



NORTH CAROLINA
REAL ESTATE LICENSING BOARD

Real Estate Bulletin

VOLUME 4

SPRING QUARTER, 1973

NUMBER 1

The Realtor's Code of Ethics

PART III

Relations to His Fellow-Realtor

ARTICLE 21.

The Realtor should seek no unfair advantage over his fellow-Realtors and should willingly share with them the lessons of his experience and study.

ARTICLE 22.

The Realtor should so conduct his business as to avoid controversies with his fellow-Realtors. In the event of a controversy between Realtors who are members of the same local board, such controversy should be arbitrated in accordance with regulations of their board rather than litigated.

ARTICLE 23.

Controversies between Realtors who are not members of the same local board should be submitted to an arbitration board consisting of one arbitrator chosen by each Realtor from the real estate board to which he belongs or chosen in accordance with the regulations of the respective boards. One other member, or a sufficient number of members to make an odd number, should be selected by the arbitrators thus chosen.

ARTICLE 24.

When the Realtor is charged with unethical practice, he should place all pertinent facts before the proper tribunal of the member board of which he is a member, for investigation and judgment.

ARTICLE 25.

The Realtor should not voluntarily disparage the business practice of a competitor, nor volunteer an opinion of a competitor's transac-

tion. If his opinion is sought it should be rendered with strict professional integrity and courtesy.

ARTICLE 26.

The agency of a Realtor who holds an exclusive listing should be respected. A Realtor cooperating with a listing broker should not invite the cooperation of a third broker without the consent of the listing broker.

ARTICLE 27.

The Realtor should cooperate with other brokers on property listed by him exclusively whenever it is in the interest of the client, sharing commissions on a previously agreed basis. Negotiations concerning property listed exclusively with one broker should be carried on with the listing broker, not with the owner, except with the consent of the listing broker.

ARTICLE 28.

The Realtor should not solicit the services of an employee or salesman in the organization of a fellow-Realtor without the knowledge of the employer.

ARTICLE 29.

Signs giving notice of property for sale, rent, lease or exchange should not be placed on any property by more than one Realtor, and then only if authorized by the owner, except as the property is listed with and authorization given to more than one Realtor.

ARTICLE 30.

In the best interest of society, of his associates and of his own business, the Realtor should be loyal to the real estate board of his community and active in its work.

CONCLUSION

The term **Realtor** has come to connote competence, fair dealing and high integrity resulting from adherence to a lofty ideal of moral conduct in business relations. No inducement of profit and no instructions from clients ever can justify departure from this ideal, or from the injunctions of this Code.

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

James E. Holshouser, Jr., Governor

BOARD MEMBERS

Henry C. Doby, Jr.,
Chm. Albemarle
Brantley Poole, V. Chm. Raleigh
A. P. Carlton Greensboro
Billy Hinton Clayton
John W. Olive Mt. Airy

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

—CHAIRMAN'S COMMENTS—

Elsewhere in this issue of the bulletin is a report on the status of a bill pending in the Legislature which proposes much-needed educational standards to qualify applicants for broker and salesman licenses.

The Licensing Board has found that North Carolina license applicants consistently score lower on the Princeton Educational Testing Service uniform real estate examinations than the applicants from some fifteen other states who take the same examination. This vividly points out the fact that North Carolina applicants are not as knowledgeable as they should be.

The standards proposed in the bill are at best minimal. Compare them with license requirements in other occupations. For example, to qualify for an apprentice barber license, an applicant must complete an eight month course in a state approved barber college. Then he must work under a registered barber for eighteen months before he can take the examination for a registered barber's license.

The key to professionalism in real estate is education. If the real estate industry is really interested in professionalism, every broker and salesman will urge his Representative in the General Assembly to support this important change in the Licensing Law.

Henry C. Doby, Jr.

COOPERATION DENIED COMMISSION

In the case of Real Estate Exchange & Investors v. Tongue, 17 N. C. App. 575, recently decided by the North Carolina Court of Appeals, the plaintiff was denied recovery of a commission.

The plaintiff alleged that defendants listed their property with plaintiff under an "exclusive listing contract" by which plaintiff was granted for a period the exclusive right to negotiate for the sale upon terms specified in the listing contract, that during such period plaintiff itself offered to purchase the property but defendants refused the offer. Plaintiff sued for the agent's commission computed on the listed price at the rate specified in the listing contract. The trial court allowed defendant's motion to dismiss for failure to state a claim upon which relief can be granted and plaintiff appealed.

The Court of Appeals held that the judgment of the lower court was in accord with applicable principles of law and dismissed the plaintiff's appeal.

In its opinion, the Court stated: "An agent employed to sell his principal's property may not himself become the purchaser absent both a good faith full disclosure to the principal of all material facts surrounding the transaction and consent to the transaction by the principal after receiving such disclosure. This general rule applies although no positive fraud or unfairness may have been practiced by the agent and although he purchases the property 'at a fair market price, or at the price set by the principal, and even though he was unable to sell to anyone else at the price fixed.' Decisions of our Supreme Court support this statement of the general rule. . . . In the present case the allegations in plaintiff's complaint establish that defendants did not consent that plaintiff might become the purchaser; plaintiff expressly alleged that no response was received from their offer to purchase and that their subsequent tender was refused by the defendants. Since plaintiff's own allegations establish that it had no lawful right to effect a sale of the property to itself, it was not entitled to commissions for attempting to negotiate such a sale, and judgment dismissing the action on the pleadings was proper."

LICENSE STATISTICS

Licensees as of March 31, 1973
Brokers 12,663
Salesmen 3,482
16,145

Examination—January 1973
Passed Failed
Brokers 650 344
Salesmen 220 110

Examination—February 1973
Passed Failed
Brokers 176 88
Salesmen 102 45

Examination—March 1973
Passed Failed
Brokers 302 152
Salesmen 162 91

LICENSES SUSPENDED-REVOKED

BLAIR T. GIBSON & BLAIR REALTY CO. — Raleigh — broker — 60-day suspension, violation of G.S. 93A-6(a) (8), (10).

BRUCE RUFFIN — Charlotte — broker — revoked — violation of G.S. 93A-6(1), (8) — APPEALED.

LICENSE RENEWALS

Application forms for the annual renewal of real estate licenses were mailed the middle of May to all licensees of record. Brokers and salesmen who have not yet renewed are urged to do so as soon as possible. Renewals filed after June 30th are subject to a \$5.00 late filing fee. In addition, licensees who fail to renew their licenses but continue in business are not only not entitled to compensation for their services but are also subject to prosecution as for a misdemeanor.

This year, for the first time, corporation licenses also require renewal. This is in accordance with an opinion of the Attorney General carried in a previous issue of the BULLETIN. A number of brokers are engaging in business as a corporation without being licensed to do so. Unlicensed corporations should immediately contact the Licensing Board office for instructions.

In processing renewals, it appears that a number of salesmen have changed employment without properly transferring their licenses or having their licenses returned to the Board office by their former broker. These licenses will not be renewed until they have been transferred. Please refer to page 4 for the rules regarding the renewal and transfer of licenses.

INTERSTATE LAND SALES FULL DISCLOSURE ACT

The Department of Housing and Urban Development, Office of Interstate Land Sales Registration, Washington, D. C., has requested that the following letter be brought to the attention of North Carolina real estate brokers:

The purpose of this letter is to alert you to consequences which may ensue from your failure to understand fully the Interstate Land Sales Full Disclosure Act and its implementing regulations.

The 1968 Interstate Land Sales Full Disclosure Act became effective April 28, 1969, and has now been operative for nearly four years. Although the Office of Interstate Land Sales Registration (OILSR) has processed thousands of registrations on both domestic and foreign subdivisions, it is nevertheless likely that an even larger number of subdivisions covered by this Act are still unregistered.

Unless exempt, any developer having 50 or more lots or parcels of subdivided land who sells these lots by using the U. S. mails or any other instruments of interstate commerce, without first registering with OILSR and providing the purchaser in advance of sale with an approved property report, is in violation of the law and may be sentenced to a jail term of 5 years or a \$5,000 fine, or both.

In addition, all such contracts are voidable at the absolute and unconditional election of the purchaser. Besides refunding the purchase price of the lot, the developer may be required to pay the reasonable costs of all improvements on the lot or lots. Once an unregistered developer is faced with the wholesale repurchasing of properties previously sold, many of which have already been improved, his bankruptcy is more than a remote possibility. All developers should be forewarned to reassess their positions on the need for registration before it is too late.

Since the Act defines a "developer" as "any person who, directly or indirectly, sells or leases, or offers to sell or lease, or advertises for sale or lease any lots in a subdivision," real estate brokers who are active in promoting the sale of lots in any unregistered subdivision, could be regarded as sharing the owner's responsibilities for complying with the Act.

In addition to the direct penalties that the developer may face, there may be serious derivative consequences for the attorneys, accountants, bankers and title companies of unregistered developers under certain circumstances.

We urge you to read and study the Interstate Land Sales Full Disclosure Act and the OILSR Regulations. We are ready at all times to answer any questions from concerned parties.

Sincerely,

Signed/George K. Bernstein
Interstate Land Sales Administrator

GEORGIA CASE

In the recent case of *Howell Realty Company, Inc. v. Boggs*, 195S.E. 2d 253, the Georgia Court of Appeals held that under an employment contract between a salesman and broker, the salesman's rights to a commissions vested when she procured buyers for properties and she was entitled to receive her portion of the commissions which had been collected by the broker even though the commissions had been collected after the salesman had terminated her employment with the broker.

Plaintiff salesman, brought suit against her former broker to recover real estate commissions allegedly due for the sale of two parcels of real estate under the terms of a contract of employment which provided:

"Commissions: All commissions resulting from real estate transactions procured by salesman shall be divided between company and salesman on a basis of 30 per cent of the gross commission to Salesman . . . No commission shall be considered earned, or payable, to Salesman until the transaction has been completed and the commission collected by company and check is collected by company bank; . . ."

In affirming judgment for the plaintiff, the court said:

"It is contended by defendant that the terms of the contract conclusively establishes that plaintiff is not entitled to the commissions on the sales of the properties involved since plaintiff voluntarily terminated her relationship with defendant on a date prior to the time that the sales were completed. The contract, however, specifies that the commission is payable upon real estate transactions 'procured' by the plaintiff when the defendant has collected the commission. The undisputed evidence shows that the efforts of the plaintiff were the efficient and the procuring cause of both transactions. . . . While it is true that the plaintiff was no longer associated with defendant at the time the sales commissions were paid, this will not defeat plaintiff's claim. There is nothing in the contract which by any reasonable construction implies that the plaintiff, in order to be entitled to commissions on sales for which she was the procuring cause, must be still in the employ of the defendant at the time the broker receives the full commission. Plaintiff's rights to the commissions vested when she performed by procuring the buyers."

LEGISLATIVE REPORT

Senate Bill 871 to amend Chapter 93A of the General Statutes relating to real estate brokers and salesmen was passed by the Senate during the recent session of the 1973 General Assembly. The bill will be considered by the House Judiciary Committee 1 in January when the 1974 General Assembly reconvenes.

The bill (identical to House Bill 1260) was introduced in April at the request of the North Carolina Association of Realtors and has the support of the Real Estate Licensing Board. The bill would provide the following new requirements for broker and salesmen licenses.

"Each applicant for a license as a real estate broker shall have been actively engaged as a licensed real estate salesman in this State for at least 12 months prior to making application for a license as a real estate broker, or shall furnish evidence satisfactory to the Board of experience in real estate transactions which the Board shall find equivalent to such 12 months experience as a licensed real estate salesman, or shall furnish evidence satisfactory to the Board of completion of 60 classroom hours of such courses of education in real estate subjects at a school approved by the Board as the Board shall by regulation prescribe. Each applicant for a license as a real estate salesman shall furnish evidence satisfactory to the Board of completion of 30 classroom hours of such courses of education in real estate subjects at a school approved by the Board as the Board shall by regulation prescribe or shall furnish evidence satisfactory to the Board of experience in real estate transactions which the Board shall find equivalent to such real estate education."

RULE NO. 8

Any licensee desiring the renewal of a license in good standing shall apply for the same in writing upon a form approved by the Board during the month of June and forward the required fee of \$10.00. Any person who engages in the business of real estate broker or real estate salesman while his license is lapsed will be subject to the penalties prescribed in the Act.

RULE NO. 11

A Salesman's license is valid only while he is associated with or engaged by a broker. Upon termination of such association, the broker shall immediately endorse the back of the salesman's license, showing date of termination, and return same to the Board for cancellation or transfer. The salesman concerned may have his license re-issued and transferred to a new broker by filing a prescribed transfer form with \$1.00 duplicate license fee.

NORTH CAROLINA
REAL ESTATE LICENSING BOARD
P. O. BOX 266
RALEIGH, N. C. 27602

BULK RATE
U. S. Postage Paid
Permit No. 99
RALEIGH, N. C.