



NORTH CAROLINA
REAL ESTATE LICENSING BOARD

Real Estate Bulletin

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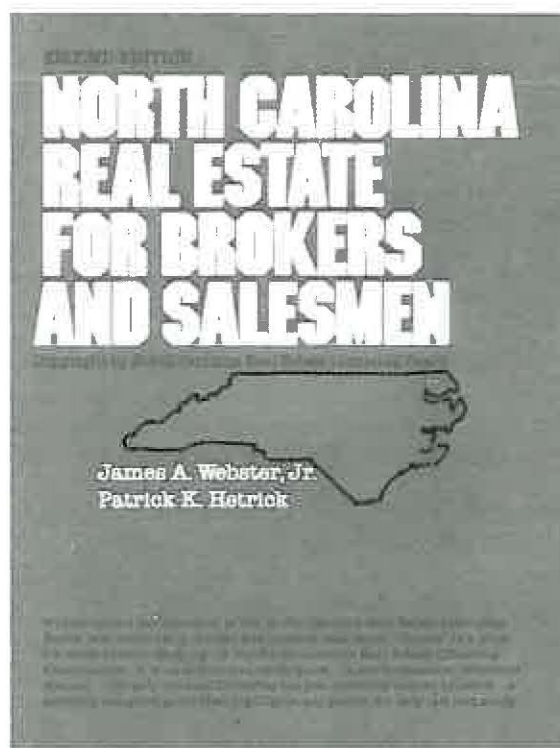
The North Carolina Real Estate Licensing Board is pleased to announce publication by Prentice-Hall, Inc. of the revised 2nd edition of its highly acclaimed text and reference book, **NORTH CAROLINA REAL ESTATE FOR BROKERS AND SALESMEN**. The original edition, which was written for the Licensing Board by Dr. James A. Webster, Jr. (now deceased) of the Wake Forest University School of Law and published in 1974, has been completely revised by Patrick K. Hetrick of the Campbell University School of Law.



Mr. Hetrick has ably performed the difficult task of thoroughly revising, reorganizing, and updating this

authoritative book to improve its usefulness as both a textbook for real estate prelicensing courses and a comprehensive reference book for real estate licensees. He has achieved the Board's goal of producing a more useful and practical revised edition with broader coverage while retaining the scholarly character of Dr. Webster's outstanding original work.

Also contributing greatly to the 2nd edition were John M. McCracken and Dale A. Swift, practicing brokers and appraisers in Greensboro, who jointly rewrote the



chapter on "Real Property Valuation", Robert O. Loftis, Jr. of Campbell University School of Law, who wrote the new chapter on "Federal Income Taxation of Real Estate", and Larry A. Outlaw, Licensing Board Education Director, who edited the entire book and supervised the revision process.

Highlights of the 2nd Edition

- Added coverage of new financing practices, landlord-tenant laws, consumer protection legislation, timesharing, taxation, and other topics.

- Expanded coverage of all topics, especially financing, property valuation, agency law, title assurance, closing, real estate contracts, and land use controls.
- Completely new format which parallels the Licensing Board's "Fundamentals of Real Estate" pre-licensing course outlines and greatly enhances the readability and usefulness of the book.
- Extensive use of graphics, boldface type and italics to emphasize key points and terms.
- Numerous sample forms, examples and tables for illustrative purposes.
- Expanded and revised glossary featuring over 130 new entries and cross-references to related entries.

The Licensing Board thinks you will find the revised 2nd edition of **NORTH CAROLINA REAL ESTATE FOR BROKERS AND SALESMEN** to be an essential and valuable reference book. All North Carolina real estate licensees are urged to obtain a copy of this book. □

SEE PAGE 3
FOR ORDER FORM

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

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NEW TELEPHONE NUMBER

The Real Estate Licensing Board has joined the State Telephone Network. Please note the following new telephone number when calling the Licensing Board office:

919/733-9580

EXAM RESULTS

EXAMINATION—July, 1982

	Passed	Failed
Brokers	120	175
Salesmen	161	67

EXAMINATION—August, 1982

	Passed	Failed
Brokers	92	131
Salesmen	141	119

EXAMINATION—September, 1982

	Passed	Failed
Brokers	83	134
Salesmen	81	54

EXAMINATION—October, 1982

	Passed	Failed
Brokers	56	104
Salesmen	124	74

NOTICE OF HEARING

Notice is hereby given that the North Carolina Real Estate Licensing Board, pursuant to the authority vested in it by Section 93A-3(c) of the General Statutes of North Carolina proposes to:

1. Adopt a new rule to be contained in Title 21, Chapter 58 of the North Carolina Administrative Code, codified and summarized as follows:
.0110 Designated Broker—Every real estate firm or branch office thereof shall designate a licensed broker to assume responsibility for the proper display of licenses of all licensees associated with the firm, notification to the Licensing Board of changes in the firm's business address or trade name, the proper conduct of the firm's advertising, and the proper maintenance of the firm's trust account and transaction records.
2. Adopt a new paragraph (b) to be added to Rule .0506 of Title 21, Chapter 58 of the North Carolina Administrative Code, codified and summarized as follows:
.0506(b)—The supervising broker of a licensed real estate salesman shall actively and personally supervise the salesman. Failure to supervise a salesman will subject the supervising broker to discipline by the Licensing Board.
3. Amend Rule .0102 of Title 21, Chapter 58 of the North Carolina Administrative Code by deleting that portion of the rule which permits a licensed real estate salesman to manage a branch office of a real estate firm.

The new rule .0110, the new paragraph (b) of Rule .0506 and the change in Rule .0102 are proposed to become effective on April 1, 1983.

Notice is also given that any person interested in these rules may present written or oral comments relevant to the action proposed at a public rule-making hearing to be held at the office of the North Carolina Real Estate Licensing Board, 1200 Navaho Drive, Raleigh, North Carolina, on January 20, 1983 at 3:00 p.m. Written statements not presented at the public hearing should be directed, so as to be delivered not later than January 31, 1983, to the office of the North Carolina Real Estate Licensing Board, 1200 Navaho Drive, Post Office Box 17100, Raleigh, North Carolina 27619.

Copies of the proposed rules are available for public inspection, or may be obtained upon request from the Real Estate Licensing Board.

This the 30th day of December, 1982.

PHILLIP T. FISHER

Phillip T. Fisher, Secretary-Treasurer

FROM THE BOARD ROOM

Board Members Re-appointed

Board Members Bart Bryson, B. Hunt Baxter, Jr., and Thomas Council have been re-appointed to the Real Estate Licensing Board by Governor Hunt for terms expiring July 31, 1985.

Mr. Bryson, a Hendersonville real estate broker and appraiser, is currently serving as Vice Chairman of the Board. Mr. Baxter, an attorney, resides in New Bern and is one of the Board's two "public members." Mr. Council is a Fayetteville real estate broker and is Chairman of the Board's Education Committee.

Carlton Elected NARELLO Director

Board Chairman A. P. Carlton of Greensboro has been re-elected to the Board of Directors of the National Association of Real Estate

License Law Officials (NARELLO). Board Executive Director Phillip T. Fisher has also been named Chairman of the Association's Interstate Cooperation Committee and Board Legal Counsel Harry H. Harkins, Jr. will serve as Chairman of the Legal and Professional Conduct Committee for the coming year.

The Association consists of real estate licensing officials and administrators from the various states and provinces of the United States and Canada. Its primary purpose is to promote the better administration and enforcement of real estate license laws.

Board Wins National Education Award

The National Association of Real Estate License Law Officials

(Continued on Page 5)

ANSWERLINE

by
Thomas R. Miller
Legal Information Officer

- Q. I am a licensed real estate broker. In order to stimulate interest in the properties I have listed, may I offer a "bonus" to any selling agent who assists in selling my listings?
- A. Yes, but there are some limitations. First of all, the "bonus" should be paid in a manner that will not interfere with any employment contract between the selling agent and his employer. In addition, since Section 93A-6(a)(5) of the License Law prohibits a licensed real estate salesman from accepting a commission or other consideration from anyone other than his employing broker, when the selling agent is a salesman, the "bonus" should be paid through his employing broker and not directly to the salesman.
- Q. I am a licensed real estate broker engaged in property management. May I withhold a portion of the tenant security deposit to cover the cost of routine cleaning between tenants?
- A. No. The answer to this question is found in the Tenant Security Deposit Act which states in Section 42-52 that "The landlord (or his agent) may not withhold as damages part of the deposit for conditions that are due to normal wear and tear nor may the landlord retain an amount from the security deposit which exceeds his actual damages." Since "routine cleaning" is performed to correct conditions that are due to normal wear and tear, no portion of the security deposit may be retained for that purpose. [Although the Tenant Security Deposit Act is not part of the License Law, licensees involved in rentals or property management should be thoroughly familiar with its provisions.]
- Q. I have an inactive real estate salesman's license. May I accept a referral fee while my license is inactive if I do not become involved in the ultimate negotiations or consummation of sale?
- A. No. Licensing Board Rule .0504(c) states that the holder of an inactive real estate license shall not act in any capacity for which a real estate license is required until his license has been reactivated. According to a recent decision of the North Carolina Court of Appeals, a finder who, for a fee, assists in bringing the parties to a real estate transaction together must have an active real estate license, even though he does not participate in the ultimate negotiation and consummation of the sale. ☐

SCHWEIDLER SCHOLARSHIP AWARDED

Judy H. Older of Durham and Carolyn W. Thomasson of Charlotte have been named co-winners of the Joe Schweidler Memorial Scholarship for the year 1982. 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 the first session of Course B of the REALTORS' Institute, and consists of the tuition fee for Course C of the Institute. Mrs. Older and Mrs. Thomasson recorded identical grades in attaining the highest scholastic average in Course B; therefore, they were each awarded scholarships recognizing their outstanding individual achievements.

Mrs. Older is a 1966 graduate of Duke University. She obtained her real estate salesman license in 1981 and is associated with Chesson REALTORS in Durham. Mrs. Older is also very involved with Triangle Hospice which provides home care and a support system for patients and their families coping with terminal illness.

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ORDER FORM

NORTH CAROLINA REAL ESTATE FOR BROKERS AND SALESMEN (2nd edition)

Prentice-Hall, Inc.

Please send me _____ copy(ies) of NORTH CAROLINA REAL ESTATE FOR BROKERS AND SALESMEN, 2nd edition, by James A. Webster, Jr. and Patrick K. Hetrick. Enclosed is a check or money order payable to Prentice-Hall, Inc. in the amount of \$ _____ (\$24.95 per copy, including postage and handling).

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UNLICENSED PROPERTY MANAGEMENT

Property Management is one of the fastest growing and most specialized areas of the real estate business. While the term "property management" encompasses a broad range of complex activities, it may in its simplest form be said to consist of (1) procuring suitable tenants for rental property, (2) collecting rents/security deposits, (3) providing for the care and maintenance of the leased premises, and (4) maintaining records regarding the property.

Because of the continuing nature of the relationship between the property manager and the property owner and the high degree of control which the manager exercises over the owner's property, property managers and their employees are placed in a special position of trust and confidence. They become "surrogate" or "proxy" owners of the property. Indeed, from the tenant's standpoint, they are the owners of the property.

It is little wonder then why the framers of the Real Estate License Law included the "leasing" or "renting" of real estate as acts for which a real estate license is required. Yet in recent weeks, several incidents have come to the attention of the Real Estate Licensing Board which would suggest widespread confusion or misunderstanding as to the licensing requirements for property managers. The confusion appears to center around the "owner exemption" from the licensing requirements.

The following is an attempt to dispel some of this confusion by describing and discussing three common fact situations involving (1) an independent property management firm, (2) a property management firm which is a subsidiary corporation of the property owner, and (3) a property owner whose employees manage the owner's property:

Fact Situation #1

Acme Property Management Corporation, an independent firm, manages an apartment complex for the owner. Acme employs persons as resident managers to show the apartments to prospective tenants, execute leases, collect security deposits and rents, and to arrange for needed repairs and maintenance to the property. What real estate licenses are required?

Since Acme is acting as an "agent" of the owner, it must obtain a Corporation Real Estate Broker's License which would require at least one executive officer of the corporation to be licensed as a North Carolina real estate broker. (The licensing of the corporation, however, does not entitle any of the corporation's officers, directors, stockholders, or employees to engage in property management or leasing activities.) All persons who are employed by Acme as resident managers or leasing agents, or who are otherwise involved in the renting or leasing of the apartments must have individual real estate broker or salesman licenses. (The fact that they are employees of the management firm does not in any way exempt them from the licensing requirement.)

[NOTE: A real estate license would not be required of clerical, maintenance or janitorial personnel or other persons who are not involved in the renting or leasing of real estate.]

Fact Situation #2

The ABC Group, a limited partnership, owns several shopping malls. Rather than employ an independent property management firm to manage its properties, ABC decides to form a separate management corporation which will be a wholly owned subsidiary of ABC and will employ "on site" persons to manage the properties (find tenants, collect rents, etc.). What real estate licenses are required?

Since the management corporation is acting as an "agent" of ABC, it must obtain a Corporation Real Estate Broker's License. (The fact that the management corporation is wholly owned by the property owners and that some or all of the owners also serve as officers of the management corporation does not excuse the management corporation from the corporation licensing requirement.) All persons who are employed by the management corporation as leasing agents

must have individual real estate licenses.

Fact Situation #3

John Smith, an unlicensed individual, owns a number of office buildings in Raleigh. John wants to manage these buildings using his own employees. What real estate licenses are required?

Neither John nor any of his employees are required to be licensed so long as his leasing personnel are, in fact, John's **regular employees**. (A real estate license is not required of an owner [whether a sole proprietorship, a corporation, or an association] when personally selling or leasing his own property, nor is a license required of the "regular employees" of the owner when selling or leasing property owned by their employer.)

To determine whether persons are **regular employees** of the property owner (as opposed to agents or independent contractors), the Real Estate Licensing Board applies inter alia the following tests:

1. Does the property owner personally exercise strict control and supervision over such persons?
2. Does the property owner compensate these persons on a salary basis rather than on a commission or transactional basis?
3. Does the property owner pay social security taxes on their earnings?

If the answer to any of these questions is "no", then a presumption is raised that the person is not, in fact, an employee of the property owner, and therefore a real estate license would be required in order for this person to handle real estate transactions for the owner.

To act as an agent in the leasing or renting of real estate without the required license(s) is a criminal offense, and the Real Estate Licensing Board will take whatever action is necessary to ensure full compliance with the real estate licensing requirements. □

IS IT OR IS IT NOT A HEAT PUMP?

When considering the purchase of a home, the prudent buyer will weigh a variety of factors before arriving at a decision. Near the top of his checklist will be the projected monthly cost of heating and cooling the home. Therefore, he will ask about the R factor of the insulation, storm doors and windows, attic fans, and perhaps most importantly, the type of cooling and heating system in the home.

Without advocating or endorsing any particular type of heating system or fuel source, suffice it to say that many home buyers consider the heat pump to be the most efficient and economical means of heating and cooling today's homes. Consequently, home sellers and their agents are quick to point out to these would-be buyers that the home is serviced by a heat pump.

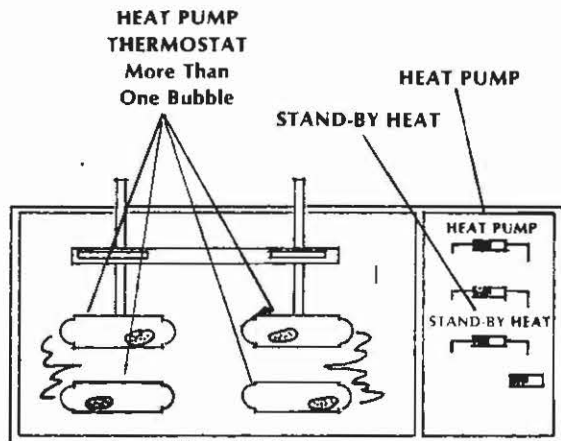
Unfortunately, most purchasers cannot by visual inspection or otherwise distinguish a heat pump from a conventional heating system. And perhaps even more disturbing is the fact that many real estate brokers and salesmen are unable to tell the difference. They merely accept the owner or builder's statements and blindly record the information on their listing and MLS sheets. As a

result, the Real Estate Licensing Board has received numerous complaints from persons who purchased homes which were represented by the real estate agent as having a heat pump only to find out later that it did not.

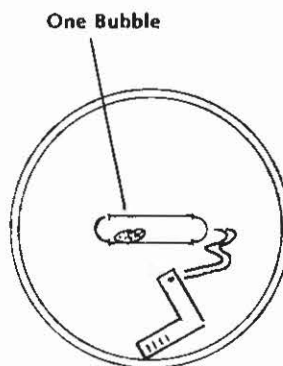
Hence, the question: "How can you tell a heat pump from a furnace or other conventional heating/cooling system?" The answer: "Look at the thermostat!" And follow these helpful hints:

1. If the thermostat is round, it's probably **not** a heat pump.
2. If the thermostat has a switch for "STAND-BY HEAT", it's a good sign that it is a heat pump.
3. If the thermostat is labeled "HEAT PUMP", it is almost assuredly a heat pump.
4. And if you are still in doubt, take off the cover. If it has more than one mercury-filled bubble, chances are 99 out of 100 that it is a heat pump.

Go through these simple steps even if you are told by the seller that the home has a heat pump—Even he may not know for sure. You will surely be doing yourself and the buyer a favor. □



CONVENTIONAL
FURNACE
THERMOSTAT



FROM THE BOARD ROOM

(Continued from Page 2)

(NARELLO) at its recent annual meeting presented to the North Carolina Real Estate Licensing Board three Certificates of Recognition for outstanding achievement in real estate education.

The Certificates were awarded to the Board for its publication of a high school real estate manual entitled "It's Your Move"; for the Board's efforts in the areas of trust account guidelines and seminars; and for the major revision and expansion of the textbook, **North Carolina Real Estate For Brokers and Salesmen** (see page 1).

The Board's education program is administered by Education Director Larry A. Outlaw. □

SCHOLARSHIP

(Continued from Page 3)

Mrs. Thomasson is a graduate of Flora MacDonald College. She has been a licensed real estate broker since 1978 and is associated with Merrill Lynch Realty/Townsend Co. in Charlotte. She and her husband John are active in the First Presbyterian Church in Mooresville and they have four daughters—two in high school and two at Western Carolina University.

The Real Estate Licensing Board and the Real Estate Educational Foundation congratulate Mrs. Older and Mrs. Thomasson and extend to them their best wishes for continued success and achievement in the real estate field. □



DISCIPLINARY ACTION

The Real Estate Licensing Board revoked the broker's license of BETTY L. PARSONS of West Jefferson for converting trust funds to her own use and failing to deposit same in a trust account. The Board found that Mrs. Parsons collected almost \$8,000 from prospective purchasers on a transaction that never closed, and failed to return same on demand. The Board also found that Mrs. Parsons prepared forged bank statements in an attempt to deceive the Board's Trust Account Auditors into believing that the funds were still in her trust account.

The Licensing Board revoked the broker's license of MILDRED B. RUSSELL of Albemarle for forging the signature of a property owner to a document guaranteeing payment of the electric bill of one of her clients.

The Licensing Board revoked the broker's license of PATRICIA M. WATSON of Southern Pines for embezzling funds from the trust account of the real estate office where she was employed as a bookkeeper. Mrs. Watson's employing broker voluntarily made up the shortages caused by her theft.

The Licensing Board revoked the broker's license of RAYMOND L. WALKER, JR., of Chapel Hill for failing to account to property owners for rent income he collected on their behalf.

The Licensing Board suspended the broker's license of KENT C. HADLOCK of Maggie Valley for one year for acquiring an interest in his principal's property without the knowledge or informed consent of the seller. The Board's action was originally taken in December of 1981, but was stayed while Mr. Hadlock appealed to Wake County Superior Court. He recently withdrew the appeal.

The Licensing Board suspended the broker's license of MARVIN E. MINTON of Nags Head for one year for converting trust funds to his own use and failing to deposit in a trust account all funds of others received by him as agent. The Board's Trust Account Auditor found that Mr. Minton withdrew funds from his company's escrow account as "commissions" which had not been earned by him. The Board further found that Mr. Minton had made up all shortages in his trust account at the time of the hearing, and had employed a competent bookkeeper. Accordingly, after Mr. Minton served 30 days of the one year suspension, the Board suspended its order and placed Mr. Minton on pro-

bation for five years, on condition that he not violate the Real Estate License Law and that he take the Board's trust account course offered by the auditing staff.

The Licensing Board suspended the broker's license of WILLIAM C. SPANN of Chapel Hill for one year for converting trust funds to his own use. The Board found that Mr. Spann had "borrowed" funds from his escrow account or withdrawn same as "commissions" before they were earned.

The Licensing Board suspended the broker's license of VERLENE D. WRIGHT of Gastonia for one year for encouraging and assisting a purchaser to furnish false information to a mortgage lender and to the Veterans Administration. The buyers had decided not to purchase the property, but Mrs. Wright encouraged them to take title to the property so that she could resell it. The buyers falsely represented that they intended to occupy the property as owners. The Board further ruled that after Mrs. Wright's license was suspended for 60 days, the sentence would be suspended and the remainder served on probation, on condition that she use her best efforts to restore the VA eligibility of the borrowers, take additional real estate education, and not violate any other provision of the License Law.

The Licensing Board suspended the broker's license of L. DOUGLAS BLACK of Gastonia for one year for encouraging and assisting the same purchasers to furnish false information to the mortgage lender and the Veterans Administration. The Board suspended its order and placed Mr. Black on probation for one year, on condition that he use his best efforts to restore the VA eligibility of the

borrowers, take additional real estate education, and not violate the License Law during the probationary period.

The Licensing Board suspended the broker's license of RICHARD C. CHAPMAN of Sanford for six months for selling his principals' house to financially unqualified purchasers. The sellers never collected a penny on their second mortgage, which was wiped out when the purchasers declared bankruptcy and their first mortgage was foreclosed. The Board further ordered Mr. Chapman to make financial restitution to the sellers in the amount of the second mortgage, plus interest.

The Licensing Board suspended the broker's license of ELAINE O. JOHNSON of Wallace for one year for disbursing an earnest money deposit to the seller, knowing that the buyer felt she was entitled to said funds. Mrs. Johnson thereby violated the Board's regulation requiring a broker to retain disputed deposits in a trust account until the matter is resolved by litigation or compromise. Mrs. Johnson also improperly recorded a listing contract to enforce her claim for a commission, creating a cloud on the title. The Board further found that Mrs. Johnson failed to have all parties to the transaction properly fill out the contract of purchase. Feeling that Mrs. Johnson's actions were a result of ignorance and carelessness rather than a deliberate intent to defraud any party, the Board suspended its order and placed Mrs. Johnson on probation for two years. The Board further ordered Mrs. Johnson to repay the disputed earnest money deposit to the buyer, release her from the listing contract, and take a 90-hour broker's pre-licensing course. □

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