



NORTH CAROLINA
REAL ESTATE LICENSING BOARD

Real Estate Bulletin

VOLUME 6

FALL QUARTER 1975

NUMBER 3



To Our Licensees:

From Manteo to Murphy we wish you the joys of the holiday season and many blessings in the new year.

Among our joys and blessings of the past year have been the opportunities to experience many pleasant associations with you, our licensees, in person, by telephone, and by correspondence.

It is with deep appreciation and pleasure we remember you whose friendship and good will we value so highly. May your Christmas be bright and cheerful and may your new year be filled with health, happiness and success.

*North Carolina Real Estate
Licensing Board and Staff*

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.

NORTH CAROLINA REAL ESTATE LICENSING BOARD

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Raleigh, North Carolina 27602

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EXAMINATION RESULTS

Examination — September 1975		
	Passed	Failed
Brokers	188	226
Salesmen	24	41
Examination — October 1975		
	Passed	Failed
Brokers	192	171
Salesmen	38	38
Examination — November 1975		
	Passed	Failed
Brokers	241	201
Salesmen	43	46

CORRECTION

The April, 1975 examination results were incorrectly reported in the spring quarter edition. The corrected totals are as follows:

	Passed	Failed
Brokers	301	257
Salesmen	39	41

NORTH CAROLINA LICENSEES — A COMPARISON

Do we have too many people licensed as brokers and salesmen in North Carolina as claimed from time to time by some licensees? The statistics compiled in the table below provide an interesting answer.

The table is based on July 1, 1974 estimated census figures matched with license totals furnished by the National Association of Real Estate License Law Officials to show the number of real estate licensees per 1,000 population in each state and the District of Columbia.

The results showed that Massachusetts leads with 15.34 licensees per 1,000 population and West Virginia is lowest with 1.86. North Carolina is 17th lowest with 4.11. The average for all the jurisdictions is 6.29.

State	1974 Population	Total Licensees As of 12/31/74	Number Per 1000 Population
California	20,907,000	219,427	10.50
New York	18,111,000	119,475	6.60
Texas	12,050,000	89,441	7.42
Pennsylvania	11,835,000	121,548	10.27
Illinois	11,131,000	60,083	5.40
Ohio	10,737,000	57,110	5.32
Michigan	9,098,000	42,832	4.71
Florida	8,090,000	104,921	12.97
New Jersey	7,330,000	43,357	5.92
Massachusetts	5,800,000	89,000	15.34
North Carolina	5,363,000	22,035	4.11
Indiana	5,330,000	27,991	5.25
Virginia	4,908,000	21,024	4.28
Georgia	4,882,000	30,500	6.25
Missouri	4,777,000	35,064	7.34
Wisconsin	4,566,000	21,330	4.67
Tennessee	4,129,000	12,500	3.03
Maryland	4,094,000	28,068	6.86
Minnesota	3,917,000	15,000	3.83
Louisiana	3,764,000	14,796	3.93
Alabama	3,577,000	9,336	2.61
Washington	3,476,000	27,616	7.94
Kentucky	3,357,000	11,040	3.29
Connecticut	3,088,000	26,374	8.54
Iowa	2,855,000	10,973	3.84
South Carolina	2,784,000	8,986	3.23
Oklahoma	2,709,000	19,126	7.06
Colorado	2,496,000	27,070	10.85
Mississippi	2,324,000	5,437	2.34
Kansas	2,270,000	13,171	5.80
Oregon	2,266,000	15,315	6.76
Arizona	2,153,000	21,446	9.96
Arkansas	2,062,000	7,779	3.77
West Virginia	1,791,000	3,329	1.86
Nebraska	1,543,000	9,276	6.01
Utah	1,173,000	7,975	6.80
New Mexico	1,122,000	13,542	12.70
Maine	1,047,000	5,698	5.44
Rhode Island	937,000	6,276	6.70
Hawaii	847,000	10,529	12.43
New Hampshire	808,000	8,903	11.02
Idaho	799,000	4,132	5.17
Montana	735,000	2,367	3.22
District of Columbia	723,000	6,012	8.32
South Dakota	682,000	2,229	3.27
North Dakota	637,000	1,449	2.27
Delaware	573,000	2,214	3.86
Nevada	573,000	4,212	7.35
Vermont	470,000	3,242	6.90
Wyoming	359,000	1,272	3.54
Alaska	337,000	1,309	3.88

EMPLOYEE VS. INDEPENDENT CONTRACTOR

Additional light on the controversial question as to whether a broker's salesperson is an employee or an independent contractor has resulted from a research study, conducted by the University of Connecticut Center for Real Estate and Urban Economics.

In a very lucid and cogent report, furnished by James F. Carey, Executive Director of the Connecticut Real Estate Commission and a member of the Center's Advisory Committee, great stress is placed upon the early Missouri case of Dimmitt-Rickoff-Bayer Real Estate Co. v. Finnegan. There, the Court determined that a real estate salesman was an independent contractor. The opinion stated "... competent salesmen, almost entirely dependent upon their own initiative, efforts, skill and personality for success, working on their own time, at their own expense and deriving their remuneration from the results of their work will not be considered employees under the common law test."

The Internal Revenue Service then issued Min. 6555, a ruling which accepted the position of the case cited above and declared that real estate salesmen were not employees. There is no indication that the Common Law Test (26 U.S.C.A. 330116) was changed substantially by the later 1954 Code. The Connecticut treatise cites other authoritative cases, in point, quoting Lifetime Siding Inc. v. U.S. 359F (2d) 657, as follows:

"Generally, an employer - employee relationship exists when the person for whom the services are performed has the right to control and direct the individual who performs the service, not only as to the result to be accomplished by the work, but also as to the details and means by which that result is accomplished. That is, an employee is subject to the will and control of the employer not only as to what is to be done, but also as to how and when it shall be done."

In conclusion, the report states:

"The Regulations clearly state that individuals who are involved in an independent trade, profession, or business, in which they offer their services to the public, will, in most cases, be considered independent contractors. This would place the real estate salesman, who associates with other brokers under the normal conditions of association, in the position of an independent contractor. In addition to the above regulations, a previous ruling of the Internal Revenue Service specifically states that real estate salesmen will not be treated as employees under the normal contractual arrangements between real estate salesmen and brokers.

The normal relationship involved in an association of real estate salesmen and brokers with other brokers is one in which the salesman or broker is entirely dependent upon his own efforts, skill, and ability to earn his compensation. The company that he is associated with may provide him with:

- (1) office space,
- (2) listings,
- (3) advice,
- (4) business cards,
- (5) forms and stationery.

The company may also receive and divide commissions on sales with him and require that he take his turn covering the office on weekends. The Company may prohibit him from selling for other brokers or in his own name.

The salesman should do the following:

- (1) Pay his own association dues;
- (2) Furnish his own transportation;
- (3) Provide the license required by the state;
- (4) Pay all his expenses.

He should not, however, be required to keep regular office hours.

Under the above conditions, a real estate salesman will be treated as an independent contractor, and, therefore, no withholding is necessary.

It is important to remember that, where relevant facts differ from the ones considered above, all factors

must be reexamined. In cases where a salesman was on a guaranteed annual compensation basis, observed customary working hours, had an office on company premises, and followed regular office routine, he was considered an employee. It is important to consider any guaranteed compensation, or even a draw, which is not treated strictly as a loan, with the possibility that this may change the status of the individual associating with a brokerage office from that of an independent contractor to an employee.

If a question arises as to whether or not an individual is an employee, a Form SS-8 can be filed requesting a ruling. When requesting such a ruling, a copy of the contract, or any other written agreement covering the work to be performed, must be submitted along with the above Form. These Forms can be obtained from the District Director of Internal Revenue or a local Internal Revenue Office."

(Narello News)

RECENT SURVEY INDICATES EXTENT OF REAL ESTATE OWNERSHIP

Two-thirds of American families own their own home, nearly 40% of all owner-occupied homes are now mortgage-free and another 30% have a mortgage debt less than half the estimated sales value of the home, according to a Gallup survey sponsored by the National Association of Realtors. The survey also found that 91% of respondents view real estate as a sound investment, 8.7% own vacant land, 7.3% own a second single-family residence and another 4.5% own other types of residential, commercial or industrial real estate. Ownership of other real estate besides a primary residence was reported by 38% of persons with incomes of \$15,000 or more; 23.7% of those with incomes of \$10,000-\$14,999, 21.6% of those with incomes of \$6,000-\$9,000 and 16.6% of persons with incomes of less than \$6,000. (HUD) Newsletter, 26 May '75).

RECIPROCITY

North Carolina exchanges reciprocal licensing privileges with a number of other states. This does not mean, however, that a North Carolina broker or salesman may transact business in these states on the basis of his North Carolina license alone. He must also obtain a license in the other state by complying with all of their licensing requirements with the exception of an examination, which may be waived.

Reciprocity is a privilege and not a matter of right. It depends on mutual respect and cooperation between real estate commissions and licensees alike in order to operate in a fair and reasonable manner.

Listed below are the states which currently exchange reciprocity with North Carolina. Interested persons should write or call directly to the real estate commissions of these states for information.

List of Reciprocal States

Alaska Real Estate Commission
Division of Occupational Licensing
Pouch D
Juneau, Alaska 99801
(586-1677)

Arkansas Real Estate Commission
1311 West Second Street
P. O. Box 3173
Little Rock, Arkansas 72201
(501/371-1247)

Connecticut Real Estate Commission
90 Washington Street
Hartford, Connecticut 06115
(203/566-5130)

Delaware Real Estate Commission
State House Annex
Dover, Delaware 19901
(302/678-4186)

District of Columbia Real Estate Commission
North Potomac Building
614 "H" Street, N. W.
Washington, D. C. 20001
(202/629-4543)

Georgia Real Estate Commission
166 Pryor Street, S. W.
Atlanta, Georgia 30303
(404/656-3916)

Maryland Real Estate Commission
Department of Licensing & Regulation
One South Calvert St., Sixth Floor
Baltimore, Maryland 21202
(301/383-2130)

New Jersey Real Estate Commission
201 East State Street
Trenton, New Jersey 08625
(609/292-7053)

South Carolina Real Estate Commission
900 Elmwood Avenue
Columbia, South Carolina 29201
(803/758-3981)

Tennessee Real Estate Commission
556 Capitol Hill Building
Nashville, Tennessee 37219
(615/741-2273)

Virginia Real Estate Commission
Ninth Street Office Building
P. O. Box 1-X
Richmond, Virginia 23202
(804/770-2161)

West Virginia Real Estate Commission
402 State Office Building, No. 3
Charleston, West Virginia 25305
(304/348-3555)

LICENSES SUSPENDED/REVOKED

MELBA C. HOWARD, Denver — Suspended broker's license for three months — Violation of G.S. 93A-6 (a) (8) in that she permitted an unlicensed person to hold himself out to the public as engaging in or assuming to engage in the business of real estate broker or salesman.

KENNETH J. KIRBY, Hendersonville — Revoked broker's license — Violation of G.S. 93A-6 (a) (7), (8). (Appealed to Superior Court. Stay of execution ordered).

DAVID H. LAWRENCE, Nags Head — Suspended broker's license for one year. Appeal to Superior Court withdrawn. Suspension became effective November 20, 1975.

DOUGLAS W. STANALAND, Wilmington — Revoked broker's license — Violation of G.S. 93A-6 (a) (1), (8), (12).

BOARD ORDER REVERSED

The North Carolina Court of Appeals has reversed the order of the Licensing Board suspending the broker's license of M. D. Woodard of Jacksonville for ninety days for violation of G.S. 93A-6 (a) (8) of the North Carolina Real Estate Licensing Law. Proceeding to be remanded to the North Carolina Real Estate Licensing Board for vacation of license suspension.

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