



NORTH CAROLINA
REAL ESTATE LICENSING BOARD

Real Estate Bulletin

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NUMBER 1

New Legislation

Several amendments to the Real Estate Licensing Law have been enacted by the 1975 General Assembly. The sections which have been amended are shown below with the change indicated in bold type in brackets:

SECTION 93A-2. (a) A real estate broker within the meaning of this chapter is any person, partnership, association, or corporation, who for a compensation or valuable consideration or promise thereof lists or offers to list, sells or offers to sell, buys or offers to buy, auctions or offers to auction (specifically not including a mere crier of sales), or negotiates the purchase or sale or exchange of real estate, or who leases or offers to lease, or who sells or offers to sell leases of whatever character, or rents or offers to rent any real estate or the improvement thereon, for others. **[A broker shall also be deemed to include a person, partnership, association, or corporation who for a fee sells or offers to sell the name or names of persons, partnerships, associations, or corporations who have real estate for rental, lease, or sale.]** (Effective April 7, 1975).

SECTION 93A-4. (c) 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, **[provided, the Board may by regulation require the renewal of such licenses for periods not exceeding three years upon payment of a renewal fee of ten dollars (\$10.00) for each twelve-month period; provided further, that in the event of the licensee's death, removal to another state or upon voluntary surrender of the renewed license the Board shall, upon written application by the licensee or his estate, (administrator, executor, or personal representative) refund the amount of the renewal fee prepaid for the unexpired license year or years other than the current year and the renewal receipt or pocket card shall contain notice of this refund provision.]** (Effective January 1, 1976.) 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. Duplicate licenses may be issued by the Board upon payment of a fee of one dollar (\$1.00) by the licensee.

SECTION 93A-6. (a) The Board shall have power to revoke or suspend licenses as herein provided. The Board may upon its own motion, and shall upon the verified complaint in writing of any persons, provided such complaint with the evidence, documentary or otherwise, presented in connection therewith, shall make out a prima facie case, hold a hearing as hereinafter provided and investigate the actions of any real estate broker or real estate salesman, or any person who shall assume to act in either such capacity, and shall have power to suspend or revoke any license issued under the provisions of this chapter at any time where the licensee has by false or fraudulent representations obtained a license or has been convicted or has entered a plea of nolo contendere upon which a finding of guilty and final judgment has been entered in a court of competent jurisdiction in this State or in any other state of the criminal offense of embezzlement, obtaining money under false pretenses, forgery, conspiracy to defraud or any similar offense or offenses involving moral turpitude or where the licensee in performing or attempting to perform any of the acts mentioned herein is deemed to be guilty of:

(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 or savings and loan association **[in North Carolina]** 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; provided, such accounts shall not bear interest unless the principals authorize in writing the deposit be made in an interest bearing account and also provide for the disbursement of the interest thereon. (Effective July 1, 1975).

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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Blanton Little Admin. Asst.

LICENSE STATISTICS

Examination — January 1975

	Passed	Failed
Brokers	303	359
Salesmen	37	42

Examination — February 1975

	Passed	Failed
Brokers	69	78
Salesmen	7	7

Examination — March 1975

	Passed	Failed
Brokers	148	215
Salesmen	23	27

Examination — April 1975

	Passed	Failed
Brokers	127	158
Salesmen	19	29

Licensees as of April 30, 1975

Brokers licensed	18,898
Salesmen licensed	3,788
Corporations licensed	1,429

Total 24,115

PRIVATE REAL ESTATE SCHOOLS

Article 31, Chapter 115, North Carolina General Statutes, requires that private real estate schools be licensed and regulated by the State Board of Education acting by and through the Superintendent of Public Instruction. Pursuant to such authority, the State Board has adopted regulations providing for the licensing of such schools. The new regulations become effective on July 1, 1975.

DISCIPLINARY ACTIONS

Robert M. Cartwright, Kill Devil Hills, broker, license suspended sixty days, effective March 31, 1975

Robert V. Early, Jacksonville, broker, license suspended one year, effective January 15, 1975

Michael E. Eckel, Hendersonville, broker, license suspended six months, effective May 18, 1975

Charles L. Heniford, Holden Beach, broker, license suspended six months, effective April 26, 1975

David H. Lawrence, Nags Head, broker, license suspended one year, effective April 26, 1975 (Appeal to Superior Court pending)

New Pioneer Co., Inc., Hendersonville, corporation broker, license suspended six months, effective May 18, 1975

Donald R. Newlin, Fayetteville, salesman, license revoked, effective February 21, 1975

Forrest C. Shaw, II, Fayetteville, broker, license revoked, effective March 31, 1975 (Appeal to Superior Court pending)

NOW HEAR THIS

Have you mailed in your real estate license renewal?

Remember — all licenses will expire on June 30th unless renewed.

Brokers — have you checked with your salesmen to make sure they have sent in their renewals? This is your responsibility.

Due to the large number of renewals being processed, the Board office will not be able to advise licensees as to whether their renewals have been filed until the complete print-out of renewals is received from the computer at the end of the renewal period.

Pocket renewal cards will be mailed out after they are printed and received from the computer. It is anticipated that approximately half the renewals will be mailed near the end of June and the balance about the middle of July.

Copies of the regulations and information may be obtained from Mr. Gilmore W. Johnson, Department of Public Instruction, 247 Heart of Raleigh Building, Raleigh, North Carolina, 27601.

FEDERAL SETTLEMENT PROCEDURES ACT

Real estate brokers should become familiar with the federal Real Estate Settlement Procedures Act of 1974 which becomes effective on June 20, 1975.

The purpose of the Act is to effect certain changes in the settlement process for residential real estate that will result (1) in more effective advance disclosure to home buyers and sellers of settlement costs; (2) in the elimination of kickbacks or referral fees that tend to increase unnecessarily the costs of certain settlement services; (3) in a reduction in the amounts home buyers are required to place in escrow accounts established to insure the payment of real estate taxes and insurance; and (4) in significant reform and modernization of local record-keeping of land title information.

Under the Act, any lender agreeing to make a federally related mortgage loan in connection with residential real property is required to furnish the buyer and seller an itemized statement disclosing each charge arising in connection with the settlement at the time of the loan commitment but no later than 12 days prior to settlement upon a standard form developed by the Department of Housing and Urban Development (HUD).

Lenders will be required to furnish loan applicants a booklet developed by HUD which will contain (1) a description and explanation of the nature of each cost incident to a real estate settlement; (2) an explanation and sample of the standard real estate settlement form; (3) a description and explanation of escrow accounts used in connection with real estate loans; (4) an explanation of the choices available to buyers in selecting persons to provide necessary services incident to a real estate settlement; and (5) an explanation of the unfair practices and unreasonable and unnecessary charges to be avoided by the buyer.

Settlement services include title searches, title examinations, the provision of title certificates, title insurance, services rendered by an attorney, the preparation of documents, property surveys, the rendering of credit reports or appraisals, pest and fungus inspections, services rendered by a real estate agent or broker, and the handling of the processing, and closing or settlement.

Chapter 47A. Unit Ownership Act

(Concluded From Last Issue)

§ 47A-23. Liability of grantor and grantee of unit for unpaid common expenses. — The grantee of a unit shall be jointly and severally liable with the grantor for all unpaid assessments against the latter for his proportionate share of the common expenses up to the time of the grant or conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor. However, any such grantee shall be entitled to a statement from the manager or board of directors, as the case may be, setting forth the amount of the unpaid assessments against the grantor and such grantee shall not be liable for, nor shall the unit conveyed be subject to a lien for, any unpaid assessments in excess of the amount therein set forth.

§ 47A-24. Insurance on property; right to insure units. — The manager of the board of directors, or other managing body, if required by the declaration, bylaws or by a majority of the unit owners, shall have the authority to, and shall, obtain insurance for the property against loss or damage by fire and such other hazards under such terms and for such amounts as shall be required or requested. Such insurance coverage shall be written on the property in the name of such manager or of the board of directors of the association of unit owners, as trustee for each of the unit owners in the percentages established in the declaration. The trustee so named shall have the authority on behalf of the unit owners to deal with the insurer in the settlement of claims. The premiums for such insurance on the building shall be deemed common expenses. Provision for such insurance shall be without prejudice to the right of each unit owner to insure his own unit for his benefit.

§ 47A-25. Damage to or destruction of property; repair or restoration; partition sale on resolution not to restore. — Except as hereinafter provided, damage to or destruction of the building shall be promptly repaired and restored by the manager or board of directors, or other managing body, using the proceeds of insurance on the building for that purpose, and unit owners shall be liable for assessment for any deficiency; provided, however, if the building shall be more than two-thirds ($\frac{2}{3}$ rds) destroyed by fire or other disaster and the owners of three-fourths ($\frac{3}{4}$ ths) of the building duly resolve not to proceed with repair or restoration, then and in that event:

- (1) The property shall be deemed to be owned as tenants in common by the unit owners;
- (2) The undivided interest in the property owned by the unit owners as tenants in common which shall appertain to each unit owner shall be the percentage of undivided interest previously owned by such owner in the common areas and facilities;

- (3) Any liens affecting any of the units shall be deemed to be transferred in accordance with the existing priorities to the percentage of the undivided interest of the unit owner in the property as provided herein; and
- (4) The property shall be subject to an action for sale for partition at the suit of any unit owner, in which event the net proceeds of sale, together with the net proceeds of insurance policies, if any, shall be considered as one fund and shall be divided among all the unit owners in proportion to their respective undivided ownership of the common areas and facilities, after first paying off, out of the respective shares of unit owners, to the extent sufficient for that purpose, all liens on the unit of each unit owner.

§ 47A-26. Actions as to common interests; service of process on designated agent; exhaustion of remedies against association. — Without limiting the rights of any unit owner, actions may be brought by the manager or board of directors, in either case in the discretion of the board of directors, on behalf of two or more of the unit owners, as their respective interests may appear, with respect to any course of action relating to the common areas and facilities or more than one unit. Service of process on two or more unit owners in any action relating to the common areas and facilities or more than one unit may be made on the person designated in the declaration to receive service of process. Any individual, corporation, partnership, association, trustee, or other legal entity claiming damages for injuries without any participation by a unit owner shall first exhaust all available remedies against the association of unit owners prior to proceeding against any unit owner individually.

§ 47A-27. Zoning regulations governing condominium projects. — Whenever they deem it proper, the planning and zoning commission of any county or municipality may adopt supplemental rules and regulations governing a condominium project established under this chapter in order to implement this program.

§ 47A-28. Persons subject to chapter, declaration and bylaws; effect of decisions of association of unit owners. — (a) All unit owners, tenants of such owners, employees of owners and tenants, or any other persons that may in any manner use the property or any part thereof submitted to the provisions of this chapter, shall be subject to this chapter and to the declaration and bylaws of the association of unit owners adopted pursuant to the provisions of this chapter.

(b) All agreements, decisions and determinations lawfully made by the association of unit owners in accordance with the voting percentages established in the chapter, declaration or bylaws, shall be deemed to be binding on all unit owners.

BROKER MUST COMPLY WITH TRUTH-IN-LENDING DISCLOSURE

(Concluded From Last Issue)

The Federal Reserve Board's definition, contained in its interpretive regulations on the Act — Regulation Z — goes but a little further: a creditor is one "who in the ordinary course of business" regularly extends credit. 12 C.F.R. § 226.2(m) (1973).

The legislative history, though sparse on this point, is of some help. In both the House and Senate reports, the only comment relevant to the definition of creditor indicates that the term is to have a broad scope. "Thus a small retailer who extended credit . . . in an isolated instance to accommodate a particular customer would not be covered (by the Act)." H.R. Rep. No. 1040, 90th Cong., 2d Sess. 20 (1968); S. Rep. No. 392, 90th Cong., 1st Sess. 13 (1967). 1968 U. S. Code Cong. & Admin. News, p. 1962. Reading this along with the definitions in the statute and Regulation Z, the intent seems to have been to except from the Act only those lenders whose extensions of credit are an occasional, isolated, and incidental portion of their business.

Informal letters, issued by the staff of the Federal Reserve Board, are a further indication that the term "creditor" should be expansively read. While these letters are hardly binding on a court, they do represent an "experience(d) and informed judgment to which courts . . . may properly resort for guidance." In one letter, for example, a homeowner was advised that he would not be a creditor simply because he accepted a mortgage in the sale of his own home. Letter from Milton W. Schober, Ass't. Director, Nov. 4, 1969, reported at 4 CCH Consum. Credit Guide 30,326. More importantly, a 1970 staff letter opined that a corporation, distributing its stock on credit, would be a creditor for purposes of disclosing the credit terms of the sale. "(I)t appears to us that the restriction of the application of the Act, to 'creditors' was included merely because of the unfairness in placing a burden on a private party to make disclosures in connection with his **casual isolated** sales."

The Truth in Lending Act is a remedial statute designed as much as possible to permit borrowers to make informed judgments about the use of credit. To effectuate this congress-

sional purpose requires that the Act's terms be liberally construed . . . Here, realty sales were a significant aspect of appellant's business. And in nearly half its sales, it extended credit to its customers. They were credit transactions involving a large amount of money and not, after all, like granting credit for a bag of groceries. In view of this, we cannot say Reb Realty's extensions of credit were the type of isolated and incidental transactions the definition of creditor was meant to exempt.

To hold otherwise would undermine the remedial objective of the statute. Undoubtedly, a considerable number of land sales are effected by real estate brokers acting as sellers, and in a large percentage of those, the broker must, in this age of credit, either provide credit or arrange for its extension, both of which may subject the lender to the Act. See 15

U.S.C. § 1602(f). To except appellant here, then, might well insulate a significant credit market from the Act.

Finally, an additional factor influencing our decision is that a real estate broker like appellant is unlikely to be unduly burdened or surprised by the Act's mandates. Probably one reason Congress exempted those **not** regularly extending credit from the Act was that such persons could not be expected to know the law or be able, without considerable trouble, to follow its directives. Real estate brokers constantly deal with credit, either as principals or in assisting purchasers. They are, therefore, likely to be familiar with the general requirements of the Act and to be capable of implementing its requirements.

Judgment affirmed.

—From Narello News

EXAMINATION SCHEDULE

FILING DATE

May 23
June 27
July 18
August 15
September 10
October 24

EXAM DATE

June 24
July 29
August 19
September 16
October 10
November 25

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