



NORTH CAROLINA
REAL ESTATE LICENSING BOARD

Real Estate Bulletin

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1983

Number 1

REAL ESTATE LICENSE LAW AMENDED

Real Estate "Licensing Board" to Become Real Estate "Commission"

Listed below are the various changes in the North Carolina Real Estate License Law (G.S. 93A) which were recently enacted by the North Carolina General Assembly. Following each item is a brief explanation as to why the Real Estate Licensing Board requested the change.

These changes will become effective September 1, 1983 at which time copies of the revised Real Estate License Law will be available upon request from the Commission Office.

Action regarding other License Law legislation now pending before the General Assembly will be reported in the next issue of the Bulletin.

Summary of Changes

1. **The name of the North Carolina Real Estate Licensing Board was changed to the "North Carolina Real Estate Commission."**

The trade association for real estate brokers and salesmen in North Carolina is organized into local "Boards of REALTORS." The similarity in the names "Board of REALTORS" and "Real Estate Licensing Board" caused many members of the public to confuse the two organizations, and, as a result, matters which fell within the jurisdiction of the Real Estate Licensing Board were sometimes referred to the local REALTOR Boards for action. In addition, attorneys and judges often confused the two organizations to

the extent that the Board felt compelled recently to file an *amicus curiae* brief to call attention to the distinction between the two organizations.

It was therefore requested that the name of the Real Estate Licensing Board be changed to the "Real Estate Commission" to eliminate this confusion.

2. **The reference in the Real Estate License Law to rental locator services was deleted.**

In 1976 the North Carolina Court of Appeals ruled that the activities of rental locator services "do not fall within those which the legislature may constitutionally regulate as constituting the practice of real estate brokerage."

Therefore, since rental locator services were effectively removed from the Board's jurisdiction, it was requested that the reference to such locator services be removed from the License Law.

[NOTE: The General Assembly in 1981 added a new Article 23 to Chapter 66 of the General Statutes for the specific purpose of regulating rental referral agencies.]

3. **Persons employed by licensed real estate brokers as apartment managers were exempted from the real estate licensing requirements.** [See Bulletin, Page 4]

Under the License Law, persons who were employed by real

estate brokers as apartment managers were themselves required to be licensed as real estate brokers or salesmen; however, their activities were considered to be primarily ministerial in nature, and therefore not requiring the depth and scope of real estate knowledge required of real estate brokers and salesmen engaged in general real estate practice.

It was therefore requested that these persons be exempted from the licensing requirement, provided their activities are closely supervised by the licensed broker by whom they are employed; such broker will be held strictly accountable for any misconduct on the part of his unlicensed employee(s).

4. **The reference in the Real Estate License Law to the specific amounts of reimbursements paid to Board Members was deleted.**

The amounts shown in the License Law were incorrect. Since Board Members are, in fact, compensated in accordance with the provisions of G.S. 93B-5, it was therefore requested that the License Law be amended to reflect this.

5. **The Board's rule-making authority was clarified.**

In 1977 the Real Estate License Law was amended at the re-

(Continued on Page 3)

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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EXAM RESULTS

EXAMINATION—March, 1983		
	Passed	Failed
Brokers	85	175
Salesmen	198	136
EXAMINATION—April, 1983		
	Passed	Failed
Brokers	137	190
Salesmen	287	138

LICENSEES TOP 50,000

According to recent statistics, there are currently more than 50,000 North Carolina real estate licensees, or approximately one licensee for every 118 North Carolina residents.

The break-down is as follows:

Brokers	41,078
Salesmen	7,238
Corporations	2,372
Total Licensees	50,688

NEW EXAMINATION SPECIFICATIONS ADOPTED



Examination Specifications Advisory Committee

Seated (left to right): Betsy Anne Bradshaw, Broker/Appraiser, GRI, MAI, Raleigh; Alan M. (Mac) Harris, Broker, GRI, Instructor (Pitt Community College), Greenville; June Dinkins, Broker, NCAR President, Winston-Salem; William C. Stokes, Broker, REALTOR Emeritus, Former NCRELB Chairman, Reidsville; Wanda J. Proffitt, Broker, GRI, CRS, Burnsville — Standing (left to right): Larry A. Outlaw, NCRELB Education Director, Broker/Attorney, Raleigh; Neill M. Laney, Broker, GRI, CRS, CRB, Instructor/Owner (Laney School of Real Estate), Wilmington; George W. Hayworth, Mortgage Banker (Wachovia Mortgage Co.), President of Mortgage Bankers Association of the Carolinas, Winston-Salem; James A. Hagan, Instructor (Asheville-Buncombe Technical College), Broker, GRI, Asheville; L. D. Jones, Jr., Broker, GRI, CRS, CRB, Fayetteville; Edward H. Willer, Broker, GRI, CRB, Instructor (Bacon School of Real Estate), Raleigh; Chet Snow, Sr., Broker, Former NCAR President, Charlotte; William P. Aycock II, Real Estate Attorney, NCAR Legal Counsel, Greensboro; Huey M. Rowe-Anderson, Broker, Education Committee Chairman of National Association of Real Estate Brokers, Charlotte.

In preparation for the "in-house" licensing examination program to be implemented in January, 1984, the Real Estate Licensing Board has adopted "specifications" for the new salesman and broker licensing examinations. These specifications consist of the following:

- (1) A detailed list of topics to be covered on the examinations.
- (2) A statement of the required competency level for beginning (entry-level) salesmen and brokers with regard to each topic covered on the examinations.
- (3) The number of questions by topic to be included in each examination form.

The specifications provide the framework for development of examination questions and for assembly of the questions into examination forms. By following these specifications throughout the examination development process, the Board can better assure that each question on the examinations is appropriate and that all examination forms used are equivalent in terms of content coverage and difficulty.

Procedures

The new examination specifications were carefully and systematically developed. Draft specifications were prepared by the Board staff based primarily on the Board's pre-licensing course syllabi. The draft specifications were then thoroughly reviewed and revised where nec-

essary by the Board-appointed Examination Specifications Advisory Committee (pictured above) consisting of real estate experts from across the state. The recommendations of this "blue ribbon" committee were subsequently adopted without change by the Board at its April meeting.

Highlights of Examination Coverage and Structure

The examinations will consist of multiple choice questions (salesman exam—110 questions; broker exam—130 questions) on the following general topics:

Real Estate Law
Real Estate Brokerage (Law and Practices)
N.C. Real Estate License Law, Commission Rules and Trust Account Guidelines
Real Estate Finance
Real Estate Valuation (Appraisal)
Real Estate Mathematics

In general, overall coverage of topics on the examinations will be similar to that on the current Educational Testing Service examinations;

(Continued on Page 5)

License Law

(Continued from Page 1)

quest of the Board to provide that the Board could adopt rules and regulations relating only to certain specific areas of activity. It was the prevailing belief that such specificity was necessary to protect the rules from possible legal challenge; however, the Board was later advised that such action was not, in fact, necessary, and moreover, an examination of the license laws of other occupational licensing boards in this State revealed that no other board had similarly restricted its rule-making authority.

It was therefore requested that the Board's rule-making authority be returned to its pre-1977 status, making it consistent with the rule-making authority of other state licensing boards and agencies.

6. **The title of the Board's administrator was changed from "Secretary-Treasurer" to "Executive Director," and the License Law was revised to clarify that the Board may hire other than "clerical" employees.** Strictly interpreted, the License Law permitted the Board to hire only "clerical" employees; however, other administrative and professional-level employees (attorneys, accountants, etc.) are required in order to properly conduct the Board's business.

It was therefore requested that the License Law be amended to clarify that the Board may employ "professional and clerical staff."

7. **The requirement was eliminated that applicants for licenses provide in their applications the name and address of their future supervising brokers.**

The Board had found that by requiring applicants for salesman licenses to obtain a supervising broker prior to their sitting for the licensing examination, a hardship was often created on the applicant because some brokers were reluctant to extend an open-ended promise of employment to persons under such conditional circumstances.

In view of this, the Board in 1980 requested and received an Opinion from the North Carolina Attorney General's Office which held that "(A)n applicant for a real estate salesman's license need not include with his initial application the name of a sponsoring broker."

It was therefore requested that this unwarranted restriction on entry into the real estate business be removed from the License Law.

8. **The requirement that the Board maintain a record of the place of business of license applicants was eliminated.**

Strictly interpreted, the License Law required the Board to maintain a record of the place of business of all persons who applied for real estate licenses (e.g., "Acme Barber Shop"). Since this information had been found by the Board to be of no practical benefit, yet consumed valuable clerical time and effort, the Board in 1980 requested and received an Opinion from the North Carolina Attorney General's Office which held that such information need not be collected and maintained by the Board.

It was therefore requested that this unnecessary recordkeeping requirement be removed from the Real Estate License Law.

9. **The License Law was revised to clarify that the Board is not required to hold a hearing on every complaint which makes out a prima facie case of a violation of the License Law.**

It had been asserted that based upon the language in the License Law, the Board was required to hold a hearing on virtually every complaint filed against a broker or salesman even though the Board's investigation of the charges clearly showed that the complaint was without merit.

It was therefore requested that the License Law be amended to clarify that a formal hearing would not be required unless the results of the Board's inquiry indicated probable cause of a violation of the License Law or Board Rules.

10. **The disciplinary provisions of the License Law were revised to clarify that the making of negligent misrepresentations or the omission of material facts constitutes a violation of the License Law.**

Under other general provisions of the License Law, the Board could discipline a licensee who had made negligent misrepresentations or had failed to disclose to a consumer some material fact about which the broker or salesman knew or should reasonably have known.

It was requested, however, that the License Law be amended to specifically state that these improper acts are cause for disciplinary action by the Board.

11. **The Board was authorized to reprimand and censure licensees who violate the License Law.**

This was requested to afford the Board an alternative to the suspension or revocation of licensing privileges in cases involving less serious violations of the License Law and Board Rules.

12. **The Board was authorized to send a copy of any order revoking or suspending the license of a real estate broker or salesman to the Clerk of Court of the county in which the licensee operates to be entered by the Clerk on the judgment docket of such county.**

This was requested so that notice would be given to members of the public when the licensing privileges of a real estate broker or salesman in their community had been suspended or revoked. [NOTE: This practice is also followed by the State Bar in reporting disciplinary actions against attorneys.]

13. **The liability limits of the Real Estate Recovery Fund were more clearly defined for claims against real estate brokers and salesmen doing business as licensed real estate brokerage corporations.**

The Board maintains a Recovery Fund for the purpose of compensating consumers who have suffered a monetary loss as a

(Continued on Page 4)

License Law

(Continued from Page 3)

result of certain improper acts by licensed brokers and salesmen. The liability of the Fund is limited to **\$20,000 per licensee** (not to exceed **\$10,000 per licensee per year**) and **\$5,000 per transaction**.

Inasmuch as some brokers operate as **licensed** real estate brokerage corporations, the question had arisen as to whether the corporation itself should be considered a separate licensee for the purpose of determining the liability of the Fund, in which case the limits of liability would be doubled. Since treating corporations as separate licensees would, in effect, discriminate against consumers who had been injured by non-corporate brokers, it was requested that the License Law be amended to clarify that licensed real estate brokerage corporations will **not** be considered separate licensees for the purpose of determining the liability of the Real Estate Recovery Fund.

In addition, it was requested that the **per transaction** limit of the Fund be increased from \$5,000 to \$10,000 to more accurately reflect the amount of losses likely to be sustained by today's real estate consumers as a result of a broker or salesman's mishandling of their funds. □

Real Estate Brokers/ Mobile Home Sales

In other legislative action, the General Assembly amended G.S. 20-286(11) relating to the definition of "motor vehicle dealer" to provide that the term "motor vehicle dealer" shall not include "A licensed real estate broker or salesman who sells a mobile home for the owner as an incident to the sale of land upon which the mobile home is located."

Therefore, effective July 1, 1983, licensed real estate brokers and salesmen will be exempted from the licensing requirements for motor vehicle dealers when selling mobile homes under the above conditions. □

EMPLOYEES OF PROPERTY MANAGERS EXEMPTED FROM LICENSING

As a result of a recent amendment to the Real Estate License Law, effective September 1, 1983 a real estate license will no longer be required of certain employees of licensed real estate brokers who manage real estate for an owner. However, limitations and restrictions were placed upon the acts which these unlicensed persons may perform.

Reprinted below are the applicable provisions of the amended License Law creating this exemption: G.S. 93A-2(c)(6). The provisions of this Chapter (the Real Estate License Law) shall not apply to and shall not include (A)ny salaried person employed by a licensed real estate broker, for and on behalf of the owner of any real estate or the improvements thereon, which the licensed broker has contracted to manage for the owner, if the salaried employee is limited in his employment to: exhibiting residential units on the real estate to prospective tenants; providing the prospective tenants with information about the lease of the residential

units; accepting applications for lease of the residential units; completing and executing preprinted form leases; and accepting security deposits and rental payments for the residential units only when the deposits and rental payments are made payable to the owner or the broker employed by the owner. The salaried employee shall not negotiate the amount of security deposits or rental payments and shall not negotiate leases or any rental agreements on behalf of the owner or broker.

G.S. 93A-6(b)(4). Following a hearing, the Commission shall also have power to suspend or revoke any license issued under the provisions of this Chapter or to reprimand or censure any licensee when (T)he broker's unlicensed employee, who is exempt from the provisions of this Chapter under G.S. 93A-2(c)(6), has committed, in the regular course of business, any act which, if committed by the broker, would constitute a violation of G.S. 93A-6(a) for which the broker could be disciplined. □

TRUST ACCOUNT COURSE

More than 700 persons enrolled in the trust account workshops sponsored and conducted by the Real Estate Licensing Board. The workshops were held in Charlotte, Asheville, Greensboro, Raleigh, Greenville, Fayetteville, Jacksonville, Wilmington, and Boone over the period May 2-24.

This short course in trust account recordkeeping was developed by Administrative Director L. Ted Gayle to assist those responsible for keeping trust account records to become more proficient. Persons taking part in the course receive a practice set of materials consisting of sample purchase contracts, deposit tickets, ledgers, and other documents pertaining to trust account recordkeeping. Using these documents, they must then post receipts and disbursements to the journal and ledger, reconcile bank statements, prepare trial balances, and perform other bookkeeping tasks. Persons completing the half-day course receive a certificate from the Board.

Assisting Mr. Gayle in conducting these courses were Trust Account Auditors Nancy Adams and Emmet Wood, CPA. □

FOAM INSULATION UPDATE

The "Answerline" column of the last **BULLETIN** reported that the Federal Consumer Products Safety Commission had banned the use of Urea Formaldehyde Foam Insulation (UFFI) in homes. Soon after that **BULLETIN** item appeared, the United States Fifth Circuit Court of Appeals overturned the Commission's ban. The Commission has petitioned the court for a rehearing, however, and a stay of the court's order has been granted. Until a final decision is rendered by the court, the ban on the use of Urea Formaldehyde Foam Insulation will remain in force. When a broker or salesman knows or has reason to suspect that a house he has listed for sale contains UFFI, he must disclose its presence to a potential purchaser. □

TRUTH IN LENDING

(Continued from Previous Bulletin)

B. Advertisements Involving New Financing

If an advertisement states any of the following specific credit terms it is subject to the full disclosure requirements of 226.10(d)(2):

1. The amount of the downpayment or that there is "no downpayment" required (this includes statements such as "No closing or other costs until your first monthly payment");
2. The amount of any installment payment;
3. The dollar amount of any finance charge (this of course would encompass reference in the advertisement to the dollar amount of points, finder's fee or other charges that will become part of the finance charge);
4. The number of installments or the period of repayment (this includes statements such as "Up to 30 year financing available"); or
5. That there is no charge for credit.

If any of the above five categories of statements is used in a consumer credit advertisement of real estate, then the advertisement must disclose all of the following:

1. The cash price;
2. The amount of the downpayment required or that none is required, as applicable;
3. The (a) number, (b) amount and (c) due dates or period of payments scheduled to repay the debt; and
4. The annual percentage rate of finance charge.

There is no need to state the total dollar amount of finance charge in any advertisement and there is no need to state the deferred payment price in the case of the sale of a dwelling or the sum of the payments of a loan secured by a

first lien on a dwelling to purchase that dwelling.

A hypothetical may be used to illustrate typical terms when all sales or loans are not made on the same basis. For example:

"Typical VA financing of 30 year loan: Cash price of 'Hilton' model \$22,040; no downpayment; 360 monthly payments of \$204 (including estimated taxes) at 7½% Annual Percentage Rate."

A note of caution is in order here. An advertisement that states a "7½% Annual Percentage Rate" is improper if it relates to a transaction that, after calculation of points, discount, and other extra charges, turns out to be 7.99% at closing time. The seller usually knows about these additional charges when he places the advertisement and he should not ignore what he knows is common practice when he advertises the property.

Further, since Regulation Z provides (226.6(a)) that whenever the term "Annual Percentage Rate" is required to be disclosed it must be printed more conspicuously than other required terminology, advertisers should make this term more predominant than other required terms in their advertisements.

C. The Use of General Terms

General terms such as "Small Downpayments Accepted," "FHA or VA financing available" and "Compare our liberal mortgage rates" are not within the scope of Regulation Z.

The advertising provisions of the Truth in Lending Act are intended to encourage the use of the Annual Percentage Rate by advertisers (thus the exemption from disclosing the other terms in 226.10(d)(2)) and to promote full disclosure of specific credit terms or none at all.

Federal Trade Commission ☐

BROKER-IN-CHARGE

In the last issue of the Bulletin it was reported that the Real Estate Licensing Board had adopted a rule requiring there to be designated for each real estate office and branch office a licensed broker to supervise and be responsible for certain acts within such office.

This broker will be designated the "Broker-In-Charge" of such office and will be responsible for the display of licenses and renewal stickers; reporting any changes of business name/address; advertising; the escrow account; and the office's real estate transaction records.

The Board staff is currently in the process of finalizing plans to compile and maintain a list of "Brokers-In-Charge." In late August a "Broker-In-Charge Declaration Card" and Instructions Sheet will be sent to each real estate company listed in the Licensing Board's records. The Declaration Card will be in the form of a self-addressed postcard which, when completed, can simply be stamped and returned to the Licensing Board Office.

Further details concerning Broker-In-Charge status will be included in the next issue of your Bulletin. ☐

EXAM SPECIFICATIONS

(Continued from Page 2)

however, there will be some differences in topics covered as well as in the relative emphasis placed on topics. Questions on the broker examination will generally be more difficult than those on the salesman examination and will require broker candidates to possess more in-depth knowledge and a greater ability to apply their knowledge to practical situations which may be encountered in the brokerage business. In addition, the broker examination will feature special trust account and closing problems that will require candidates to answer several questions based on hypothetical fact situations.

Details about examination coverage will be provided to schools and instructors in June, and to persons requesting applications in September. The required passing scores will be established in late November. ☐

DISCIPLINARY ACTION

The Real Estate Licensing Board revoked the broker's license of **BRUCE RUFFIN** of Charlotte. Mr. Ruffin was convicted in Federal Court of 16 counts of bankruptcy fraud and making false statements to the bankruptcy court.

The Licensing Board revoked the broker's license of **FORREST C. SHAW, II**, of Fayetteville. Mr. Shaw was convicted in the Superior Court of Cumberland County of four counts of obtaining money by false pretense in a real estate transaction.

The Licensing Board revoked the broker's license of **HOWARD C. BURNETTE** of Fayetteville for failing to disclose numerous worthless check convictions on his application for a real estate license. The Board also found that after he was licensed Mr. Burnette was convicted on additional counts of issuing worthless checks.

The Licensing Board suspended the broker's license of **WILLIAM BARBRE, JR.**, of Greenville for one year. Mr. Barbre withdrew an earnest money deposit from his escrow account and converted the funds to his own use. He later returned the funds to the owners.

The Licensing Board suspended the broker's license of **JOHN P. ROBINSON, JR.**, of Salisbury for six months, and placed him on probation for an additional 18 months for withdrawing funds from his trust account for personal use. After the Board's auditor detected the shortage, Mr. Robinson restored the necessary funds to his trust account. The Board also ordered Mr. Robinson to take its trust account course.

The Licensing Board suspended the broker's license of **ALBERT J. GREGOR** of Pinehurst for two months and placed him on probation for an additional four months. Mr. Gregor disbursed a disputed earnest money deposit to the buyers in a real estate transaction over the objection of the sellers. This violated one of the Board's regulations. The Board also found that Mr. Gregor had drafted the purchase

contract in a vague manner that created the dispute. The Board further ordered Mr. Gregor to restore the disputed deposit to his trust account and take the Board's trust account course. □

COMING EVENTS

* * *

Attorney General's Symposium on Legal Aspects of Valuation of Historic Properties

Date: Friday, July 8, 1983
Place: The State Capitol—House Chamber, Raleigh, N. C.
Purpose: How to achieve equitable tax valuations on historic property. Featuring appraisal experts and specialists in tax procedures.
Information: Historic Preservation Society of N. C.
P.O. Box 27343
Raleigh, N. C. 27611.

* * *

Fifth Annual Urban Affairs Conference: Public-Private Partnerships In Urban Development

Date: September 29-30, 1983
Place: McKimmon Center, NCSU, Raleigh, N. C.
Purpose: To provide a forum for the examination of urban conditions and concerns.
Information: Ms. Karin Wolfe
N. C. State University
P.O. Box 5125
Raleigh, N. C. 27650
(919) 737-3211

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