



NORTH CAROLINA  
REAL ESTATE LICENSING BOARD

# Real Estate Bulletin

VOLUME 2

SPRING QUARTER 1971

NUMBER 1

## LICENSE RENEWAL TIME APPROACHETH!

REAL ESTATE LICENSES EXPIRE ON JUNE 30, 1971

Real estate licenses are renewable during the month of June. Renewal forms will be mailed to all licensees of record during the last week of May. Anyone not receiving his form by June 1st should immediately contact the Board office for another form.

The mechanics of renewal are quite simple. The licensee merely has to personally sign the renewal form, make address changes or corrections, enclose the \$10.00 renewal fee, and return in the envelope which is provided. A salesman's renewal must also be signed by his supervising broker provided the broker has filed his own renewal. Renewals not filed in proper form will be returned.

The exact amount of the fee must be enclosed with each renewal. Other fees should not be included. (Fees for payment of real estate privilege tax license should be sent to the North Carolina Department of Revenue). Checks drawn on escrow or trust accounts are not acceptable. Checks returned because of insufficient funds are grounds for license suspension or revocation.

Completed renewal forms must be received in the Board office, 813 B B & T Building, 333 Fayetteville Street, Raleigh, no later than 5:00 P.M. on June 30, 1971. Late renewals will be returned and are subject to an additional \$5.00 late filing fee.

Renewals are processed by computer; consequently, a strict renewal schedule must be maintained. At the end of each 10 day renewal period, the computer will print pocket cards for the licensees who have renewed during that period. Licensees are urged to renew as soon as possible to prevent undue delay in processing and issuing pocket cards.

**General Statute 93A-4(c)** provides that "All licenses granted and issued by the Board under the provisions of this chapter shall expire on the 30th day of June following issuance thereof, and shall become invalid after such date unless reinstated. Renewal of such license may be effected at any time during the month of June preceding the date of expiration of such license upon proper application to the Board accompanied by the payment of a renewal fee of ten dollars (\$10.00) to the secretary-treasurer of the Board. 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."

**IT IS YOUR RESPONSIBILITY TO RENEW IN TIME!**

## 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

813 BB&T Bldg.

Raleigh, North Carolina 27602

Robert W. Scott, Governor

#### BOARD MEMBERS

John W. Olive, Chm. .... Mount Airy  
J. Bart Hall, V. Chm. .... Belmont  
A. P. Carlton ..... Greensboro  
J. Toliver Davis ..... Forest City  
Brantley Poole ..... Raleigh

J. F. Schweidler ..... Sec'y.-Treas.  
Blanton Little ..... Admin. Asst.

#### BOARD MEETINGS

Meetings of the Licensing Board are open to the public. If you wish to attend, please contact the Board office for time and place of meeting.

#### — CHAIRMAN'S COMMENTS —

On behalf of your Board, I would like to thank the many licensed salesmen and brokers who solicited the support of their legislators for H.B. 187. As you know, this bill is now law and should go far in further upgrading the real estate profession in North Carolina.

"Reciprocity" is the giving or exchanging mutually or equally. The new amendment to the real estate licensing law just passed allows the North Carolina Board to negotiate reciprocity agreements on an equal basis with other states. In other words, North Carolina may now make the same requirements of an out-of-state resident as are made of North Carolinians wishing to be licensed out-of-state.

In the past there have been some serious charges filed against real estate brokers. At the formal hearings it frequently has developed that the trouble arose from the brokers failing to keep escrow accounts as required by G.S. 93A-6. Escrow accounts are required by law. It is the duty of the broker to have his escrow account in proper order as he is accountable for the funds.

*J. W. Olive*

## EARNEST MONEY IS NOT ADVANCE ON BROKER'S COMMISSION

There appears to be a misconception among some members of the real estate industry as to the disposition of earnest money in the event the transaction fails. Earnest money is not prepayment for, or to be considered as partial payment of, or as protection against, the broker's commission. Earnest money is not in the broker's trust account as a payment to be retained by the broker if the sale, for any reason, is not completed. Earnest money is given as a part of the contractual agreement, or proposed contractual agreement, executed by the buyer or the seller or both. It is given as evidence of the earnest intent of the buyer to fulfill the terms of the contract. Disbursement of earnest money may be made only with the full knowledge of the contracting parties, and pursuant to their agreement.

If a broker is in doubt as to the proper disposition of earnest money retained in his trust account, he should seek legal counsel as to the proper procedures and documentation

## LICENSE STATISTICS

Licensees as of March 31, 1971

Brokers	8,712
Salesmen	2,588
Total	11,300

Examination — January 1971

	Passed	Failed
Brokers	204	116
Salesmen	40	18

Examination — February 1971

	Passed	Failed
Salesmen	52	22

Examination — March 1971

	Passed	Failed
Brokers	127	68
Salesmen	64	26

## LICENSES

### SUSPENDED-REVOKED

WILLIAM A. COWAN — Durham  
broker—revoked—G.S. 93A-6(12).

to be executed in disbursing such monies. As a broker, you MAY NOT simply appropriate such money to your own use.

—Minnesota Real Estate News

## LICENSING LAW AMENDED

The following amendments to the Real Estate Licensing Law, enacted by the General Assembly, become effective July 1, 1971:

G.S. 93A-3(f). The Board is authorized to expand expense reserve funds as defined in G.S. 93A-3(b) for the purpose of conducting education and information programs relating to the real estate brokerage business for the information, education, guidance and protection of the general public, licensees, and applicants for license. The education and information programs may include preparation, printing and distribution of publications and articles and the conduct of conferences, seminars, and lectures.

G.S. 93A-6(c). Records relative to the deposit, maintenance, and withdrawal of the money or other property of his principals shall be properly maintained by a broker and made available to the Board or its authorized representative when the Board determines such records are pertinent to the conduct of the investigation of any specific complaint against a licensee.

G.S. 93A-9. An applicant from another state, which offers licensing privileges to residents of North Carolina, may be licensed by conforming to all the provisions of this Chapter and, in the discretion of the Board, such other terms and conditions as are required of North Carolina residents applying for license in such other state; provided that the Board may exempt from the examination prescribed in G.S. 93A-4 a broker or salesman duly licensed in another state if a similar exemption is extended to licensed brokers and salesmen from North Carolina.



# ADMINISTRATIVE PROCEDURE ACT

(Continued From Last Issue)

**§ 150-16. Powers of board in connection with hearing.**—In connection with any hearing held pursuant to the provisions of this chapter the board or its trial examiner or committee shall have power

- (1) To have counsel to develop the case;
- (2) To subpoena witnesses and relevant books, papers, and documents;
- (3) To administer oaths or affirmations to witnesses called to testify;
- (4) To take testimony;
- (5) To examine witnesses; and
- (6) To direct a continuance of any case.

**§ 150-17. Contempt procedure.**—In proceedings before a board or its trial examiner or committee, if any person refuses to respond to a subpoena, or refuses to take the oath or affirmation as a witness or thereafter refuses to be examined, or refuses to obey any lawful order of a board contained in its decision rendered after hearing, the secretary of the board may apply to the superior court of the county where the proceedings are being held for an order directing that person to take the requisite action. The court shall issue such order in its discretion. Should any person willfully fail to comply with an order so issued the court shall punish him as for contempt.

**§ 150-18. Rules of evidence.**—In proceedings held pursuant to this chapter, boards may admit any evidence and may give probative effect to evidence that is of a kind commonly relied on by reasonably prudent men in the conduct of serious affairs. Boards may in their discretion exclude incompetent, irrelevant, immaterial, and unduly repetitious evidence. In proceedings involving the suspension, revocation, or the withholding of the renewal of a license, rules of privilege shall be applicable to the same extent as in proceedings before the courts of this State.

**§ 150-19. Transcript of the proceedings.**—In all hearings conducted pursuant to this chapter, a complete record shall be made of evidence received during the course of the hearing.

**§ 150-20. Manner and time of rendering decision.**—After a hearing has been completed the members of the board who conducted the hearing shall proceed to consider the case and as soon as practicable shall render their decision. If the hearing was conducted by a trial examiner or trial committee, the decision shall be rendered by the board at a meeting where a majority of the members are present and participating in the decision, provided that all such members who were not present throughout the hearing must thoroughly familiarize themselves with the entire record including all evidence taken at the hearing before participating in the decision. In any case the decision must be rendered within ninety days after the hearing.

**§ 150-21. Service of written decision.**—Within five days after the decision is rendered the board shall serve upon the person whose license is involved a written copy of the decision, either personally or by registered mail. If the decision is sent by registered mail it shall be deemed to have been served on the date borne on the return receipt.

**§ 150-22. Procedure where person fails to request or appear for hearing.**—If a person who has requested a

hearing does not appear, and no continuance has been granted the board or its trial examiner or committee may hear the evidence of such witnesses as may have appeared, and the board may proceed to consider the matter and dispose of it on the basis of the evidence before it in the manner required by § 150-20.

Where because of accident, sickness, or other cause a person fails to request a hearing or fails to appear for a hearing which he has requested, the person may within a reasonable time apply to the board to reopen the proceeding, and the board upon finding such cause sufficient shall immediately fix a time and place for hearing and give such person notice thereof as required by §§ 150-11 and 150-12. At the time and place fixed a hearing shall be held in the same manner as would have been employed if the person had appeared in response to the original notice of hearing.

**§ 150-23. Contents of decision.**—The decision of the board shall contain

- (1) Findings of fact made by the board;
- (2) Conclusions of law reached by the board;
- (3) The order of the board based upon these findings of fact and conclusions of law; and
- (4) A statement informing the person whose license is involved of his right to appeal to the courts and the time within which such appeal must be sought.

**§ 150-24. Availability of judicial review; notice of appeal; waiver of right to appeal.**—Any person entitled to a hearing pursuant to this chapter, who is aggrieved by an adverse decision of a board issued after hearing, may obtain a review of the decision in the Superior Court of Wake County, or in the superior court of the county in which the hearing was held, or, upon agreement of the parties to the appeal, in any other superior court of the State. In order to obtain such review such person must, within twenty days after the date of service of the decision as required by § 150-21, file with the board secretary a written notice of appeal, stating all exceptions taken to the decision and indicating the court in which the appeal is to be heard. Failure to file such notice of appeal in the manner and within the time stated shall operate as a waiver of the right to appeal and shall result in the decision of the board becoming final; except that for good cause shown, the judge of the superior court may issue an order permitting a review of the board decision notwithstanding such waiver.

**§ 150-25. Record filed by board with clerk of superior court; contents of record.**—Within thirty days after receipt of the notice of appeal, the board shall prepare, certify, and file with the clerk of the superior court in the proper county the record of the case, comprising

- (1) A copy of the notice of hearing required under §§ 150-11 and 150-12;
- (2) A complete transcript of the testimony taken at the hearing;
- (3) Copies of all pertinent documents and other written evidence introduced at the hearing;
- (4) A copy of the decision of the board containing the items specified in § 150-23; and
- (5) A copy of the notice of appeal containing the exceptions filed to the decision.

(Continued page 4)

With the permission of the court, the record may be shortened by stipulation of all parties to the review proceedings. Any party unreasonably refusing to stipulate to limit the record may be taxed by the court for such additional costs as may be occasioned by the refusal. The court may require or permit subsequent corrections or additions to the record when deemed desirable.

**§ 150-26. Appeal bond; stay of board order.**—The person seeking the review shall file with the clerk of the reviewing court a copy of the notice of appeal and an appeal bond of \$200 at the same time the notice of appeal is filed with the board as required by §150-24. At any time before or during the review proceeding the aggrieved person may apply to the reviewing court for an order staying the operation of the board decision pending the outcome of the review. The court may grant or deny the stay in its discretion.

**§ 150-27. Scope of review; power of court in disposing of the case.**—Upon the review of any board decision under this chapter, the judge shall sit without a jury, and may hear oral arguments and receive written briefs, but no evidence not offered at the hearing shall be taken, except that in cases of alleged omissions or errors in the record, testimony thereon may be taken by the court. The court may affirm the decision of the agency or remand the case for further proceedings; or it may reverse or modify the decision if the substantial rights of the petitioners may have been prejudiced because of the administrative findings, inferences, conclusions, or decisions are

- (1) In violation of constitutional provisions; or
- (2) In excess of the statutory authority or jurisdiction of the agency; or
- (3) Made upon unlawful procedure; or
- (4) Affected by other error of law; or
- (5) Unsupported by competent, material, and substantial evidence in view of the entire record as submitted; or
- (6) Arbitrary or capricious.

If the court reverses or modifies the decision of the agency, the judge shall set out in writing, which writing shall become a part of the record, the reasons for such reversal or modification.

**§ 150-28. Power of board to reopen the case.**—At any time after the hearing and prior to the service of the board's decision, the person affected may request the board to reopen the case to receive additional evidence or for other cause. The granting or refusing of such request shall be within the board's discretion. The board may reopen the case on its own motion at any time before notice of appeal is filed; thereafter, it may do so only with permission of the reviewing court.

**§ 150-29. Power of reviewing court to remand for hearing newly discovered evidence; procedure before the board.**—At any time after the notice of appeal has been filed, the aggrieved person may apply to the reviewing court for leave to present additional evidence. If the court is satisfied that the evidence is material to the issues, that it is not merely cumulative, and that it could not reasonably have been presented at the hearing before the board, the court may remand the case to the board where additional evidence shall be heard. The board may then affirm or modify its findings of fact and its decision, and shall file with the reviewing court as a part of the record the additional evidence, together with the affirmation of, or modifications in, its findings or decision.

**§ 150-30. Appeal to Supreme Court; appeal bond.**—Any party to the review proceeding, including the board, may appeal to the Supreme Court from the decision of the superior court under rules of procedure applicable in other civil cases. No appeal bond shall be required of the board. The appealing party may apply to the superior court for a stay of that court's decision or a stay of the board's decision, whichever shall be appropriate, pending the outcome of the appeal to the Supreme Court.

**§ 150-31. Power of board to sue; to seek court action in preventing violations.**—Any board may appear in its own name in the courts of the State and may apply to courts having jurisdiction for injunctions to prevent violations of statutes administered by the board and of regulations issued pursuant to those statutes, and such courts shall have power to grant such injunctions regardless of whether criminal prosecution has been or may be instituted as a result of such violations.

(To be continued in next issue)

## APPLICATION FORM REVISED

The license application form for real estate brokers and salesmen has been revised and becomes effective on April 25, 1971. Supplies of applications on hand in real estate offices should be destroyed and the new forms requested. Applications filed on the obsolete form after the effective date will be returned.

NORTH CAROLINA  
REAL

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No. 99  
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