



NORTH CAROLINA
REAL ESTATE LICENSING BOARD

Real Estate Bulletin

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NUMBER 1

License Renewals

Real Estate Licenses Expire on June 30, 1976

Applications for renewal of real estate licenses have been mailed to all brokers, salesmen, and corporations of record. If you have not received your renewal application by June 1, you should contact the Board office for a duplicate form.

Each year the Licensing Board receives numerous telephone calls from licensees inquiring as to whether we have received their renewal applications and fees. However, since we are processing more than 25,000 renewals during this short period of time, please allow a period of five to six weeks for receipt of your renewal pocket card. During this period the cancelled check for your renewal fee will serve as evidence that your license has been renewed for the year 1976-77.

Incomplete and incorrectly completed renewal applications cannot be accepted; therefore, you are advised to carefully read the instructions on the renewal application and observe the following RENEWAL CHECK LIST:

DO

- Make sure you have properly completed the renewal form.
- Personally sign the renewal form (**brokers must also sign their salesman's form, and corporation principal brokers must sign the corporation's form**).
- Include exact renewal fee of \$10.00, and make check payable to N. C. Real Estate Licensing Board.
- Make address changes on front of renewal form.
- Note that renewals received in our office after June 30 will be subject to a \$5.00 late filing fee.

DON'T

- Include other fees with renewal fee.
- Write renewal check on trust or escrow account.
- Send insufficient funds check.
- Confuse real estate license renewal with privilege license renewal.
- Wait until last minute to renew.

TRUST ACCOUNT RECORD KEEPING

"Records relative to the deposit, maintenance, and withdrawal of the money or other property of his principals shall be properly maintained by a broker . . ." (G.S. 93A-6(c))

Do you rely on your trust account checkbook stubs and cancelled checks alone to keep up with funds in your trust account? If so, rest assured that you are joined by many other brokers presently engaging in this questionable business practice. Reports from our field representatives indicate that an ever-increasing number of brokers throughout the state are using their escrow or trust account checkbooks as their only source of information regarding funds placed in their trust.

You may argue that your checkbook provides all data sufficient to carry out your fiduciary responsibilities. You may argue that your limited accounting and bookkeeping skills prevent you from instituting a more detailed system of trust account record keeping. Nevertheless, the Licensing Board feels that **A COMPLETE, YET UNCOMPLICATED METHOD OF TRUST ACCOUNT RECORD KEEPING IN THE FORM OF A GENERAL JOURNAL SHOULD BE ADOPTED BY EACH AND EVERY BROKER** charged with the serious responsibilities of trusteeship.

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REALTORS INSTITUTE

COURSE A June 6-12
COURSES B, C June 13-19
GRAD PROGRAM June 13-19

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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DISCIPLINARY ACTION

KENNETH J. KIRBY, Hendersonville — Broker's License No. 23449 — Withdrew appeal to Superior Court — Revoked broker's license — Violation of G. S. 93A-6(a)(7),(8). (Reported in Fall Quarter 1975 Bulletin)

HENRY A. BRADLEY, JR., Arden — Broker's License No. 28741 — Withdrew appeal to Superior Court — Revoked broker's license — Violation of G. S. 93A-6(a)(8), (14). (Reported in Summer Quarter 1975 Bulletin)

SAMUEL T. PEACE, JR., Henderson — Broker's License No. 10505 — Judgment modified — Affirmed in part and reversed in part by Superior Court. Reduced suspension of Broker's License from six (6) months to four (4) months for violation of G. S. 93A-6(a)(8), (12). (Reported in Summer Quarter 1975 Bulletin)

DOROTHY E. PEFLEY, Elizabeth City — Broker's License No. 13460 — License suspended for one hundred twenty (120) days for violation of G. S. 93A-6(a)(12).

VEDA C. PULLEN, Tryon — Salesman's License No. 21457 — License suspended for ninety (90)

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QUESTIONS AND ANSWERS ON TRUST ACCOUNTS

- Q. What is the difference between a trust account and an escrow account?
- A. **There is no difference, and therefore the terms can and often are used interchangeably.**
- Q. I maintain only one bank account for my real estate business, but I write the words "trust account" on all earnest money checks, checks for rental payments, etc. Is this permissible?
- A. **No. The purpose of the trust account is to separate trust funds from the other funds of the broker. There must be a separate trust account in addition to a broker's regular business account.**
- Q. What monies should I as a real estate broker place in my escrow account?
- A. **All money received in a real estate transaction when acting as a real estate broker, escrow agent, or the temporary custodian of the funds of others (G. S. 93A-6(a)(12)). For example, earnest money deposits, rental payments and damage deposits.**
- Q. Although I am a licensed real estate broker, I sometimes sell property which I personally own. Should I deposit into my trust account earnest money received from the sale of property which I personally own?
- A. **No. To do so would constitute "commingling" since you would be combining your own money with that of your principals, and such commingling could result in suspension or revocation of your real estate license.**
- Q. Is there a maximum time period within which trust funds must be deposited in my trust account?
- A. **Yes. "All monies received by a real estate broker acting in his fiduciary capacity shall be deposited in a trust or escrow account within 72 hours of receipt . . ." (North Carolina Real Estate Licensing Board Rule .0107(a)) UNLESS some other provision is written into the purchase agreement.**
- Q. May trust funds be deposited in an interest bearing account?
- A. **Yes, if the principals authorize such deposits in writing and if the writing provides for the disbursement of the interest (G. S. 93A-6(a)(12)). Brokers are advised to be sure that each written agreement clearly states to whom the interest belongs and to whom it will be disbursed. It is the Board's belief that the vast majority of brokers do not and should not deposit their trust funds in an interest bearing account unless the deposits are for large amounts of money which will be held for extended periods of time.**
- Q. I recently received my broker's license, but I do not plan to enter the real estate business at the present time. Must I open an escrow account even though I am not using my license?
- A. **No. An escrow or trust account, however, must be established prior to receipt of any trust funds in your capacity as a real estate broker.**
- Q. As a non-resident North Carolina broker, I occasionally transact real estate business in North Carolina. Must I deposit trust funds received in North Carolina in a North Carolina trust account?
- A. **Yes. Trust funds received in North Carolina or resulting from transactions conducted in North Carolina must be deposited in a trust or escrow account in an insured bank or savings and loan association in North Carolina (G. S. 93A-6(a)(12)).**
- Q. As a real estate broker, what should I do when a dispute arises between parties concerning trust funds?
- A. **You should KEEP THE MONEY IN YOUR TRUST ACCOUNT until the dispute is resolved to the satisfaction of all parties or until ordered by a court of competent jurisdiction to disburse the funds.**
- Q. Must I retain trust records for a minimum period of time?
- A. **Yes. Brokers must retain trust records and earnest money receipts for a period of 3 years (North Carolina Real Estate Licensing Board Rule .0108), and such records must be made available to the Licensing Board or its authorized representative when the Board determines such records are pertinent to the conduct of an investigation of any specific complaint against a licensee (G. S. 93A-6(c)).**

TRUST ACCOUNT

(Continued From Page 1)

Although your accountant can likely devise a Journal system tailored to fit your particular real estate operation, the Licensing Board offers the following model for your consideration which is designed to provide a thorough but uncluttered description of trust account receipts and disbursements. Note that in addition to giving the amounts received and paid out, the parties to

the transaction, the subject property, and essential dates, this model also provides a convenient daily balance which can be checked at a glance.

While this model should meet the needs of most general real estate brokerage agencies, many agencies maintain, in addition, a separate ledger for each property sold or managed, showing receipts and disbursements affecting that particular property. Furthermore all such es-

crow records must be retained for 3 years in accordance with the Licensing Board's recently adopted Rule .0108.

Remember, as the guardian of funds which have been entrusted to your care, your principals rightfully demand and expect to receive your faithful and impartial vigilance and your competent, professional service. Accurate trust account records are essential in fulfilling this responsibility.

Record of All Trust Funds Received and Paid Out Trust Fund Bank Account											
RECEIVED						PAID OUT					
19 Date Received	From Whom Received	Description	Amount Received	Date of Deposit	XX	To Whom Paid	Description	Amount Paid Out	Check Number	Date Paid Out	Balance
(1) 2-22-76	John A. Doe	Earnest Money on Allan Property	\$500.00	2-23-76							\$500.00
(2) 2-23-76	William Manning	Rental Payment on Snipes Property	150.00	2-23-76							650.00
(3)						Acme Repair	Plumbing Repair on Snipes Property	30.00	105	2-24-76	620.00
(4)						George Snipes	Net Rent Share on Snipes Property	105.00	106	2-25-76	515.00
(5)						Broker	Rental Commission on Snipes Property	15.00	107	2-25-76	500.00
(6) 3-1-76	James Warren	Earnest Money on Griffin Property	1,000.00	3-26-76							1,500.00
(7)						Edward O. Allan	Proceeds of Sale Allan Property	500.00	108	3-5-76	1,000.00
(8) 3-7-76	David Martin	Rental Damage Deposit Jenkins Property	50.00	3-8-76							1,050.00
(9)						James Warren	Refund Earnest Money Griffin Property	1,000.00	109	3-7-76	50.00

1. Feb. 22 — Broker received \$500.00 in earnest money from John Doe as purchase deposit on property owned by Edward Allan.
2. Feb. 23 — Broker received \$150.00 rent from William Manning on property owned by George Snipes.
3. Feb. 24 — Broker paid \$30.00 to Acme Repair for plumbing repair on Snipes property.
4. Feb. 25 — Broker paid \$105.00 to George Snipes for his share of rent.
5. Feb. 25 — Broker received \$15.00 rental commission on Snipes property.
6. March 1 — Broker received \$1,000.00 in earnest money from James Warren as purchase deposit on Griffin property.
7. March 5 — Broker paid \$500.00 to Edward Allan on closed transaction for property sold to John Doe.
8. March 7 — Broker received \$50.00 rental damage deposit from David Martin on property owned by Jenkins.
9. March 7 — Broker refunded \$1,000.00 earnest money to James Warren due to Griffin's rejection of offer.

(Format From
"North Dakota Real Estate News and Views")

DISCIPLINARY ACTION

(Continued From Page 2)

days for violation of G. S. 93A-6 (a)(8).

RONALDO INVESTMENT CORPORATION AND JAMES A. FRIE-SON, Charlotte — Corporation Broker's License No. C-786 and Broker's License No. 20169 — Consent Order of Reprimand for violation of G. S. 93A-6(a)(8), (12).

EXAMINATION RESULTS

Examination — March, 1976

	Passed	Failed
Brokers	230	209
Salesmen	58	40

Examination — April, 1976

	Passed	Failed
Brokers	243	184
Salesmen	36	26

ATTENTION SALESMEN!

To transfer your license to another broker:

1. Your present supervising broker must return your license to our office.
2. You must file a Salesman's License Transfer Form with our office together with \$1.00 fee for re-issuance of your license to your new broker.

Deceptive Acts or Practices

Article From
Attorney General's Office
Consumer Protection Section

The Consumer Protection Section of the Attorney General's Office receives thousands of complaints each year against individuals and businesses in every conceivable walk of life. Because there are so many real estate brokers and salesmen who are active in North Carolina, it is inevitable that our office will receive complaints about some of you. Some of these complaints may be justified while others are not. However, in every instance where we believe a consumer has stated a prima facie case, we will contact you in order to learn what information you may have on the subject so that we are better able to determine the merits of the complaint before going further. By writing you, we do not imply that we agree with the consumer, only that we need to hear your point of view.

North Carolina law provides that unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are unlawful and are subject to a civil injunction by the Attorney General. So that you will have a

better understanding of how this law applies, the following is a brief, and by no means conclusive, checklist you should keep in mind.

- (1) Intent to deceive, or the seller's good faith or honest belief is not relevant or material to a determination of illegality.
- (2) Opinions which are misleading or deceptive are unlawful.
- (3) Any false inducement is a violation if it is likely to mislead a substantial segment of the purchasing public, or that portion of the public to whom the representations is directed.
- (4) Failure to disclose a material fact is unlawful.
- (5) Advertisements or representations which have a tendency or capacity to mislead are unlawful.
- (6) Misrepresenting the nature of or the extent of a guar-

antee or warranty is unlawful.

- (7) Any person who engages in a transaction which in whole or in part is in violation of an already declared statute may have in fact engaged in an unfair or deceptive act or practice.

Finally, in judging the likelihood that an act or practice is likely to deceive, the measure is whether it is likely to deceive the unlearned and gullible. In determining this, courts generally are concerned with the impression a statement or representation is likely to create upon prospective purchasers which arises not only from the sum total of what is said but also of all that is reasonably implied.

It is our hope that this information will not restrict but rather assist you in your work as a real estate broker or salesman. Should you ever have any questions, please feel free to call on us. Our address is Box 629, Raleigh, N. C. 27602, and our toll free telephone number is 1-800-662-7925.

Have Your Salesmen Read the Bulletin?

NORTH CAROLINA
REAL ESTATE LICENSING BOARD
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