typify current real estate transactions.

"Borrowing" Trust Funds

The Real Estate Licensing Board has experienced a growing number of incidents of real estate brokers "borrowing" their clients' trust funds to meet pressing cash flow problems within their firms. The brokers justify their actions by claiming that they are only temporarily using the money and that they have every intention to return the funds to their trust accounts before they are needed by their clients.

Needless to say, such actions are absolutely prohibited. Any use of trust funds by brokers or salesmen for purposes other than those expressly stated in the authorizing document (offer to purchase, lease, etc.) is a direct violation of the Real Estate License Law and will not be tolerated by the Real Estate Licensing Board.

Creative Financing

More than ever before, the ability to finance real estate purchases is the key to making sales. Yet high mortgage interest rates

have stymied many would-be homebuyers. To counter these high interest rates, an almost infinite variety of financing plans and arrangements have emerged: "Variable Rate Mortgages", "Adjustable Rate Mortgages", "Renegotiable Rate Mortgages", "Buy-Downs", "Wrap-Arounds", "Land Leases", "Resale/Refinance Programs", "0% Loans"—just to name a few.

Understanding the many fine points and details of these so-called "creative financing" plans would surely challenge the wits of the most experienced banker or lender. Yet every day, real estate consumers, desperate to satisfy their housing needs, enter into these sometimes complicated and sophisticated financial agreements, often upon the advice and encouragement of the real estate broker or salesman.

While the Real Estate Licensing Board does not wish to restrict in any way the use of any legitimate financing technique, the Board is concerned that the decisions of consumers to enter into these financial arrangements may not always be based upon a clear understanding of the mechanics and ramifications of such financing (especially when it involves negative amortization).

Although it is true that real estate agents must at all times protect and promote the interests of their principals (usually the seller), they are also obligated to treat all parties to the transaction fairly.

While this does not require the broker to personally explain to the purchaser all of the intricacies involved in the various new financing arrangements, the broker should make every effort to ensure that the purchaser receives complete and accurate information.

Real estate brokers and salesmen should not attempt to explain any financing plan about which they are not fully informed. Rather, they should refer the purchaser to a competent and experienced lender or attorney for financial or legal advice concerning the proposed financing arrangements.

Summary

While the Real Estate Licensing Board recognizes and appreciates the difficulties confronting agents in today's real estate market, the Board cannot excuse brokers and salesmen who fail to strictly adhere to the requirements of the Real Estate License Law, the Board's Rules and Regulations, and established standards of real estate practice.

Brokers and salesmen are especially cautioned (1) not to use client funds for their own personal or business purposes (whether on a temporary basis or otherwise), and (2) to make every reasonable effort to assure that purchasers/borrowers are fully informed as to the terms and conditions of their loans before they enter into a loan or financing agreement. □

QUESTIONS AND ANSWERS ON TRUST ACCOUNTS (Advance Rental Deposits)

- Q. As a real estate broker who is actively involved in renting resort cottages and condominiums (usually on a weekly basis), I require prospective tenants to pay an "advance rent deposit". The purpose of the deposit is to reserve the cottage for the tenant's use for a specific period of time and is refundable only in the event the landlord breaches the rental agreement or the cottage is unavailable for occupancy by the tenant. My question is: Upon receipt of the "advance rent deposit", may I deduct my rental commission and forward the balance to the property owner?
- A. The "advance rent deposits" as described would be considered "trust funds" and therefore subject to the same requirements of the Real Estate License Law and the Real Estate Licensing Board's Rules and Regulations governing other forms of trust funds (earnest money deposits, tenant security deposits, etc.). As with tenant security deposits, "advance rent deposits" must be held by the broker in his/her trust account until the termination of the tenancy or occupancy **unless the tenant otherwise agrees in writing**. Should the tenant consent to this advance disbursement of his rent deposit, the broker may **with the written permission of the property owner** deduct his rental commission from the "advance rent deposit".

Real Estate Agents' Liability For Misrepresentation As To Size Of Property

In *Cameron v. Terrell & Garrett, Inc.*, 618 S.W. 535 (1981), a Supreme Court decision out of Texas, the Supreme Court held that a purchaser could state a cause of action and bring a successful claim against a real estate agent under that state's deceptive trade practices—Consumer Protection Act.

The argument by the purchasers was that they were consumers within the meaning of the Act, mentioned above, and that they were entitled to bring a cause of action against the real estate agent where they purchased a house, and the house had been represented to be

(Continued on Page 6)

DISCIPLINARY ACTION

The Real Estate Licensing Board revoked the broker's license of J. EDWARD SWICEGOOD, JR., of Lexington, who sold several families houses on "land contracts" or installment sale contracts. The purchasers made monthly payments on the land contracts to Swicegood for several years, without knowing that Swicegood had subsequently mortgaged the properties. Swicegood then defaulted on his loans that were secured by the properties being sold under land contract. The Board also found that Swicegood made false statements to the lending institutions to obtain said loans.

The Licensing Board revoked the broker's license of WILLIAM E. LEWIS of Winston-Salem for converting trust funds to his own use. The Board found that Lewis sold a house listed with him and deposited the sale proceeds in his operating business account rather than a trust account. Lewis then spent the proceeds and was unable to account to the seller until immediately prior to the Board's hearing.

The Licensing Board by Consent Order revoked the broker's license of GRADY PERKINS of Raleigh. Perkins did not contest allegations that he commingled his principals' funds with his own, failed to deposit funds of others in an escrow account, prepared false closing statements, converted his principals' funds to his own use and failed to keep proper records.

The Licensing Board revoked the broker's license of W. TERRY MCGOVERN of Kill Devil Hills for converting trust funds to his own use. A random audit by the Board's Trust Account Auditor detected a shortage in McGovern's escrow account of over \$68,000. The Board found that McGovern had accepted numerous advance rental deposits on resort properties managed by him, and had used these deposits to finance a time-sharing project he was building.

The Licensing Board suspended the broker's license of FENTON H. HARRIS of Jacksonville for 60 days for issuing checks drawn on his escrow account that were returned for insufficient funds, and for failing to keep proper trust account records. Harris failed to deposit all rent receipts in a trust account. The Board also ordered Harris and his bookkeeper to take the Board's Trust Account Course.

The Licensing Board reprimanded broker MILDRED Y. JEWELL of Sanford for failing to verify that one of her listings had an electric heat pump. The house actually had another type of heating unit. The buyers purchased the house based on the statement in the MLS listing that the house had a heat pump. The buyers were compensated by Mrs. Jewell's former broker's errors and omissions insurance carrier. □

AGENTS

(Continued from Page 5)

2,400 sq. ft., but in fact it only had 2,245 sq. ft. The purchasers alleged damages of \$3,419.30 which they computed by multiplying the cost of the house per sq. ft. as represented, which was \$22.06 (x) the sq. ft. deficiency of 155 sq. ft. They also sought treble damages, reasonable attorney fees and court costs.

The Supreme Court, reversing the lower decision, held for the plaintiffs and allowed not only the damages mentioned, but also the treble damages, attorney fees and court costs, as authorized under the special Act, noted earlier.

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Although the Real Estate Licensing Board is unaware of any similar ruling or decision holding that such activity violates North Carolina's Deceptive Acts or Practices Act, nevertheless it underscores the importance for real estate brokers and salesmen to accurately measure and state the square footage of structures. □

RENEWAL STICKERS

Have you displayed your 1982-83 license renewal sticker on your real estate license? This sticker accompanied your annual pocket renewal card. The Board's Field Representatives and Trust Account Auditors will be looking for your stickers when they visit your office. Failure to display your renewal sticker can result in disciplinary action by the Licensing Board.

If you do not have a sticker, you should contact the Board office for instructions.