



**NORTH CAROLINA
REAL ESTATE LICENSING BOARD**

Real Estate Bulletin

VOLUME 2

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NUMBER 4

I AM A REALTOR

+ + + *I Pledge Myself* + + +

**To protect the individual right of real estate ownership
and to widen the opportunity to enjoy it;**

To be honorable and honest in all dealings;

**To seek better to represent my clients
by building my knowledge and competence;**

To act fairly towards all in the spirit of the Golden Rule;

To serve well my community, and through it my country;

**To observe the Realtor's Code of Ethics
and conform my conduct to its lofty ideals.**

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

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John W. Olive,
V. Chm. Mount Airy
A. P. Carlton Greensboro
Henry C. Doby, Jr. Albemarle
J. Bart Hall Belmont
J. F. Schweidler Sec'y.-Treas.
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— CHAIRMAN'S COMMENTS —

This BULLETIN'S cover contains the REALTOR'S PLEDGE.

I believe it is well for every licensed real estate broker and salesman in North Carolina to read and re-read its pledge (whether or not he or she is a Realtor). It will impress upon each of us the extreme importance of ethical conduct of the highest order on the part of each licensee.

The pledge begins by emphasizing the importance of our responsibility in protecting the individual right of real estate ownership. This is followed by a reminder that we should be honorable and honest in all transactions handled by us.

A licensee cannot hope to represent his clients well unless he is competent and knowledgeable. This means that we must be constantly striving to keep informed on the new developments in the real estate profession. Our universities, colleges, technical institutes, and private schools are making available an increasing number of courses which help both prospective licensees and existing licensees in becoming better informed and keeping abreast of current trends and procedures.

If we all operate in the spirit of the Golden Rule, and if we serve our community well, it is highly probable that our business will prosper and that we will receive immeasurable satisfaction from our work.

Brantley Poole

ATTORNEY GENERAL'S OPINION

SUBJECT: North Carolina Real Estate Licensing Board; Applicability of Act to Participation-Type Loans Negotiated by Mortgage Corporation.

REQUESTED BY: Joseph F. Schweidler, Secretary-Treasurer North Carolina Real Estate Licensing Board

QUESTION: Are mortgage corporations or their officers, who bring together a long term mortgage lender and a borrower, required to secure a real estate broker's or salesman's license?

CONCLUSION: No.

OPINION BY: ROBERT MORGAN, Attorney General
Millard R. Rich, Jr., Assistant Attorney General

A participation type loan is one whereby the long-term mortgage lender takes an equity position in the property whether by purchasing it from the borrower and then leasing it back to the borrower or simultaneously purchasing the property from the borrower and selling it right back to him at an appreciated price. In both of these type transactions, the corporation would be performing the function of bringing together a buyer and a seller for real estate not owned by the corporation.

A hypothetical transaction illustrating the above would be as follows: If borrower X approaches the mortgage corporation requesting a loan to develop property owned by him with improvements such as an apartment complex, and because of the current money market situation, no long-term investor would make the loan to the borrower without an equity participation, could the mortgage corporation then advise borrower X of these facts, and bring him together with investor Y and arrange or assist in the sale of borrower's property to investor Y?

This hypothetical assumes that the mortgage corporation would **receive no sales commission or other compensation** in connection with purchase of the property by investor or the sale of the property by borrower X. **The only fee assumption to be made is that the mortgage corporation would receive only its standard mortgage fees and no other compensation as generally recognized in the mortgage loan field today.**

G. S. 93A-2(a) and (b) are as follows:

"Section 93A-2. DEFINITIONS AND EXCEPTIONS.

"(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.

"(b) The term real estate salesman within the meaning of this chapter shall mean and include any person who under the supervision of a real estate broker, **for a compensation or valuable consideration** is associated with or engaged by or on behalf of a licensed real estate broker to do, perform or deal in any act, acts or transactions set out or comprehended by the foregoing definition of real estate broker." (Emphasis added.)



Henry C. Doby, Jr.

Henry C. Doby, Jr., of Albemarle, became a member of the North Carolina Real Estate Licensing Board on January 13th by appointment of Governor Bob Scott. Mr. Doby, who formerly served on the Board from 1964 to 1966, succeeds J. Toliver Davis. His term will expire on July 31, 1974.

Mr. Doby is a native of Albemarle in Stanly County and is a graduate of the University of North Carolina at Chapel Hill and Wake Forest School of Law. He is engaged in the general practice of law in Albemarle with the firm of Patterson and Doby. His former law partner was the late Senator Frank N. Patterson, Jr.

Mr. Doby has served as Albemarle City Attorney since 1953 and is a past member and Chairman of the Board of Trustees, Stanly County Hospital.

Mr. Doby is a veteran of WWII having served in the U. S. Air Force. He is married to the former Elithe Outlaw of Duplin County and they have two daughters.

He was welcomed to the Board by his co-members at the January Board meeting in Raleigh.

CARLTON RE-APPOINTED

A. P. (Red) Carlton of Greensboro was reappointed to the Licensing Board by Governor Scott on January 13th for a new term expiring July 31, 1974.

Mr. Carlton has served on the Board since March 1968, when he was originally appointed by Governor Moore to complete the unexpired term of the late Carroll V. Singleton who had resigned. Mr. Carlton served as Board Chairman in 1969-70.

KEYNOTE ADDRESS WELL RECEIVED

The address of Honorable Robert Morgan, Attorney General of North Carolina, opened the 43rd annual NARELLO Conference in Miami Beach last November. Mr. Morgan's address was so well received that it sparked a spontaneous standing ovation. The speech points up individual rights and guarantees of personal liberty and freedom. In commenting upon the 1970-1971 summary of license law statistics, published by NARELLO, the Attorney General noted that in 15 states, more than half of the applicants for license failed to pass the examination. He stated: "It is hard to draw the line, but my personal view is that if more than half of the applicants taking the brokers' and salesmen's exams are not passing the examination, something is wrong. Either the license board is trying to exclude others from entering the profession or the educational program available to prospective licensees is not adequate; or perhaps both of these factors are playing an important part in the unfortunate end result. It is absolutely essential that all licensing boards, including real estate licensing boards and Commissions, keep as their primary purpose, the protection of the public. Licensing boards should never be used to limit those entering the profession, to foster a guild system, to raise revenue, or to assert political power and influence. I am not suggesting that all licensing boards have been used in this manner, but clearly some have and all are susceptible to such misuse."—(From NARELLO News Magazine)

TROVER AND CONVERSION

Trover is the name of the action which lay, at common law, for the recovery of damages for the conversion of personal property, the gist of which action is the disposing or assuming to dispose of the goods of another without his authority.

In the recent case of *McNeill v. Minter* from Lee County, the North Carolina Court of Appeals held that an action in trover could not be maintained for damages to real property.

The facts in the case disclosed that plaintiff instituted this action to recover \$650.00 in damages from defendant. Plaintiff's evidence tended to show: He signed a note and a contract to purchase a certain lot in a real estate subdivision owned by Minter Realty Company, of which defendant was an officer and shareholder. The sale of the lot was made to plaintiff by defendant, acting on behalf of the realty company. Plaintiff paid \$50.00 down and his note obligating him to pay \$30.00 per month was assigned to Southern National Bank; he was to receive a deed to the property at the completion of the payments. Plaintiff's contract for the purchase of the lot was signed by him only and was never recorded. Over a year after this transaction, defendant, as vice president of Minter Realty Company, negotiated a sale of the lot plaintiff had agreed to purchase, as well as other lots in the subdivision, to Carr Creek Estates, Inc. Acting as assistant secretary of Minter Realty Company, defendant signed the deed transferring the property to Carr Creek Estates, Inc. Then defendant, as president of Carr Creek Estates, Inc., signed a deed of trust on the lots in the subdivision from Carr Creek Estates, Inc. to E. T. Newton and S. C. Brawley, Jr., Trustees. Plaintiff subsequently discovered a house on "his" lot with people living in it and stopped making payments to Southern National Bank.

Defendant's evidence tended to show that defendant was acting in a corporate capacity when he engaged in the transactions complained of, and that he did not receive any personal remuneration from the transactions. Defendant has since been adjudged a bankrupt the discharge in bankruptcy being granted over the objection of plaintiff.

(Continued on page 4)



A. P. Carlton and Clarence B. Beasley

Licensing Board member A. P. Carlton was inaugurated as the 51st president of the North Carolina Association of Realtors in Greensboro on January 7, during the Association's inaugural meeting. He is shown above receiving the gavel of office from out-going president, Clarence B. Beasley.

TROVER AND CONVERSION

(Continued from page 3)

At the conclusion of all the evidence, the trial judge made findings of fact and conclusions of law and entered judgment in favor of plaintiff for \$650.00 plus interest. Defendant appealed to the Court of Appeals which reversed the trial court on the ground that conversion does not apply to real property. The Court said:

"'Conversion' is defined as 'an unauthorized assumption and exercise of the right of ownership over goods or personal chattels belonging to another, to the alteration of their condition or the exclusion of an owner's rights' While there appears to be no North Carolina case that expressly so holds, the language quoted indicates that conversion applies only to goods and personal property and does not apply to real property. Other jurisdictions have expressed this view . . . C. J. S. states: 'an action of trover lies only for the conversion of personal chattels. Such action does not lie for a wrongful deprivation of, or for injuries to, land or other real property. . . .'"

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REAL ESTATE LICENSING BOARD**
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LICENSE STATISTICS

Licensees as of December 31, 1971

Brokers	9,643
Salesmen	2,801
	<u>12,444</u>

Examination — October, 1971

	Passed	Failed
Brokers	86	54
Salesmen	101	48

Examination — November, 1971

	Passed	Failed
Brokers	97	33
Salesmen	93	24

(No examination held in December)

LICENSES SUSPENDED/REVOKED

JAMES L. BRESWITZ — Fayetteville broker — 6 months suspension — G.S. 93A-6(a) (7) & (8).

NEW HIGH

A record total of 819 applicants, 624 broker and 195 salesman candidates, were processed for the January real estate examinations. The previous high was in July 1971, when 671 candidates, 529 for broker, and 142 for salesman applied.

RULE NO. 13

In the event that any licensee shall advertise in any manner using a firm name, a corporate name, or an assumed name **which does not set forth the name of the licensee**, he shall first notify the Board in writing of such name or names, and also notify the Board of all certificates filed in compliance with G.S. 66-68, giving the office of the County Register of Deeds in which any certificate has been filed and the date of such filing.