



NORTH CAROLINA
REAL ESTATE LICENSING BOARD

Real Estate Bulletin

VOLUME 8

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NUMBER 3

New Board Members

Mr. William C. Stokes of Reidsville and Mr. Brantley T. Poole of Raleigh became members of the North Carolina Real Estate Licensing Board by appointment of Governor James B. Hunt, Jr. for terms expiring July 31, 1980.



WILLIAM C. STOKES

Mr. Stokes is a native of Rockingham County and brings to the Board over 50 years of real estate experience. As owner of William C. Stokes and Company he has been active in the fields of real estate brokerage, finance and insurance since 1928, but is now primarily involved in land development and building.

Mr. Stokes is a Charter Member of the Board of Trustees of Rockingham Community College and also is currently serving on the Board of Managers and Finance Committee of the Methodist Home for the Aged at Charlotte. He has previously served as Chairman of the Board of Trustees of Annie Penn Memorial Hospital and Vice-president of North Carolina Children's Home Society, Greensboro.

Mr. Stokes is married to the former Sarah Watt. They attend Main Street United Methodist Church where Mr. Stokes is Chairman of the Board of Trustees.



BRANTLEY T. POOLE

A former member and chairman of the Real Estate Licensing Board, Mr. Poole is owner of Poole Realty Company, a Raleigh firm specializing in industrial and commercial properties, syndications, and investments.

Mr. Poole's professional affiliations include membership in the National and North Carolina Associations of Realtors and the Raleigh Board of Realtors. He has served as a Director of the North Carolina Association of Realtors, as Chairman of its Legislative and License Law Committee and Director of its Political Action Committee. In 1970 he was honored by the Raleigh Board of Realtors as their Realtor of the Year. Active in Raleigh civic affairs, Mr. Poole is currently a member of the Board of Directors of the Raleigh YMCA and the Raleigh Parks & Recreation Advisory Committee.

Mr. Poole is married to the former Elizabeth Griffin and they have two sons and a daughter.

BROKERS MUST VERIFY ACCURACY OF INFORMATION

Both the Licensing Board and the Consumer Protection Section of the Attorney General's Office have observed a noticeable increase in complaints resulting from inaccurate information on Multiple Listing Service property description sheets. Consequently, the Licensing Board is taking a closer look at these complaints to determine whether the listing broker's negligence is responsible for these errors.

It seems that when listing his property for sale, an owner-seller is prone to make many oral representations and statements to the listing broker regarding the condition of his home, the boundary lines of his lot, easements, encumbrances, and other features of his property which cannot be readily or easily verified by the broker. The listing broker, content to simply accept such representations as being true, then proceeds to disseminate this information to the Multiple Listing Service without qualification or reservation. Eventually another broker or salesman (an MLS member) communicates this information to a prospective purchaser who accepts its accuracy and who relies and acts upon it—often to his detriment.

It is, therefore, essential that the listing broker, whenever possible, confirm all information given to him by the property owner, and this entails more than a 30 minute question and answer session with the owner. Furthermore, the listing broker must clearly specify to the Multiple Listing Service that information which he has not personally verified. (Listing brokers are also encouraged to proofread the MLS property description sheet before it is distributed to other brokers to insure that the data which he has furnished to the MLS has been properly recorded.) By doing so, other brokers can properly

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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

115 Hillsborough St.
Raleigh, North Carolina 27602

James B. Hunt, Jr., Governor

BOARD MEMBERS

J. Edward Poole
Chm. Spring Lake
Edwin W. Tenney, Jr.
V. Chm. Chapel Hill
Brantley T. Poole Raleigh
C. Bayless Ridenhour Concord
William C. Stokes Reidsville

Blanton Little Sec'y. Treas.
Phillip T. Fisher Admin. Asst.

EXAM RESULTS

Examination — August, 1977		
	Passed	Failed
Brokers	489	298
Salesmen	66	15
Examination — September, 1977		
	Passed	Failed
Brokers	201	286
Salesmen	27	21
Examination — October, 1977		
	Passed	Failed
Brokers	345	494
Salesmen	24	31

BROKERS MUST VERIFY

(Continued From Page 1)

advise prospective buyers that the information was supplied by the seller, that it has not been verified, and that its accuracy cannot, therefore, be guaranteed.

This will at least place the buyer on notice as to the reliability of the broker's information and enable him to verify this information to his personal satisfaction before he commits himself to a purchase which both he and the broker may regret.

Rules and Regulations Amended

Summarized below are recent amendments to the Rules and Regulations of the North Carolina Real Estate Licensing Board. These changes were adopted following a rule-making hearing held in the offices of the Board on September 21, 1977 and became effective September 30, 1977.

1. Rule .0103 amended by deleting the requirement that licensees notify the Board of each change of residence.
2. Rule .0202 amended by changing the location of the offices of the Licensing Board to 115 Hillsborough Street.
3. Rule .0502(a) amended by deleting from the description of the application form used to obtain a corporation license that part which refers to a resolution of the board of directors.
4. Rule .0504(a) amended by providing that inactive licenses shall be renewed upon the payment of the regular \$10.00 annual renewal fee. (The word "shall" substituted for the word "may" previously being used.)
5. Rule .1001 amended by deleting the requirement that schools seeking approval of their course shall file an application with the Board on the official stationery of the school, and by adding a requirement that schools seeking approval of their course shall make written application to the Board on a prescribed form.
6. Rule .1004 amended by adding a requirement that schools shall furnish each successful student an official certification upon a form prescribed by the Board.

Disciplinary Action

JACQUELYN SMITH — Sanford — Broker's License No. 37513 — Suspended for a period of thirty (30) days for violation of G.S. 93A-6(a)(10) — Improperly allowed loan application to be submitted while knowing it contained inaccurate information.

SAMUEL JACKSON CORBETT — Wilmington — Broker's License No. 27739 — Suspended for ninety (90) days for violation of G.S. 93A-6(a) (8) and (14) — Failed to keep proper escrow records and failed to deliver a closing statement to the buyers.

WILLIAM JAMES HOLMES — Charlotte — Broker's License No. 27830 — Reprimanded for violation of G.S. 93A-6(a) (7) and (10) — Improperly received offer to purchase without receiving earnest money and failed to inform his principal of this fact, and failed to divide the forfeited earnest money with seller until Board investigation.

SAMUEL H. McMAHON, JR. — Charlotte — Broker's License No. 6082 — Revoked for violation of G.S. 93A-6(a) (8) and (10) — Purchased a tract of real estate for \$115,000.00 when it had been

offered at \$85,000.00 and improperly caused or permitted the difference (\$30,000) to be applied toward his own purchase of another property. Broker has appealed. Stay of execution granted by the Superior Court.

MITCHEL W. HUNEYCUTT — New London — Broker's License No. 22757 — Reprimanded for violation of Section .0105 of the Rules and Regulations of the Licensing Board — Certain advertisements did not indicate they were the advertisements of a broker or brokerage firm.

JOE LAMB, JR. — Nags Head — Broker's License No. 1762 — Reprimanded for violation of G.S. 93A-6(a) (15) — Failure to deposit earnest money in escrow account in accordance with Section .0107 of the Rules and Regulations of the Licensing Board.

JAMES M. HILL, JR. — Address Unknown — Broker's License No. 16583 — Revoked for violation of G.S. 93A-6(a) (7) and (8) — Failed to return a client's cash deposit within a reasonable time and without explanation, and refused a request from the Board's representative to produce records relative to the handling of the deposit.

Misnomers

Often Confused, Abused, and Misused Real Estate Terms

"COUNTER OFFERS"

The term "counter offer" is perhaps one of the most often used yet least understood words in the broker's real estate vocabulary.

Generally speaking, a counter offer or counter proposition has been made when, for example, a seller has accepted some — but not all — of the terms of a buyer's offer to purchase. The seller "counters" the buyer's offer usually by striking through the objectionable terms or by adding his own terms to the buyer's original offer, mistakenly thinking that he can always accept the buyer's original offer at some later time should the buyer refuse to accept his new conditions. **WRONG!**

A counter-offer constitutes a rejection of the original offer, and, once rejected, an offer is gone forever unless the offeror (person making the offer) reinstates it or offers it again. A subsequent attempt to accept it will not be effective.

As agents and advisors to persons involved in real estate transactions it is essential that you have a proper understanding of the effects of counter-offers, and as licensed real estate brokers and salesmen you are reminded that copies of (counter) offers must be delivered to the parties thereto within 5 days from the date of execution (Licensing Board Rule .0106) with one copy being retained by the broker in his files for a period of at least three years (Rule .0108).

"LISTING" OR "OPTION"?

The developers of our licensing examinations inform us that examinees tend to experience the least difficulty in answering those math questions dealing with brokerage commissions. This is perhaps understandable since it is a subject of great interest both to practicing and aspiring brokers and salesmen. It is surprising, however, to hear experienced brokers and salesmen improperly labeling the very agreement which provides for the payment of such commission — the listing agreement.

We frequently hear licensees using the terms "listing" and "option" interchangeably despite the fact that each has a meaning and significance of its very own. A listing agreement is, in fact, an employment agreement between principal and agent, while an option is a contract granting a

right to purchase or lease certain property for a certain specified period of time.

Although a listing contract may contain a provision giving the broker an option to purchase the listed property, the use of such a provision is not encouraged since it would place the broker in the conflicting position of being both agent (with respect to the listing) and principal (with respect to the option).

Remember these very basic and important distinctions when using these terms.

"OFFER" OR "CONTRACT"?

Listings, options, contracts to purchase and sell, and offers to purchase are all fundamentally contracts. However, as between listings and options, an "offer to purchase" can and should be distinguished from a "purchase contract" or "contract of sale" or simply "contract". Listed below are several important characteristics of each instrument which should help you differentiate between them.

Offer to Purchase:

1. Expresses the deal the prospective buyer wants to propose to the seller and generally constitutes the starting point for negotiations;
2. **Does not require earnest money to be valid;**
3. Can be withdrawn by the offeror (person making offer) at any time prior to acceptance by the offeree (person receiving offer) even if offeror states that the offer will remain open for a specified period of time;
4. If withdrawn prior to acceptance by owner-seller, the prospective buyer is entitled to a full refund of any earnest money deposit;
5. Obligates neither the offeror nor offeree.

Purchase or Sales Contract:

1. A legally enforceable agreement created by the acceptance of an "offer to purchase" which generally constitutes the conclusion of negotiations;
2. **Does not require earnest money to be valid;**
3. Cannot be withdrawn or revoked by either party after

acceptance of offer has been communicated to offeror;

4. Obligates both the vendee (buyer) and vendor (seller) to perform according to the terms of their mutual agreement.

Remember: An offer must be unconditionally accepted before a contract is created. When using the terms "offer" and "contract" be careful to employ the term which correctly befits the status of the instrument.

"RECIPROCITY"

In recent years, North Carolina real estate brokers and salesmen have shown increasing interest in obtaining nonresident real estate licenses in other states; likewise, the North Carolina Real Estate Licensing Board has observed an increase in demand for nonresident North Carolina real estate licenses. In applying for or inquiring about such nonresident licenses, the term "reciprocity" naturally surfaces — often being used incorrectly and indicating a general misunderstanding of the meaning and application of this term.

The North Carolina Real Estate Licensing Law contains a provision whereby an applicant from another state which offers licensing privileges to North Carolina residents may qualify for a nonresident North Carolina real estate license by (1) satisfying the qualification requirements demanded of North Carolina residents seeking North Carolina real estate licenses, and (2) satisfying such other terms and conditions required of North Carolina residents applying for licenses in such other state. This mutual agreement between states for the exchange of licensing privileges upon equal terms and conditions is referred to as a reciprocal licensing agreement or simply "reciprocity".

Note that the term "reciprocity" does not denote "transferability" in the sense that licenses may be transferred from one state to another. Nor does it entitle a broker or salesman to engage in real estate activities in a "reciprocal state" without first obtaining the required nonresident license. However, primarily to accommodate licensees wishing to transact business in a bordering or neighboring state, licensing authorities (Boards and Commissions) may exempt from written examination a

(Continued on Page 4)

Court Decisions

N. C. (34 N. C. APP. 290)

Buyer and seller entered into a written contract for the purchase and sale of 25 acres of land. The contract called for final settlement to be completed on or before October 15, 1975, but settlement did not take place within the prescribed time period because the buyer needed additional time to complete the property survey and title examination.

The seller subsequently refused to convey title, arguing (in part) that the buyer had failed to close within the time specified in the contract; however, the Court of Appeals rejected the seller's argument, pointing out that nothing in the nature of the contract or its terms made time of the essence insofar as the settlement date was concerned.

NOTE: If your standard forms do not meet the needs of the parties to a particular transaction, consult an attorney for assistance.

N. H. (375 A. 2d 600)

In this case the New Hampshire Supreme Court held that the purchasers forfeited their earnest money deposit where (1) The purchase and sale contract was subject to buyers obtaining bank financing, (2) a bank agreed to finance the purchase, and (3) the bank subsequently withdrew

its offer to finance when it learned the buyers (husband and wife) had decided to file for divorce.

The court reasoned that a provision in a sales contract making the sale subject to the buyer's ability to obtain financing does not protect the buyer when financing is denied due to some voluntary action on his part, such as filing for divorce.
LA. (331 SO. 2d 550)

In Louisiana the first Circuit Court of Appeals was faced with the following situation: A seller signed a standard ninety-day exclusive listing contract with a brokerage firm giving this firm the right to sell certain property and also providing as follows:

"I/we further agree to pay commission as above stipulated in event of sale of said property by me/us within six months after the expiration of this agreement, provided purchaser has become interested in said property as a result of the efforts of advertising of said agent during the active term of this listing, and I/we also agree to refer all prospects to the listing Realtor."

During the initial ninety-day period, a Mr. Kuetemeyer made two

offers to purchase the property, but both offers were rejected. Immediately following the expiration of the listing agreement, however, the seller listed the property with another realty firm and the Kuetemeyers then presented a higher offer through this firm. The seller accepted the offer, and the house was sold. The agency which had originally listed the property then sued the seller for a commission citing the above "six-month" clause.

Despite two dissents, a majority of the Louisiana appellate court held that, as a matter of law, the first agency was not entitled to a commission even though the house was sold to the Kuetemeyers within the six-month period. According to the court, the purpose of the "six-months" clause is to prevent an owner from contacting a prospective purchaser after expiration of a listing in order to deprive the agent of his commission. Thus, the clause pertains only to a sale by owners and does not apply where a real estate agent, operating under a listing agreement, sells property to a purchaser who has initially become interested as a result of efforts of the first listing agent.

"RECIPROCITY"

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broker or salesman duly licensed in another state if that state similarly exempts their residents from examination. This exemption is presently contained in reciprocal licensing agreements with Alaska (to be cancelled effective 1/1/78), Arkansas, Connecticut, Delaware, District of Columbia, Georgia, Kentucky, Maryland, New Jersey, South Carolina, Tennessee, Virginia, and West Virginia.

Persons interested in applying for nonresident licenses from another state should contact the real estate commission or licensing body in that particular jurisdiction. We shall be happy to furnish you their mailing addresses and telephone numbers.

EXAMINATION SCHEDULE

Filing Date

December 1, 1977
January 5, 1978
February 2, 1978
March 9, 1978
April 13, 1978
May 11, 1978

Exam Date

January 10, 11, 12, 1978
February 14 and 15
March 14 and 15
April 18 and 19
May 23 and 24
June 20 and 21

The Board reserves the right to change this schedule without prior notice.

NORTH CAROLINA
REAL ESTATE LICENSING BOARD
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Seasons Greetings

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Licensing Board and Staff