



**NORTH CAROLINA
REAL ESTATE LICENSING BOARD**

Real Estate Bulletin

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MEET YOUR LICENSING BOARD



NORTH CAROLINA REAL ESTATE LICENSING BOARD

(l. to r.) J. Toliver Davis; J. Bart Hall; Kenneth R. Smith, Vice Chairman; A. P. Carlton, Chairman; and John W. Olive.

A. P. CARLTON, Greensboro, was appointed to the Licensing Board in 1968 and presently serves as Chairman. He is a graduate of the University of North Carolina. He is a licensed real estate broker and has been quite active as a Realtor, having served as President, Greensboro Board of Realtors; Director, N. C. Association of Realtors; President, N. C. Real Estate Educational Foundation; and Dean of the Realtors Institute. In 1969, he was chosen Greensboro Realtor of the Year. Mr. Carlton's business interests include Interstate Realty, Inc., Carlton-Phillips Insurance Agency, and H.M. & T. Investment Company.

J. BART HALL, Belmont, has been a member of the Licensing Board since 1957 and has served as Board Chairman. After graduating from Davidson College in 1925, he began a banking career in Charlotte. He joined the Belmont Savings and Loan Association in 1932 and has been President since 1954. He has served as Director, United States Savings & Loan League; President, North Carolina Savings & Loan League; President, Belmont Kiwanis Club and President, Belmont Chamber of Commerce and is a Trustee of Gaston College.

J. TOLIVER DAVIS, Forest City, was appointed to the Licensing Board in 1966 and is a past Chairman. He is a graduate of Wake Forest Law School and practices law in Forest City. During the 1955, 1957, and 1959 sessions, he was a member of the North Carolina House of Representatives. He is active in various legal organizations including the N. C. State Bar, N. C. Bar Association, American Bar Association, and the American Trial Lawyer's Association. Mr. Davis served in the U. S. Navy as a LCDR in the European and Pacific Theatres in WW II and was decorated with the Purple Heart and Silver Star citations.

KENNETH R. SMITH, Raleigh, was appointed to the Licensing Board in 1957. He is a past Chairman and presently serves as Vice Chairman of the Board. He attended Washington and Lee University. He is a retired fire insurance executive. Prior to his appointment to the Licensing Board, he served as Director of the Atlantic and North Carolina Railroad. He has served on many prominent committees including Chairman of the Committee on Rates, Rules and Forms for the N. C. Inspection and Rating Bureau and Executive Committee of the N. C. Fire Insurance Rating Bureau.

JOHN W. OLIVE, Mount Airy, was appointed to the Board in November, 1969. He is a graduate of Duke University and served in the U. S. Army 1942-45. He is actively engaged in real estate development and residential construction. He serves as Executive Vice President of the United Savings and Loan Association with offices in Mount Airy, E'kin, and King. He is affiliated with a number of companies as a Director. He is a licensed real estate broker and is a member of the Surry County Board of Realtors.

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

412 First Federal Bldg.
Raleigh, North Carolina 27602

Robert W. Scott, Governor

BOARD MEMBERS

A. P. Carlton, Chm. Greensboro
Kenneth R. Smith, V. Chm. .. Raleigh
J. Toliver Davis Forest City
J. Bart Hall Belmont
John W. Olive Mount Airy
J. F. Schweidler Sec'y.-Treas.

CHAIRMAN'S COMMENTS

Very soon, I will be completing my year as Chairman of the North Carolina Real Estate Licensing Board. I am grateful to the Board for the opportunity to serve as Chairman inasmuch as this year has been a most rewarding one to me. The year has presented many problems some of you will recall, but with the fine spirit of cooperation of the licensees and Board, we have gone about the business of solving them.

At this time, we are in the process of many changes and during the days forthcoming, you will be more aware of the efforts of your Board to upgrade your chosen profession. Your Board is charged, in the Statute by which it was created, to protect the interest of the citizens of the State of North Carolina and I can assure you that this is being done. You too have an obligation to the people of this State to know what you are doing in the practice of real estate and to be completely aware of the North Carolina Real Estate Licensing Law and the Rules and Regulations of the Board. May I suggest, if you have not reviewed them lately, to order copies from our office.

Best wishes.



ATTORNEY GENERAL'S OPINION ON TRUST ACCOUNTS

QUESTION: May a real estate broker maintain an escrow or trust account in a savings and loan association?

CONCLUSION: No.

OPINION: G. S. 93A-6 provides that a real estate broker's or salesman's license may be suspended or revoked for certain acts, among which is:

"(12) Commingling the money or other property of his principals with his own or failure to maintain and deposit in a trust or escrow account in an insured bank all money received by a real estate broker, acting in said capacity, or as escrow agent, or the temporary custodian of the funds of others, in a real estate transaction." (Bold added.)

The term "bank" has a statutory definition. G. S. 53-1(1) provides:

"Bank. — The term 'bank' shall be construed to mean any corporation, other than building and loan associations, industrial banks, and credit unions, receiving, soliciting, or accepting money or its equivalent on deposit as a business."

Likewise, the term "savings and loan association" has a statutory definition. G. S. 54-1 provides in part:

"The terms 'building and loan association' and 'savings and loan association,' as used in this subchapter, shall apply to and include all corporations, companies, societies, or associations organized for the purpose of making loans to their members only, and of enabling their members to acquire real estate, make improvements thereon and remove encumbrances therefrom by the payment of money in periodical installments or principal sums, and for the accumulation of a fund to be returned to members who do not obtain advances for such purposes."

These two terms are not used interchangeably, the laws relating to banks and savings and loan associations being contained in separate chapters of the General Statutes and the rights, powers and duties of each being different in a myriad of ways.

G. S. 93A-6 is clear and unambiguous in its use of the word "bank." The Supreme Court of North Carolina has held repeatedly that a statute must be construed as written and that if the language of a statute is clear and unambiguous, there is no room for judicial construction and the courts must give it its plain and definite meaning. See *STATE v. WIGGINS*, 272 NC 147; *STATE v. ROSS*, 272 NC 67, and *DAVIS v. GRANITE CORPORATION*, 259 NC 672. Many other North Carolina cases are cited in 7 N. C. Index 2d, Statutes, sec. 5.

DID YOU KNOW

that North Carolina law automatically adds a risk of loss clause to real estate contracts?

Uniform Vendor and Purchaser Risk Act

"§ 39-39. Risk of loss. — Any contract hereafter made in this State for the purchase and sale of realty shall be interpreted as including an agreement that the parties shall have the following rights and duties, unless the contract expressly provides otherwise:

- (1) If, when neither the legal title nor the possession of the subject matter of the contract has been transferred, all or a material part thereof is destroyed without fault of the purchaser, the vendor cannot enforce the contract, and the purchaser is entitled to recover any portion of the price that he has paid;
- (2) If, when either the legal title or the possession of the subject matter of the contract has been transferred, all or any part thereof is destroyed without fault of the vendor, the purchaser is not thereby relieved from a duty to pay the price, nor is he entitled to recover any portion thereof that he has paid."

IMPORTANT NEW DEVELOPMENT IN THE LAW OF BROKERAGE

It has been the general rule of law that a broker is entitled to his commission when the contract of sale is signed by buyer and seller. In accepting the purchaser, the seller has approved the buyer, and should the latter later refuse to consummate the deal, the burden is upon the seller to enter suit to compel the buyer to perform. A case of great importance, which rejects the premise that the owner is liable to the broker for commission, where the buyer defaults, is the case of *Ellsworth Dobbs, Inc. v. Johnson (owner) and Larussi (buyer)*, 50 N.J. 528. In joining the buyer as defendant, the broker charged the buyer with breach of an implied agreement to pay the commission if he failed to complete the purchase and thus deprived the broker of commission from the seller. The trial judge held, as a matter of law, that the broker's commission vested upon execution of the contract of sale, and the commission was not dependent upon the closing of title. The jury found for the broker in the amount of \$15,000 against the owner. Upon appeal, the appellate court said:

"Corbin notes that there has been an immense amount of litigation over the years with respect to the commissions of land brokers. 1 Corbin on Contracts 50 (1963). Almost a century ago, the former Supreme Court ruled that when a broker who had been duly authorized by the owner to find a buyer for his property produced a willing and able purchaser who entered into a contract to buy on terms agreeable to the owner, the broker had fulfilled his undertaking and his right to commission from the owner was complete . . .

There can be no doubt that ordinarily when an owner of property lists it with a broker for sale, his expectation is that the money for the payment of commission will come out of the proceeds of the sale. He expects that if the broker produces a buyer to whom the owner's terms of sale are satisfactory, and a contract embodying those terms is executed, the buyer will perform, i.e. he will pay the consideration and accept the deed at the time agreed upon. Considering the realities of the relationship created between owner and broker, that expectation of the owner is a reasonable one, and, in our view, entirely consistent with what should be the expectation of a conscientious broker

as to the kind of ready, willing and able purchaser his engagement calls upon him to tender to the owner.

The present New Jersey rule as exemplified by the cases cited above is deficient as an instrument of Justice. It permits a broker to satisfy his obligation to the owner simply by tendering a human being who is physically and mentally capable of agreeing to buy the property on mutually satisfactory terms, so long as the owner enters into a sale contract with such person. The implication of the rule is that the owner has the burden of satisfying himself as to the prospective purchaser's ability, financial or otherwise, to complete the transaction; he cannot rely at all on the fact that the purchaser was produced in good faith by the broker as a person willing and able to buy the property. Once he enters into a contract of sale with the broker's customer, he is considered to have accepted the purchaser as fully capable of the ultimate performance agreed upon. If it later appears that the purchaser is not financially able to close the title, or even that he never did have the means to do so, the owner must pay the broker his commission, so long as he acted in good faith. Such a rule, considered in the context of the real relationship between broker and owner, empties the word "able" of substantially all of its significant content and imposes an unjust burden on vendors of property. It seems to us that fairness requires that the arrangement between broker and owner be interpreted to mean that the owner hires the broker with the expectation of becoming liable for a commission only in the event a sale of the property is consummated, unless the title does not pass because of the owner's improper or frustrating conduct . . .

Thus when the broker produces his customer, it is only reasonable to hold that the owner may accept him without being obliged to make an independent inquiry into his financial capacity. That right ought not to be taken away from him, nor should he be estopped to assert it, simply because he "accepted" the buyer . . . In a practical world, the true test of a willing buyer is not met when he signs an agreement to purchase; it is demonstrated at the time of closing

of title, and if he unjustifiably refuses or is unable financially to perform then, the broker has not produced a willing buyer . . .

Study of the problems involved in this case in light of the above considerations leads us to the following conclusions as to what the controlling rule should be in New Jersey: When a broker is engaged by an owner of property to find a purchaser for it, the broker earns his commission when (a) he produces a purchaser ready, willing and able to buy on the terms fixed by the owner, (b) the purchaser enters into a binding contract with the owner to do so, and (c) the purchaser completes the transaction by closing the title in accordance with the provisions of the contract. If the contract is not consummated because of any other default of his, there is no right to commission against the seller. On the other hand, if the failure of completion of the contract results from the wrongful act or interference of the seller, the broker's claim is valid and must be paid. In short, in the absence of default by the seller, the broker's right to commission against the seller comes into existence only when his buyer performs in accordance with the contract of sale . . .

The rules which we have set down above to govern dealings, rights, and duties between brokers and owners are necessary for the protection of property owners, and constitute the public policy of our State . . .

This Court has held that when a prospective buyer solicits a broker to find or to show him property which he might be interested in buying, and the broker finds property satisfactory to him which the owner agrees to sell at the price offered, and the buyer knows the broker will earn commission for the sale from the owner, the law will imply a promise on the part of the buyer to complete the transaction with the owner. If he fails or refuses to do so without a valid reason, and thus prevents the broker from earning the commission from the owner, he becomes liable to the broker for breach of the implied promise. The damages chargeable to him will be measured by the amount of commission the broker would have earned from the owner."

—Narello News

COMPLAINTS

The Licensing Board is greatly concerned whenever a complaint is filed against a broker or salesman. Particularly disturbing are complaints which involve the improper handling of real estate funds or the failure to furnish buyers and sellers copies of properly prepared purchase agreements or closing statements.

When a client employs a licensed broker to represent him in a real estate transaction, he naturally expects the broker and his salesmen to handle his business with the highest degree of honesty and competency. The real estate licenses which have been issued by the Licensing Board and which are displayed in the broker's office give this assurance to the client. If the broker or his salesmen fail this obligation, the client has a perfect right to complain to the Licensing Board and expect the Board to take appropriate action to protect him.

Brokers are urged to review in detail the following sections of 93A-6(a) of the Licensing Law with their personnel:

- (12) Commingling the money or property of his principals with his own or failure to maintain and deposit in a trust or escrow account in an insured bank all money received by a real estate broker acting in said capacity, or as escrow agent, or the temporary custodian of the funds of others, in a real estate transaction.
- (13) Failure to deliver, within a reasonable time, a completed copy of any purchase agreement or offer to buy and sell real estate to the buyer and to the seller.
- (14) Failure by a broker to deliver to the seller in every real estate transaction wherein he acts as a real estate broker, at the time such transaction is consummated, a complete detailed closing statement showing all of the receipts and disbursements handled by such broker for the seller; also failure to deliver to the buyer a complete statement showing all money received in the transaction from such buyer and how and for what the same were disbursed.

1309 LICENSEES FAIL TO RENEW

Another annual license renewal period ended on June 30th. Of the 10,485 persons holding licenses on this date, 1,309 did not renew for 1970-71 and their licenses automatically expired. These persons should be aware that if they continue to engage in the real estate business, they will be subject to the penalties prescribed by law for engaging in business without a license.

Brokers should check the licenses of all salesmen in their employ to ascertain whether they have renewed their licenses. By employing unlicensed salesmen, brokers subject themselves to having their own licenses suspended or revoked.

The Licensing Board and staff thank the many licensees who followed renewal instructions and made it possible to efficiently process their applications.

Expired licenses may be reinstated in accordance with the requirements of General Statute 93A-4(c) which provides as follows:

"All licenses reinstated after the expiration date thereof shall be subject to a late filing fee of five dollars (\$5.00) in addition to the required renewal fee. In the event a licensee fails to obtain a reinstatement of such license within twelve months after the expiration date thereof, the Board may, in its discretion, consider such person as not having been previously licensed, and thereby subject to the provisions of this chapter relating to the issuance of an original license, including the examination requirements set forth herein."

LICENSE STATISTICS

Licensees as of June 30, 1970

Brokers	8,021
Salesmen	2,464
Total	10,485

Examination — April 1970

	Passed	Failed
Brokers	38	20
Salesmen	76	17

Examination — May 1970

	Passed	Failed
Brokers	153	82
Salesmen	56	21

(No examination held in June)

LICENSES SUSPENDED-REVOKED

WILLIAM A. CROSS — Greensboro broker—suspended 60 day suspension—G.S. 93A-6(12)

NOTICE

The Licensing Board will move into larger quarters on August 22.

The new offices will be located in 813 Branch Banking and Trust Building (B. B. & T. Bldg.), 333 Fayetteville Street, Raleigh.

Licensees are cordially invited to visit the new Board offices.

BOARD APPOINTMENT

As we go to press, it was announced that Governor Bob Scott had appointed Brantley T. Poole, Raleigh Realtor, to the Licensing Board for a three-year term expiring July 31, 1973.

Mr. Poole succeeds Kenneth R. Smith whose term expired July 31, 1970.

NORTH CAROLINA
REAL ESTATE LICENSING BOARD
P. O. BOX 268
RALEIGH, N. C. 27602

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