



## The Realtor's Code of Ethics

### PART II

#### Relations to the Client

##### ARTICLE 11.

In accepting employment as an agent, the Realtor pledges himself to protect and promote the interest of the client. This obligation of absolute fidelity to the client's interest is primary, but it does not relieve the Realtor from the obligation of dealing fairly with all parties to the transaction.

##### ARTICLE 12.

In justice to those who place their interests in his care, the Realtor should endeavor always to be informed regarding laws, proposed legislation, governmental orders, and other essential information and public policies which affect those interests.

##### ARTICLE 13.

Since the Realtor is representing one or another party to a transaction, he should not accept compensation from more than one party without the full knowledge of all parties to the transaction.

##### ARTICLE 14.

The Realtor should not acquire an interest in or buy for himself, any member of his immediate family, his firm or any member thereof, or any entity in which he has a substantial ownership interest, property listed with him, or his firm, without making the true position known to the listing owner, and in selling property owned by him, or in which he has such interest, the facts should be revealed to the purchaser.

##### ARTICLE 15.

The exclusive listing of property should be urged

and practiced by the Realtor as a means of preventing dissension and misunderstanding and of assuring better service to the owner.

##### ARTICLE 18.

When asked to make a formal appraisal of real property, the Realtor should not render an opinion without careful and thorough analysis and interpretation of all factors affecting the value of the property. His counsel constitutes a professional service.

The Realtor should not undertake to make an appraisal or render an opinion of value on any property where he has a present or contemplated interest unless such interest is specifically disclosed in the appraisal report. Under no circumstances should he undertake to make a formal appraisal when his employment or fee is contingent upon the amount of his appraisal.

##### ARTICLE 19.

The Realtor should not submit or advertise property without authority and in any offering, the price quoted should not be other than that agreed upon with the owners as the offering price.

##### ARTICLE 20.

In the event that more than one formal written offer on a specific property is made before the owner has accepted an offer, any other formal written offer presented to the Realtor, whether by a prospective purchaser or another broker, should be transmitted to the owner for his decision.

## 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

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#### —CHAIRMAN'S COMMENTS—

It is reported that the real estate industry is the fastest growing industry in this country today. This growth is reflected in the great numbers of persons seeking license from the appropriate regulatory agencies to enter the field.

The impact of this growth has been felt by the North Carolina Real Estate Licensing Board. Applications for license increase each month. The number of licensees, brokers and salesmen, has more than doubled in the last several years, and the percentage of increase is rising annually.

The increased number of licensees subject to the jurisdiction of the Licensing Board has added greatly to the work load of the Board. An example of this is manifested in the number of hearings the Board must conduct each year involving alleged violations of the licensing law. The number today far exceeds the number of hearings only a few years ago.

A disturbing number of the violations coming before the Board involve a breach of the fiduciary relationship that exists between the broker and his salesman on the one hand and the client on the other hand. Too often, it is made to appear upon

hearing that a breach of this trust relationship occurred primarily because the licensee had no real comprehension of the relationship that existed between him and his client. In many instances there is a total lack of understanding that a licensee cannot treat money received in a transaction as his own, regardless of good intentions to replace it at some later time.

The lack of appreciation of the importance of the trust relationship between the licensee and his client is of great concern to the Board. It suggests that those persons who are now licensed, as well as those who are contemplating applying for license, ought to give more time and thought to their responsibilities to the client and the others involved in a real estate transaction, particularly with respect to the handling and accounting for all moneys that pass in the transaction. Every licensee should be aware that once he converts escrow funds to his own use, a violation of the law occurs, a violation of such serious import that a revocation of the offender's license may result. No licensee should jeopardize his opportunity to earn a livelihood as a broker or salesman by the negligent or intentional failure to comprehend the nature of his role in a real estate transaction. He should always know and be aware of his responsibilities and obligations in each transaction.

The Licensing Board takes no pleasure in revoking or suspending licenses.

Best Wishes.

*Henry C. Doby, Jr.*

#### NEW HIGH

A new record total of 1501 applications, 1070 broker and 431 salesman, were processed for the January 1973 real estate examinations. This compares with January 1972 when 819 applications, 624 broker and 195 salesman, were processed.

For the first six months of this fiscal year, 2913 applications, 1906 broker and 1007 salesmen were processed for examination. This compares with the first six months of the preceding year when 1856 applications, 1126 broker and 730 salesmen were processed.

#### LICENSE STATISTICS

Licensees as of December 31, 1972  
Brokers 11,809  
Salesmen 3,211  
15,020

Examination — October 1972  
Passed Failed  
Brokers 242 136  
Salesmen 96 39

Examination — November 1972  
Passed Failed  
Brokers 158 89  
Salesmen 106 94

(NO EXAMINATION IN DECEMBER)

#### LICENSES SUSPENDED-REVOKED

ELLIS E. SEHORN — Concord — broker — revoked — violation of G.S. 93A-6(a) (1), (8), (13)

CHARLES G. ALLEN, JR. — Concord — broker — 6 month suspension — violation of G.S. 93A-6(a) (1), (18), (13).

#### NEW FIELD REPRESENTATIVE



EVERETTE H. JENKINS

The Licensing Board is pleased to announce the employment on January 15, 1973, of Everette H. Jenkins of Candler, North Carolina, as Field Representative in western North Carolina. Everette is experienced in law enforcement, having been formerly employed with the State Highway Patrol and the Buncombe County Sheriff's Department. His wife, Mary Jo, is a Deputy Clerk with the Buncombe County Superior Court. The Board is sure the licensees in Everette's territory will make him welcome.



## FROM THE MAIL BAG

N. C. Real Estate Board  
P. O. Box 266  
Raleigh, North Carolina  
Gentlemen:

I recently came to North Carolina seeking property in your state. I contacted Mr. \_\_\_\_\_, \_\_\_\_\_, N. C. concerning the farm advertised in the \_\_\_\_\_ News, believing Mr. \_\_\_\_\_ to be the owner.

Mr. \_\_\_\_\_ never informed me that he is a realtor. I do not mind purchasing through a realtor, but feel that it is deceptive for one to advertise and act as an owner.

Yours very truly,  
Irate Citizen

### NOTE

The Licensing Board continues to receive complaints from the public, similar to the one expressed in the above letter, relative to deceptive advertising by real estate brokers and salesmen. The ill-will generated by such advertising is not only damaging to the agent concerned but is also a reflection on the entire real estate profession. It is for this reason the Board adopted a rule effective August 1, 1972, to prevent such advertising. The rule is again published below. Brokers and salesmen who are in violation may expect to have their licenses suspended or revoked.

### RULE NO. 15

A broker shall not advertise the sale, purchase, exchange, rent or lease of real estate, for another or others, in a manner indicating the offer to sell, purchase, exchange or lease is being made by a principal. Every such advertisement shall clearly indicate that it is the advertisement of a broker or brokerage firm and shall not be confined to publication of only a post office box number, telephone number, or street address.

A salesman shall not advertise the sale, purchase, exchange, rent or lease of real estate, for another or others, without his broker's consent and without including in the advertisement the name of the broker or firm with whom he is associated.

A broker shall not display a "For Sale" or "For Rent" sign on any real estate without the consent of the owner or his authorized agent.

### WHAT IS THE PRACTICE OF LAW?

Real estate brokers and salesmen are prohibited from practicing law unless they are licensed to practice as attorneys at law. G.S. 84-2.1 defines the practice of laws as follows:

"The phrase 'practice law' as used in this chapter is defined to be performing any legal service for any other person, firm or corporation, with or without compensation, specifically including the preparation or aiding in the preparation of deeds, mortgages, wills, trust instruments, inventories, accounts or reports of guardians, trustees, administrators or executors, or preparing or aiding in the preparation of any petitions or orders in any probate or court proceeding; abstracting or passing upon titles, the preparation and filing of petitions for use in any court, or assisting by advice, counsel, or otherwise in any such legal work; and to advise or give opinion upon the legal rights of any person, firm or corporation; Provided, that the above reference to particular acts which are specifically included within the definition of the phrase 'practice law' shall not be construed to limit the foregoing general definition of such term, but shall be construed to include the foregoing particular acts, as well as all other acts within said general definition."

### BROKER DENIED COMMISSION

In the case of Aiken v. Collins, 16 N. C. App. 504, recently decided by the North Carolina Court of Appeals, the plaintiff, a licensed real estate broker, was denied recovery in his suit to collect a \$2400 real estate commission.

According to the findings of fact, in May 1969 the defendant Collins listed property for sale with the plaintiff for \$25000 of which \$3000 was to be payable in cash and the balance by purchase money note in monthly installments secured by a deed of trust.

As compensation for the making of such a sale, the plaintiff was to receive all amounts for which he might sell the property in excess of \$25000. Plaintiff never secured a purchaser on the listed terms. In November 1969, plaintiff tendered to defendant an offer from Ford and wife for \$24000, of which \$3000 was to be paid in cash and the balance in monthly installments of \$100 each and accompanied by a letter advising the defendant, Collins, that plaintiff would charge a commission of 10% of the total sales price to be deducted from the down-payment. Defendant did not accept this offer. In August 1970, defendant sold the property to Ford and wife for \$24000, of which \$3000 was paid in cash and the balance by purchase money note payable in monthly installments of \$125. The trial court adjudged that plaintiff was entitled to recover nothing from defendant and plaintiff appealed to the Court of Appeals which affirmed the lower court.

In its opinion, the Court stated: "It is established law in this jurisdiction that a real estate broker is not entitled to commissions or compensation unless he has found a prospect, ready, able and willing to purchase in accordance with conditions imposed in the broker's contract. . . . Therefore, for a broker to recover he must establish (1) a binding contract and (2) performance on his part."

"It is true, of course, that as a general proposition if property is placed in the hands of a broker for sale at a certain price, and a sale is brought about through the broker as a procuring cause, he is entitled to commissions on the sale even though the final negotiations are conducted through the owner, who, in order to

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## BROKER DENIED COMMISSION

(Continued from page 3)

make a sale, accepts a price less than that stipulated by the broker. . . . This is so because the law does not permit an 'owner to reap the benefits of the broker's labor without just reward' if he has requested a broker to undertake the sale of his property and accepts the result of services rendered at his request. In such case, in the absence of a stipulation as to compensation, he is liable for the reasonable value of those services."

"In the present case, however, the trial court found that there was an express understanding as to the plaintiff's compensation under which he was to receive compensation only for amounts for which he might sell the property in excess of the sum of \$25000. This brings the present case within the exception to the general rule. . . to the effect that 'when the contract between the broker and his principal expressly makes the payment of commissions dependent on the obtaining of a certain price for the property the broker cannot recover, even though the owner sells at a lower price to a person to whom the broker has first shown the property, unless the broker is prevented from making the sale by the fault of the principal'. . . . There was no evidence in the present case even tending to show that plaintiff was ever able to produce a purchaser who was ready, able and willing to purchase the defendant's land in accordance with the conditions imposed in the contract under which the land was listed with the plaintiff, nor was there any evidence tending to show that plaintiff was in any way prevented from making such a sale by any default of the defendants."

## Consent Judgment to End L. A. Case

A proposed consent judgment prohibiting the Los Angeles Realty Board, four of its divisions, and their 3,800 active members from fixing commission rates in connection with the sale, lease, or management of real estate, has been filed by the Department of Justice in U. S. District Court in Los Angeles.

The proposed judgment will become final in 30 days upon approval of the court, according to Attorney General Richard G. Kliendienst, and will terminate the Department's civil antitrust suit filed Dec. 18, 1970, alleging that the board and its Southwest Branch, Hollywood-Wilshire, Pacific Palisades, and Westwood Divisions and their active members combined to fix commission rates in violation of the Sherman Act.

The judgment prohibits the defendants from fixing, establishing or maintaining any rate of amounts of commissions or fees in connection with the sale, lease, or management of real estate. The defendants also would be forbidden under terms of the judgment from recommending that their members adhere to any suggested fee schedule and from taking any action against a member

who refuses to adhere to any such fees, according to Assistant Attorney General Thomas E. Kauper, head of the Antitrust Division.

In addition, the proposed judgment prohibits each defendant from:

—fixing, maintaining, suggesting, or enforcing any percentage division of commissions between the selling and listing broker;

—adopting, adhering to, maintaining, or enforcing any by-law, rule, regulation, plan or program which would prohibit any member from doing business with any person;

—establishing, maintaining, or enforcing any fees for membership in the Board of Multiple Listing Services which are not related to the approximate cost, including reasonable reserves, of maintaining the organization as a going concern.

The judgment also directs each defendant to insert in its rules, by-laws, regulations, contracts, and other forms which contain a set commission rate, or division thereof, a provision that commission rates are negotiable between the broker and his client and that commission divisions shall not be influenced by the Los Angeles Realty Board.

— Realtor Headlines

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**IS YOUR ADDRESS OK? IF NOT, NOTIFY US NOW!**

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### NEW APPRAISAL COURSE

The American Institute of Real Estate Appraisers is offering a new course, Real Estate Appraisal 1-A, Basic Principles, Methods and Techniques, at the University of North Carolina, Chapel Hill, on July 16-27. The cost of tuition is \$145.00. For information and application for enrollment, write to: American Institute of Real Estate Appraisers, 155 East Superior St., Chicago 60611.

NORTH CAROLINA  
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