



NORTH CAROLINA
REAL ESTATE LICENSING BOARD

Real Estate Bulletin

Volume 13

1983

Number 4

FROM THE BOARD ROOM

"In-House" Examination Program

The Real Estate Licensing Board at its February meeting voted to return to an "in-house" administration of its real estate license examination program whereby all examination services (exam development, exam administration, and related administrative services) would be performed by the Board Staff without the assistance of an outside testing service.

According to a comprehensive plan developed by the Staff and approved by the Board, examination questions are to be written by knowledgeable persons directly involved in the real estate business and/or real estate education. These questions will be subjected to strict review by the Staff, a professional testing expert, and a committee of real estate practitioners and educators. The questions will then be assembled into test forms according to specifications recommended by a separate committee of real estate professionals and approved by the Board. Separate tests will be given for broker and salesman licenses, and will continue to contain questions on general real estate principles and practices, N. C. real estate laws and rules, and trust account guidelines.

Examinations will be given each month (on a Saturday) at six (6) test centers across the state.

All administrative support services will be performed by the Board

Staff using the latest computer technology. Candidates will be scheduled for examination and examination "admission tickets" will be issued on a weekly basis. In addition, all scoring of examinations and issuing of score reports to candidates will be performed entirely in the Board Office during the week following the examination. And, as an added feature, candidates who fail their examination will be afforded an opportunity to review their examinations in the Board Office.

The Board voted to implement an "in-house" examination program after carefully considering alternative proposals submitted by several private testing firms. The Board determined that it could administer a high quality "in-house" program at a substantial financial savings and thus divert the need for any immediate increase in license application fees.

The first examination to be administered under this new program is scheduled for January, 1984.

Poole Reappointed

Board Member Brantley T. Poole has been reappointed to the Real Estate Licensing Board by Governor Hunt for a three-year term expiring July 31, 1986.

Mr. Poole is owner of Poole Realty Company in Raleigh and has been active in the real estate business for more than 25 years.

Pennsylvania Reciprocity

The Real Estate Licensing Board has entered into an understanding of conditional reciprocity with the Pennsylvania Real Estate Commission whereby North Carolina real estate brokers and salesmen can under certain conditions obtain nonresident Pennsylvania real estate licenses without passing Pennsylvania's licensing examination.

Persons interested in obtaining further information regarding the qualification requirements for Pennsylvania real estate licenses should contact the Pennsylvania Real Estate Commission, P.O. Box 2649, Room 611, Transportation and Safety Building, Commonwealth Avenue & Forster Street, Harrisburg, Pennsylvania 17105 (Phone: 717-783-3658).

1983-84 License Renewal Reminder!

Application forms to renew real estate licenses for 1983-84 (July 1, 1983—June 30, 1984) are scheduled to be mailed to licensees on May 13 and must be returned to the Licensing Board Office by June 30 properly completed and accompanied by the required \$15 annual license renewal fee.

Since this will be the last Bulletin which you will receive before the renewal period, you are reminded to:

- Renew early
- Stick your Renewal Sticker on your wall license at the upper left hand corner.

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

1200 Navaho Dr.
P.O. Box 17100

Raleigh, North Carolina 27619
Phone 919/733-9580
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—November, 1982

	Passed	Failed
Brokers	53	123
Salesmen	126	81

EXAMINATION—December, 1982

	Passed	Failed
Brokers	69	108
Salesmen	159	92

*EXAMINATION—January, 1983

	Passed	Failed
Brokers	142	179
Salesmen	295	112

EXAMINATION—February, 1983

	Passed	Failed
Brokers	96	121
Salesmen	195	99

* Includes persons granted make-up examination due to inclement weather in test center area.

RULES AND REGULATIONS AMENDED

Re-printed below are recent amendments to the Rules and Regulations of the North Carolina Real Estate Licensing Board together with explanatory remarks. These amendments were adopted following a rule-making hearing held in the office of the Board on January 20, 1983. Notice of the rule-making hearing was published in the previous issue of the **Real Estate Bulletin**. These changes will become effective September 1, 1983.

.0102 Branch Office

In addition to his principal place of business, a licensed broker may maintain one or more branch offices under the same business name at different locations. A licensed broker who maintains a branch office must employ a licensed real estate broker to actively manage such office and to supervise the real estate salesmen working from such branch office; the license of the broker employed to actively manage such branch office shall be displayed in the branch office.

[NOTE: Beginning September 1, 1983 a licensed real estate salesman may not manage a real estate office or branch office.]

.0110 Designated Broker

(a) There shall be designated for each real estate firm and branch office thereof one duly licensed real estate broker who shall assume responsibility at such office for:

- (1) the proper display of licenses and renewal stickers of all licensed real estate brokers and salesmen associated with or engaged on behalf of the firm at such office; and
- (2) the proper notification to the Board of any change of business address or trade

name of the firm and the registration of any assumed business name adopted by the firm for its use; and

- (3) the proper conduct of advertising by or in the name of the firm at such office; and
- (4) the proper maintenance at such office of the trust or escrow account of the firm and records pertaining thereto; and
- (5) the proper maintenance and retention of records relating to transactions conducted by or on behalf of the firm at such office.

(b) Each designated broker shall notify the Board in writing of any change in his status as Designated Broker within 10 days following the change.

[NOTE: Forms will be sent to all real estate offices and branch offices in August to be completed and returned with the name of the broker who is to be the Designated Broker for such office(s).]

.0506 Salesman to be Associated with and Supervised by Broker

(b) A broker who certifies to the Board that he will supervise a licensed real estate salesman shall actively and personally supervise the salesman in a manner which would reasonably assure that the salesman performs all acts for which a real estate license is required in accordance with the real estate license law and Board rules. A supervising broker who fails to supervise a salesman as prescribed above may be subject to disciplinary action by the Board.

[NOTE: Imposes obligation on Supervising Broker to actively and personally supervise his/her salesmen.] ☐

EXAMINATION SCHEDULE

Filing Date	Exam Date
April 18, 1983	May 21, 1983
May 20, 1983	June 25, 1983
June 17, 1983	July 23, 1983
July 25, 1983	August 27, 1983
August 19, 1983	September 24, 1983
September 19, 1983	October 22, 1983
October 14, 1983	November 19, 1983
November 9, 1983	December 17, 1983

ANSWERLINE

by Thomas R. Miller

Legal Information Officer

Q. I am a licensed real estate broker. I have heard that the government has banned the use of urea formaldehyde foam insulation in homes. I recently discovered that a house I have listed for sale is insulated with this foam. Must I disclose this information to a potential buyer?

A. Yes, the Consumer Products Safety Commission of the federal government has found that the use of urea formaldehyde foam insulation poses a serious potential hazard to public health and has banned its further use in residences after August 9, 1982. Although the ban does not prohibit the sale of homes insulated with urea formaldehyde foam, its presence in a house is a material fact that would be important to anyone considering to purchase

the property. When a broker or salesman knows or has reason to suspect that a home he has listed contains this insulation, he must fully disclose it to a potential buyer.

Q. I am a licensed North Carolina real estate broker with property in this state listed for sale. A broker licensed in another state brought a potential purchaser into the state and showed him the property. The broker then brought the purchaser to my office and requested to cooperate with me in the sale of my listing. May I cooperate with this out-of-state broker and compensate him for his assistance?

A. No. Section 93A-6(a)(9) of the License Law makes it unlawful for a North Carolina real estate

licensee to pay a commission or valuable consideration to any person for acts or services performed in violation of the Real Estate License Law. Since it would violate the License Law for an out-of-state broker not licensed in North Carolina to come into this state and sell or offer to sell real estate, it would be unlawful for a North Carolina licensee to pay him a commission or other compensation. [Please note: The License Law does not prohibit cooperation between a North Carolina real estate licensee and the licensee of another state so long as the out-of-state licensee does not come into North Carolina to perform acts for which a North Carolina real estate license is required.] ☐

Trust Account Course

In view of the very favorable response to its first series of trust account workshops, the Real Estate Licensing Board has agreed to conduct another series of workshops FREE OF CHARGE in several locations around the state. This short course in Trust Account Record-keeping 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 one of these courses, please indicate below the time, date, and location preferred, and complete and return the registration form to: **North Carolina Real Estate Licensing Board, P.O.**

Box 17100, Raleigh, North Carolina 27619. (The Board reserves the right to cancel any date or location due to lack of interest.)

Registration forms must be received in the Board Office by April 15 and will be accepted on a "first come—first served" basis. So ACT NOW! Registrants will be notified later of the exact time and place of the course offering. ☐

Registration Form Trust Account Short Course

May 1983

Charlotte

- ☐ May 2, p.m.
☐ May 3, a.m.

Raleigh

- ☐ May 11, a.m.
☐ May 11, p.m.

Jacksonville

- ☐ May 17, a.m.
☐ May 17, p.m.

Asheville

- ☐ May 4, p.m.
☐ May 5, a.m.

Greenville

- ☐ May 13, a.m.

Wilmington

- ☐ May 18, p.m.
☐ May 19, p.m.

Greensboro

- ☐ May 9, p.m.
☐ May 10, a.m.

Fayetteville

- ☐ May 16, a.m.

Boone

- ☐ May 24, a.m.

Check the date, morning or afternoon, under the preferred location.

NAME _____ ADDRESS _____

TRUTH IN LENDING AND THE ADVERTISING OF REAL ESTATE CREDIT

There continues to exist among real estate brokers widespread confusion, misunderstanding, or sheer lack of knowledge concerning the requirements of the federal Truth in Lending Act as it relates to real estate advertising. Witness the fact that in the space of only three pages of a recent Sunday edition of a large North Carolina newspaper, there were nearly 100 apparent violations of the Truth in Lending Act.

The following article from the Federal Trade Commission has been reprinted for the purpose of better educating real estate brokers as to the requirement for complying with this Act. However, since the North Carolina Real Estate Licensing Board is not the enforcing agency for the Truth in Lending Act, inquiries concerning its provisions should be directed to the Federal Reserve Board, Division of Consumer and Community Affairs, 20th and C Streets, Washington, D.C. 20551, Phone: 202/452-3867.

I. GENERAL RULES

What kind of advertisements and advertisers are affected by Truth in Lending?

The advertising provisions of Regulation Z (226.10) apply to any advertisement which promotes an extension of consumer credit (that is, credit offered to a natural person in which the money, property or service is primarily for personal, family, household or agricultural purposes and which involves a finance charge or is, by agreement, payable in more than four installments). If the advertisement in question does not involve an offer of consumer credit that requires the disclosures set forth in 226.7 (open end credit) or 226.8 (credit other than open end), then the advertising provisions of Regulation Z are not applicable.

The term "advertisement" itself is quite broad and covers all forms of commercial messages, including display signs in store windows. For example, multiple listing cards, if displayed by a realtor to the public, would constitute an "advertisement." On the other hand, literature such as multiple listing cards that is not on public display and is only used in connection with and in

response to an individual prospective buyer's inquiry would not be considered an "advertisement."

Liability for compliance with the advertising provisions of Regulation Z extends beyond that of the extender or arranger of consumer credit. Once it is determined that the subject of the advertisement is a consumer credit transaction, the provisions of 226.10 apply to any advertiser regardless of his role in the transaction. The test is whether the advertisement promotes consumer credit, not whether the advertiser is a creditor, consumer creditor, arranger, etc. Even associations, manufacturers, and government agencies such as the FHA are covered by the Act when they advertise consumer credit transactions.

When a licensed real estate broker advertises a house owned by his principal, is the advertisement covered by Regulation Z?

The answer to this question depends on whether the advertisement promotes the extension of a customer credit sale. The answer is "yes" if the sale of the advertised home is one which will trigger the disclosure requirements of 226.8 of Regulation Z. When the broker advertises a private seller's home, he acts as the agent for the seller, but this fact cannot relieve him from liability for compliance with 226.10. The reason is that when he advertises consumer credit terms to be granted by a creditor covered by the Regulation, the advertisement is also covered by Regulation Z. In summary, the broker or realtor is subject to the advertising provisions of Regulation Z, even though he advertises on behalf of a private seller, so long as the transaction will qualify as an extension or arrangement of "consumer credit" as defined in Regulation Z.

There are cases in which a broker is selling a home for an individual who is not a "creditor," with the seller taking back a purchase-money second trust. This would not be "consumer credit" unless the seller, prior to consummation of the transaction, had made arrangements to discount the second trust note with a "creditor." In such a case the seller is simply a "straw

party" and the transaction would be subject to the disclosure provisions as well as the Right of Rescission (226.9).

What parts of the advertising provisions of Regulation Z apply to the real estate industry?

Generally only Sections 226.10(a) and (d) will apply to real estate transactions.

226.10(a) sets forth the overriding principle that no advertisement should contain terms (such as monthly payment amounts or downpayment amounts) that are not usually and customarily arranged by the creditor. In essence, this section is designed to make "bait" advertising of credit terms expressly in violation of Federal Law.

Example: An advertisement offering new homes at "\$1,000 down" is improper if the seller will not usually accept this amount as a downpayment, even if all of the other required credit terms are disclosed in the advertisement.

II. ADVERTISING OF REAL ESTATE CREDIT

A. Assumptions

Advertisements of assumptions generally involve the use of the one credit term that does **not** trigger the full disclosure required in 226.10(d)(2)—the rate of finance charge. In order to comply, the advertiser may state the rate and nothing else, but it must be expressed as an "Annual Percentage Rate," using that term.

Example: "Assume 7 1/2% mortgage" is improper.

"Assume 7 1/2% Annual Percentage Rate" mortgage is correct.

Further, the term "Annual Percentage Rate" should be spelled out and not reduced to "A.P.R." or otherwise abbreviated. Eventually, when it can be demonstrated that the public has learned to recognize this term by its initials, we may relax our position that the term should be fully spelled out.

(Continued on Page 6)

DISCIPLINARY ACTION

The Real Estate Licensing Board revoked the broker's license of MARTHA E. EDWARDS of Mocksville upon finding that Mrs. Edwards had failed to present an offer to purchase to a seller and then informed the buyer that the seller required additional money for the property. After the buyer assented to the higher price, a survey determined that the property in question contained more land than originally contemplated, whereupon Mrs. Edwards falsely informed the buyer that the seller required the acreage to be reduced or the sale price increased. The buyer then opted to cut off four acres from the land that she was purchasing, which acreage Mrs. Edwards acquired as part of a trade with the seller.

The Board's decision was issued in June of 1981, but enforcement was stayed while Mrs. Edwards appealed to Wake County Superior Court. The Superior Court upheld the Board's decision in November 1981, but the matter was further stayed pending appeal to the North Carolina Court of Appeals which recently unanimously upheld the Board's decision (See "Court Rules on Multiple Violations," page 6).

The Licensing Board revoked the broker's license of JOHN G. SHAW of Raleigh upon finding that Mr. Shaw had placed an earnest money deposit on a commercial property in his operating business account, converted the funds to his own use, and then issued a worthless check when called upon to refund the deposit.

The Licensing Board revoked the broker's license of ROBERT L. MAXEY of Spring Lake. Mr. Maxey was convicted in federal court of making false statements to the Veterans Administration in connection with real estate transactions.

The Licensing Board suspended the broker's license of COLIE L.

DOOLEY, JR. of Wilmington for two years upon finding that Mr. Dooley had represented himself to be the owner of a home when in fact he was not, and that he had sold the home to two different purchasers.

The Licensing Board revoked the broker's license of DANA K. BUNTING of Greensboro. Ms. Bunting was convicted of twelve counts of forgery.

The Licensing Board suspended the broker's license of STUART F. COOKE of Ocean Isle Beach for two

Cooke on probation for two years.

The Licensing Board suspended the broker's license of JAMES C. INGELS of Wake Forest for two years (six months' active, eighteen months' probation) upon finding that Mr. Ingels had withdrawn funds from his escrow account as "advance commissions" without the knowledge or consent of either the buyer or the seller. The Board further ordered Mr. Ingels to take the trust account course given by the Board's auditing staff.

The Licensing Board suspended the broker's license of DEBORAH SHABAZZ of Greensboro for six months for failing to place an earnest money deposit in a trust account. The Board suspended its order and placed Ms. Shabazz on probation for one year and required her to take the trust account course given by the Board's auditing staff.

The Licensing Board suspended the salesman's license of RICHARD H. FORREST of Lexington for 30 days for furnishing a home purchaser incorrect information as to the boundary lines of the property. Relying upon this information, the buyer purchased the property only to discover after closing that he did not own all of the land which he thought he was purchasing.

The Licensing Board suspended the broker's license of REBECCA M. CASHMAN of Laurinburg for one year for violating the statutes and Board rules concerning trust accounts. The Board suspended its order and placed Ms. Cashman on probation for two years and required her to take the trust account course given by the Board's auditing staff.

The Licensing Board reprimanded broker LAWRENCE R. PHILLIPS of Lake Lure for enlisting the services of an unlicensed person to assist in the sale of real estate. □

NOTICE¹

N.C. Real Estate Licensing Board Policy Adopted February 17, 1983

"Upon a finding by the Real Estate Licensing Board that a real estate broker or salesman has knowingly and willfully converted to his own use any funds held in trust for others, the Board may as a part of its judgment in such case direct that a copy of its Order be forwarded to the appropriate Office of the District Attorney for criminal prosecution." □

years (six months' active, eighteen months' probation) upon finding that he had misrepresented to two sellers that he had sold their property, when in fact their properties had not been sold.

The Licensing Board suspended the broker's license of JOHN M. COOKE of Ocean Isle Beach for six months upon finding that he had misrepresented to two sellers that closings would definitely take place on proposed sales of their properties, when in fact the closings were never scheduled. The Board suspended its order and placed Mr.

¹The Licensing Board feels compelled to take this action due to the alarming increase in cases of conversion of trust funds by real estate licensees.

The willful and unauthorized use or misapplication of money held in trust by a real estate broker for purposes other than that for which it is held constitutes the crime of embezzlement. In North Carolina, **embezzlement is a felony punishable by imprisonment up to ten years or a fine or both.** □

TRUTH IN LENDING

(Continued from Page 4)

It is true that some transactions that are commonly called "assumptions" are not within the disclosure requirements of 226.8(k) (Assumption of an obligation), and are therefore not subject to the advertising provisions of Regulation Z. For the purposes of the disclosure requirements of Regulation Z, an "Assumption" occurs only when, by written agreement entered into between a subsequent customer and the creditor, the subsequent customer is or will be accepted by that creditor as an obligor on an existing evidence of debt. If the advertiser has any doubt whether the assumption being offered will meet this test, he would be well advised to comply with the advertising provisions of Regulation Z. Since any additional charges that are involved in the "assumption" transaction will generally not affect the existing rate of the mortgage by 1/4 of one percent, all that is required to be assured that the typical "assumption" advertisement meets the Regulation is to add the words "Annual Percentage Rate" to the present advertised rate.

Many previously owned homes are sold "subject to" existing financing which does not involve an "assumption" as defined by Regulation Z. If this is the case, the ad should so state and it would not be covered by Regulation Z (for example, "Take subject to 6% mort.").

(To be continued
in next issue of BULLETIN)

NOTICE

Brokers with interest-bearing trust accounts are advised to immediately contact their bank or savings and loan association for information regarding exemption from the recent federal tax legislation providing for the withholding of federal income taxes from interest payments. □

COURT RULES ON MULTIPLE VIOLATIONS

The North Carolina Court of Appeals has ruled that the Real Estate Licensing Board may find a licensee guilty of violating more than one section of the Real Estate License Law even though the licensee performed only one improper act. The Court further ruled that a single misrepresentation may justify the Board in revoking a real estate license.

The ruling was made in connection with a case (See Edwards "Disciplinary Actions," page 5) in which the Board had revoked the license of a broker after finding that the broker was guilty of three separate misrepresentations, one count of engaging in improper and dishonest dealing, and one count of being unworthy to act as a broker in such manner as to safeguard the public interest, all of which were related to the same act. The broker appealed, contending that even if she were guilty of misrepresentation, she could not simultaneously be found guilty of the other two violations.

Writing for a unanimous court, Judge Charles L. Becton held that "Given adequate and specific findings and notice, two or more sections [of the license law] can be violated by one act." Judge Becton further wrote that "The Board acted within its power, and it properly revoked [the broker's] license based on its finding that each of the false statements to [the purchaser] was a substantial and willful misrepresentation. That finding alone is sufficient to sustain the revocation. In

NOTARY PUBLIC EDUCATION PROGRAM

Since January 1 of this year, persons desiring to become notaries public have been required to complete a course of study on the responsibilities of a notary public prior to their first appointment by the Secretary of State.

For the past two years the Secretary of State has offered a voluntary workshop for notaries public, because of the perceived need by public officials for notaries to be more aware of the seriousness of their office, a mandatory training component has been implemented placing the responsibility for notary public training in the community college system.

Instructors in the community college system and potential instructors from local communities have been trained to teach the course. The continuing education divisions in the community college system are now offering this three- to six-hour program to local communities on demand and in cooperation with local Register of Deeds offices.

North Carolina is the very first state in the nation to attempt this endeavor.

any event, we hold that findings of willful failure to disclose a suitable offer to the seller, and willful misrepresentations to the purchaser that the seller refused that same offer are sufficient to support the conclusion that multiple violations of the real estate licensing law had occurred." □

NORTH CAROLINA
REAL ESTATE LICENSING BOARD
P. O. Box 17100
Raleigh, N. C. 27619

BULK RATE
U. S. Postage Paid
Permit No. 99
RALEIGH, N. C.